

19.2.100.23 BONDING.

A. Minimum Bond Requirements.

Before the commencement of development or operations, including prospecting, on an oil and gas lease, the lessee shall execute and file with the commissioner a good and sufficient bond, in an amount to be fixed by the commissioner but not less than one hundred fifty thousand dollars (\$150,000), in favor of the commissioner and state land office for the benefit of the applicable trust beneficiary, and contract purchasers and surface lessees of the affected acreage, to protect the commissioner and state land office against damage to trust land, minerals, or other natural resources, and to ensure the lessee's compliance with lease obligations. Damage to state trust land includes but is not limited to the failure to plug inactive wells located on the lease acreage, remediate spills, and reclaim surface disturbance and damage to mineral resources and reservoirs, including contamination of soil, surface water, or groundwater resulting from oil, gas, produced water, drilling muds, tank bottoms, or other oilfield wastes, whether or not classified as hazardous under federal or state law. The bond shall be written on a form prescribed or approved by the commissioner. The surety must be certified by the United States Department of the Treasury to issue surety bonds and must be authorized to do business in New Mexico. The bond shall be non-cancellable.

B. Heightened Bond Requirements.

1. If a lease includes on its premises any of the following conditions, the commissioner ~~may~~ shall require the lessee to file an additional financial assurance, in an amount to be determined by the commissioner (not to exceed 100% of estimated applicable plugging, remediation, and reclamation costs):
 - a. An inactive well, i.e. a well for which no production or injection has been reported for a continuous period of one year or more, except for a well:
 - i. that has been in approved temporary abandonment status with the new mexico oil conservation division for a period of five years or less, but this exception shall not apply to any lessee or well operator which has 10% or more of all wells it operates on state trust lands in approved temporary abandonment status;
 - ii. that has received an approved shut-in from the commissioner; or
 - iii. that is on a lease and the lease has received an approved shut in from the commissioner.
 - b. A well that has produced 100 barrels of oil or less in the past year or the equivalent volume of gas; or

c. A release, whether or not reported to the oil conservation division, that has not been completely remediated pursuant to state land office rules and requirements within the latter of one year of occurrence or discovery, or one year from the effective date of this rule; or

d. Improper storage, handling, treatment, recycling, transport, or disposal of oil and gas waste, including but not limited to produced water, drilling muds, tank bottoms, or other oilfield wastes, that has resulted in, or presents a reasonable risk of, contamination of soil, surface water, or groundwater; or

e. A pattern of spills or releases of produced water or other oil and gas waste on the lease premises, including two or more reportable spills within any twelve-month period.

2. If any of the following conditions have occurred in the past ten years, the commissioner ~~may~~ shall require the lessee to file an additional financial assurance, in an amount to be determined by the commissioner (not to exceed 100% of estimated applicable plugging, remediation, and reclamation costs):

- a. The commissioner has claimed the lessee's bond or other financial assurance filed with the commissioner to redress the lessee's compliance deficiencies;
- b. The commissioner has filed suit against the lessee for failing to remedy damage to state trust land caused by oil and gas operations on a lease held by the lessee; or
- c. The lessee is out of compliance with an agreed compliance order, stipulated final order, or other final order of the oil conservation division, or a final order of another agency of the State of New Mexico that pertains to the lessee's oil and gas operations.

3. ~~In the commissioner's sole discretion, a lessee may defer~~ The commissioner may grant a limited deferment of the heightened bond requirement for a period of up to 90 days by committing to plug wells, remediate releases, or address other conditions that trigger the heightened bond requirement by a date agreeable to the commissioner. Any deferment shall be documented in writing and shall not be available for leases with unremediated produced-water contamination or repeated spill violations. The deferment ~~may~~ shall ~~only be extended in the commissioner's sole discretion based on the lessee's progress addressing the compliance deficiencies. upon a written finding that the lessee is making substantial, timely progress toward full compliance.~~

4. In addition to the heightened bonding factors identified in (1) and (2), the commissioner ~~may~~ shall require a higher level of bonding on an individual lease basis, based on ~~the commissioner's assessment of other factors pertinent to the lessee's oil and gas operations in New Mexico, the environmental condition or compliance status of the lease premises or other state leases held by the lessee, or significant changes in compliance costs.~~ documented site-specific factors, including but not limited to:
 - a. the presence of produced-water storage, treatment, recycling, or disposal infrastructure;
 - b. site-specific contamination or legacy impacts;
 - c. well depth, age, or construction complexity;
 - d. compliance history across state trust lands; or
 - e. significant changes in estimated plugging, remediation, or reclamation costs.
5. In the event a higher level of bonding is required under any provision of this rule, the commissioner will provide written notice to the lessee of the required amount and the reasons for the higher bonding requirement.

