

SLO Bonding-NMOGA

Alternative Draft Proposal

MUTUAL GOALS

1. Align bonding (financial assurance) protection for SLO and the trust to current-day risk profile
2. Identify potentially high-risk situations early enough to ensure adequate financial coverage is in place
3. Treatment of and differences between statutory oil and gas leases and energy business leases
4. Create a guidance/policy that is useful and practical for SLO and lessees

Identifying Framework-Outline

- General Requirement for all Lessees
- Per-Lease Financial Assurance Requirements
 - Bulk Financial Assurance
 - Comprehensive Financial Assurance
 - Heightened Financial Assurance
- Requirements
 - Forms of Financial Assurance
 - Waivers of Financial Assurance
 - Claims on Financial Assurance
 - Savings Provision before Lease Termination
- Release of Financial Assurance
 - Phase-In Schedule
 - Lessee Periodic Reporting

General Requirement for all Lessees

- Concerted effort to
 - Switch “Bond” for financial assurance
 - Emphasize the *surface* of the lands as opposed to downhole operations
- Why?
 - To strengthen the proposed rule’s jurisdictional foundation and limit its susceptibility to legal attack
 - Recognition of the broad, but not unlimited jurisdiction of the Commissioner and balance it with the Oil Conservation Division jurisdiction

Per Lease Financial Assurance

A. Minimum Lease-Specific Financial Assurance. Each individual lease on which development or operations commence must be covered by financial assurance meeting the minimum requirements set forth in (1) above.

B. Single Lease Financial Assurance. A lessee or operator holding one lease shall post a \$120,000 bond (or other approved financial assurance).

C. Bulk Financial Assurance. Lessees holding ten or more leases may, with the commissioner's written approval, submit a single instrument to cover multiple leases, according to the following schedule:

Between 10 and 19 leases: \$104,000 per lease

Between 20 and 49 leases: \$88,000 per lease

Between 50 and 99 leases: \$72,000 per lease

Between 100 and 249 leases: \$56,000 per lease
250 or more leases: \$48,000 per lease

The lessee shall provide a schedule listing all leases subject to the bulk financial assurance, and the wells (regardless of operator) located on each lease.

No lease that is subject to heightened financial assurance as outlined in Section B is eligible for inclusion in, or coverage under, a bulk financial assurance.

Notwithstanding anything to the contrary contained in [Section 19.2.100.23] the total financial assurance required of any lessee under [] shall not exceed \$14,000,000.00 in total.

For an alternative consideration: (does better at capturing the risk): each lease above 10 = ten thousand dollars (\$10,000) plus ten thousand dollars (\$10,000) multiplied by the number of unplugged wells located on the surface of that lease. Lease=\$10,000+(\$10,000 x number of unplugged wells located on the surface of that lease).

Comprehensive Financial Assurance: In lieu of the General Financial Assurance or Bulk Financial Assurance provided under this [Section 19.2.100.23.A-C] any lessee may submit a single instrument to cover every lease where the lessee holds record title, on the commissioner's written approval, in a total amount equal to \$XX,000,000 .
[Introduction of new financial assurance concept. Not suggesting any number currently, but would consider amount marginally higher than where the bulk bands ~\$20MM would be equivalent to 285 leases.]

Heightened Financial Assurance Requirements

A. Heightened Financial Assurance Requirements

The commissioner may require additional financial assurance, up to 100% of the estimated remediation and reclamation costs for the surface of a specific lease, when certain conditions are met:

i. Releases requiring remediation.

meaning a release or spill located on a state lease that has not been, within one year after the effective date of this rule or one year from occurrence or discovery, either (a) remediated in accordance with state land office rules or (b) commenced remediation with a plan done with approval by state land office; or

ii. Lessee Compliance History.

If the lessee has within the past five (5) years: (i) Had a bond or other financial assurance successfully claimed by the commissioner; or (ii) The commissioner has filed suit against the lessee for environmental damage to state trust land.

iii. **Reasonable Cause.** When the commissioner has reasonable cause to believe that the state land office may become burdened with the costs of fulfilling the lease obligations described in this section, based on the environmental condition or compliance status of the lease premises which make the remediation and reclamation of state lands more costly, the commissioner may increase the financial assurance required

B. Deferral of Heightened Financial Assurance. Upon commitment to correct the condition(s) listed in 2(A)(i-iii), a lessee may receive up to a one-hundred-and-eighty day deferment of a heightened financial assurance requirement, extendable at the commissioner's discretion based on demonstrated progress or written mutual agreement.

C. Notice. The commissioner shall provide written notice to the lessee of any heightened financial assurance requirement, including the cited basis for such increase and the amount.

Forms of Financial Assurance

A. Financial Assurance shall mean either a bond or in lieu of a surety bond, but in the same amounts and subject to the same substantive requirements set forth in this rule, with commissioner approval a lessee may post:

- i. An irrevocable letter of credit, on a form prescribed or approved by the commissioner, issued by a federally-insured financial institution either doing business in New Mexico or that has agreed in writing to submit itself to the jurisdiction of New Mexico courts. Irrevocable letters of credit shall require the issuing bank to notify the commissioner in writing of any decision to not renew the letter of credit at least 120 days in advance, and shall provide the commissioner the right to redeem the letter of credit prior to non-renewal.
- ii. cash deposit submitted to the commissioner, which shall be held in suspense unless and until the financial assurance is eligible for release or the commissioner makes a claim against the deposit.
- iii. guarantee of performance based on a lessee's demonstration of sufficient net worth may be accepted in lieu of posting other financial assurance instruments if the lessee meets the eligibility criteria set forth in this Section [] Audited financial statements that show current net worth, as demonstrated through financial statements accompanied by an unmodified opinion by an auditor.
- iv. Credit Rating of at least [B_] up to the requisite bond amount or in concert with the bond amount to otherwise lower it for a proportional amount not to exceed [fifty (50%)] of the overall total bond amount.