C. Bulk Bonds. ~~Lessees holding ten or more leases that are required under this rule to be secured by a bond may, with the commissioner's written approval, submit a single bond to cover multiple leases, according to the following schedule:~~ Lessees holding multiple leases that are required under this rule to be secured by a bond may, with the commissioner's written approval, submit a single bond to cover multiple leases only if the bulk bond meets or exceeds the cost-based bonding requirements applicable to each individual lease under this rule. Bulk bonding may be used for administrative efficiency but shall not reduce total financial assurance below cost-based requirements:

~~Between 2 and 9 leases: \$150,000 per lease~~

~~Between 10 and 19 leases: \$130,000 per lease~~

~~Between 20 and 49 leases: \$110,000 per lease~~

~~Fifty or more leases: \$100,000 per lease~~

- a. the minimum bond amount established in Subsection (A);
- b. any cost-based bond amount calculated pursuant to Subsection (L); or
- c. any increased bonding required pursuant to heightened bonding triggers or risk multipliers under this rule.

In the event the commissioner accepts one or more bulk bonds from a particular lessee, the lessee shall provide a schedule listing all leases subject to the bulk bond, and the wells (regardless of operator) located on each lease. The commissioner shall require the lessee to update such schedules annually and upon any lease assignment, termination, or material change in well status. No lease that is subject to heightened bond requirements under Subsection (B), cost-based bonding under Subsection (L), or high-risk operator provisions under Subsection (M) shall be is eligible for inclusion in, or coverage under, a bulk bond.

High-risk operators, as defined in Subsection (M), are not eligible to satisfy bonding requirements through bulk bonds.

D. Reporting and Notification Requirements.

1. Each lessee shall file an annual report on or before December 31 of each year, certified under penalty of perjury by a person with authority to bind the lessee, detailing the following, for each lease held by that lessee:

- a. inventory of active and inactive wells on the lease, with reference to well name, API number, operator, date of last production, total reported oil production (in BBLs) and gas production (in MCF) reported during the previous 12 months, and whether the well is part of an oil and gas unit;
- b. inventory of other fixed infrastructure on the lease acreage that is related to oil and gas lease operations, including but not limited to tank batteries, ponds, separators, produced-water storage, recycling, treatment, transfer, or disposal infrastructure, but not including transient equipment such as vehicles;
- c. list of any hydrocarbon or produced water releases on lease premises, whether or not reported to the oil conservation division, by reference to location (latitude/longitude coordinates), substance released, responsible party, and status of remediation, to the extent known by the lessee;
- d. identification of any warning letters, notices of violation, fines, penalties, civil actions, criminal actions, or judgments issued or initiated by any governmental entity with respect to oil and gas operations on the lease premises, by reference to date, nature of the alleged violation or action, and issuing or initiating entity;
- e. identification of any civil litigation not initiated by a governmental entity concerning or arising out of oil and gas operations on the lease premises;
- f. demonstration of retirement planning including statement of assets dedicated to plugging, remediation, and reclamation costs, based on the projected life of the reservoir, age of infrastructure, and number of active, inactive, and low producing wells, and identification of all bonds, letters of credit, insurance policies, or other financial assurance instruments relied upon to satisfy state land office bonding or insurance requirements; and
- g. identification of any wells plugged in the previous twelve months and the cost to plug, remediate, and reclaim the well, well pad, and associated areas of oil and gas operations (such as adjacent spills, tank batteries, and flowlines).

2. The commissioner may prescribe a form and submission format (e.g. web portal) for the annual report. To the extent there is no change from a prior year's 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. The commissioner shall make annual lessee reports

publicly available on the state land office website, except for information protected from disclosure by law.

3. Lessees shall notify the state land office within 30 days of any change of name or change of address of a surety or financial institution issuing a letter of credit or in the event Lessee is informed of any cancellation or non-renewal of the financial assurance or the insolvency of the surety or other entity issuing the financial assurance, including cancellation, non-renewal, or material modification of any insurance policy required under this rule.

4. Lessees shall reasonably cooperate with the commissioner's inquiries regarding all matters pertaining to state land office bond requirements, insurance requirements, or to the related reporting requirements of this rule.

E. Periodic Adjustment and Review of Bonding Levels.

1. The monetary amounts of all bonds shall be adjusted every five years for inflation based on the preceding calendar year's change in the consumer price index for All Urban Consumers (CPI-U), United States City Average for All Items, published by the United States Department of Labor. The effective date of the adjustment shall be January 1 of the sixth year (the first day following each five-year review cycle).