B. Limitations. The commissioner will not accept financial assurance riders or amendments that change the name of the guarantor, that change the scope of coverage, or that add multiple lessees to the same financial assurance without specific written approval of the same. Lessees who under the pre-existing version of this rule are sharing a financial assurance via rider shall obtain their own separate financial assurances in conformity with the phase-in schedule listed in subsection K.

Claims on Financial Assurance

- A. The commissioner may claim, draw upon, or redeem the bond, letter of credit, deposit or alternative assurance for the lease when necessary to remedy:
- i. Lessee's noncompliance with lease surface obligations;
 - ii. Damage to the state trust land lease; or
 - iii. Failure to remediate, reclaim or otherwise satisfy obligations covered by the financial assurance.
- B. Claims may be made in whole or in part, to the extent reasonably needed to address costs for remediation, reclamation or other compliance failures for the specific lease at issue.
- C. Refund of Claimed Assurance. If any portion of a lessee's financial assurance claimed under this [Section 19.2.100.23] is not needed to cover the costs of reclamation or remediation the commissioner shall refund the remaining amount to the entity that provided the financial assurance.

Savings Provisions before Lease Termination

Before a lease may be terminated due to a financial assurance claim or attempted claim, any operator conducting operations on the lease (including an operator that is not the lessee of record) shall have the right to:

- i. Post substitute financial assurance in an amount equivalent to the financial assurance claimed or attempted to be claimed; but only up to the lesser of:
- ii. the amount of financial assurance required for the lease or the amount required for the communitized area for which the operator has an approved communitization agreement.

Upon posting such substitute financial assurance, the lease shall not be terminated on the basis of the commissioner's claim or attempted claim, and operations may continue so long as the operator or lessee otherwise remains in compliance with applicable requirements.

Release of Financial Assurance and Phase-in Schedule

Release of Financial Assurance.

Bonds or other approved forms of financial assurance may only be released under one of the following conditions:

- A. The lessee first submits a substitute form of financial assurance that complies with this rule, and the commissioner approves the substitution; or
- B. The lessee no longer holds the state oil and gas lease, and the commissioner has confirmed that there are no outstanding compliance or performance issues related to the lease.

Phase-In Schedule.

The requirements of this rule shall apply immediately upon the effective date to all new oil and gas leases.

For current leases with financial assurance already on file, the rule shall become applicable according to the following Phase-In Schedule:

For a single lease, the compliance deadline is within 90 days of the effective date of this rule.

For a lessee or operator who meets the bulk financial assurance criteria, leases shall be brought into compliance within 365 days of the effective date of this rule.

Any lease subject to heightened financial assurance requirements shall be in compliance within 60 days of receipt of notice of the commissioner deeming said lease as in need of additional financial assurance per section above.

Lessee Periodic Reporting

- A. Reporting and Notification Requirements. The lessee of one or more leases shall file a report on or before April 30th occurring after one year after the effective date of the rule and by April 30th every five years thereafter, certified under penalty of perjury by a person with authority to bind the lessee, detailing the following, for each lease held by that lessee as prescribed in this [Section 19.2.100.XX]:
- B. Information requirements for the [periodic report]. On the lessee's [periodic report], the lessee shall provide a:
1. List all wells on the lease, as of December 31 of the previous calendar year, and the status of each well on that date;
 2. List of other fixed infrastructure on the surface of the lease acreage that is related to oil and gas lease operations, including but not limited to open remediation projects, unresolved spills or releases and unresolved inspection reports with outstanding corrective actions on lease premises, by reference to location (latitude/longitude coordinates).
- C. Notwithstanding the foregoing requirements, a lessee who has provided Comprehensive Financial Assurance under Section 19.2.100.XX, shall be exempt from the periodic reporting obligations described in this Section 19.2.100.XX.
- D. The commissioner may, by written notice, require the lessee to furnish the information specified in Section 19.2.100.XX within a designated period. Any such request shall be accompanied by a statement articulating the reasonable grounds necessitating the submission of the report, supported by specific facts or circumstances evidencing the need for further disclosure. The lessee shall respond within a timeframe prescribed by the commissioner, but no less than ninety (90) days after receipt.
- E. The commissioner may prescribe a form and submission format (e.g. web portal) for the reports referenced in this Section 19.2.100.XX. To the extent there is no change from the previous report in any particular category or overall, the lessee may so certify in writing, under penalty of perjury, in lieu of filing a full report.
- F. Errors in and omissions from the periodic report shall not result in lease cancellation by the state land office. Upon identification of an error or omission, the lessee shall have thirty (30) days to amend and resubmit the periodic report or otherwise make corrections thereto.

Conclusion

- NMOGA supports a reasonable and prudent increase to financial assurance requirements
- NMOGA thanks the Commissioner for this early opportunity to engage and provide feedback
- NMOGA hopes this will continue to be an iterative process that will result in a measured approach to risk