2. The commissioner will periodically, ~~but~~ and no less frequently than every five years, review the sufficiency of each lessee's bond(s) and any other financial assurance instruments required under this rule. Factors the commissioner ~~may~~ shall consider include the status of the lease (e.g. number of active and inactive wells, lease acreage, number of operators on the lease), the compliance history of lessee with respect to the specific lease in question and other state land office instruments, the presence of produced-water or waste-handling infrastructure, and changes to actual or estimated costs of plugging, remediation, reclamation, closure, decommissioning, and other compliance activities. In the event the commissioner determines a given bond is inadequate financial assurance to protect the state land office and applicable beneficiary, the commissioner shall send written notice to the lessee of the change and lessee shall have 60 days from the date of mailing to update its bond or other financial assurance. Where heightened bonding triggers, cost-based bonding calculations, risk multipliers, or insurance requirements apply under this rule, the commissioner shall require adjustment sufficient to meet those requirements. Failure of the commissioner to engage in bond sufficiency review of any particular lease or lessee in accordance with this paragraph shall not be evidence or an admission of the commissioner's acceptance of the lessee's current bond as adequate.

3. In the event that a well bond or other financial assurance on file with the new mexico oil conservation division would cover operations on a particular lease and the oil and gas act and new mexico oil conservation commission rules are changed to allow the

commissioner to access such bond or other financial assurance, the commissioner ~~may~~ shall only adjust downward the monetary value of the bond required under this rule by the amount of the bond or other financial assurance on file with the new mexico oil conservation division that is applicable to wells on state trust land, provided that such bond or other financial assurance explicitly covers plugging, surface reclamation, and contamination cleanup, including produced-water and other oilfield waste impacts, on state trust lands.

F. [NEW SUBSECTION] Cost-Based Bonding and Risk Multipliers.

1. In addition to minimum bond requirements under Subsection (A), the commissioner shall apply a cost-based bond calculation for each lease, sufficient to cover the reasonably foreseeable costs of plugging, remediation, reclamation, and closure.
2. The cost-based bond calculation shall account for, at a minimum:
 - a. the number of wells located on the lease;
 - b. well depth, age, construction type, and integrity;
 - c. the presence of produced-water storage, recycling, treatment, transfer, or disposal infrastructure;
 - d. anticipated surface reclamation costs, including roads, pads, and caliche removal;
 - e. any known or reasonably foreseeable soil, surface water, or groundwater contamination; and
 - f. the compliance history of the lessee and operator.
3. Minimum bond amounts constitute a floor and not a ceiling. Where the cost-based bond calculation exceeds the minimum bond, the commissioner shall require bonding in the higher amount.
4. The commissioner shall apply the following mandatory risk multipliers to the cost-based bond amount when any of the following conditions are present:
 - a. more than 10% of the lessee's wells on state trust land are in temporary abandonment status: plus 25%;
 - b. any spill or release on the lease that has not been fully remediated within one year of occurrence or discovery: plus 25%;
 - c. more than two produced-water spills on the lease within any twelve-month period: plus 50%;
 - d. any agreed compliance order, stipulated final order, or final enforcement order issued by the oil conservation division within the preceding five years: plus 50%;
 - e. any bond claim by the commissioner within the preceding ten years: plus 75%;
 - f. the presence of produced-water pits, treatment systems, recycling facilities, or centralized waste infrastructure: plus 50%–100%;

- g. unpaid royalties, rentals, penalties, or surface damages owed to the state land office: plus 25%.
- 5. Financial assurance shall not be less than 100% of the estimated plugging and reclamation cost for any lease, and not less than 150% where produced-water contamination or waste infrastructure is present.
- 6. The commissioner shall provide written notice to the lessee of all cost-based determinations and applied risk multipliers.

G. [NEW SUBSECTION] Insurance and Supplemental Financial Assurance.

- 1. Bonding alone may be insufficient to protect trust assets from high-cost or catastrophic releases. For leases involving elevated risk, the commissioner may require liability insurance and joint and several financial responsibility as a condition of lease performance and financial assurance, including where multiple parties own, operate, or benefit from shared infrastructure. Such insurance shall be sufficient to cover reasonably foreseeable costs of spill response, remediation, closure, and contamination cleanup associated with the insured operations, including produced-water releases.
- 2. The commissioner shall require liability insurance or equivalent financial assurance for any lease that includes:
 - a. produced-water storage, recycling, treatment, transfer, or disposal infrastructure;
 - b. centralized tank batteries or waste facilities serving multiple leases; or
 - c. operations conducted by a high-risk operator as defined in Subsection (H).
- 3. Required insurance shall:
 - a. name the commissioner and state land office as additional insureds;
 - b. cover bodily injury, property damage, environmental contamination, and cleanup costs arising from oil and gas operations on state trust land;
 - c. be issued by an insurer authorized to do business in New Mexico; and
 - d. remain in effect until all closure, plugging, and reclamation obligations are satisfied.
- 4. Insurance coverage shall be in amounts sufficient to cover reasonably foreseeable spill, contamination, and facility-failure scenarios and shall not substitute for required bonds.
- 5. Where multiple parties own, operate, or benefit from produced-water or waste infrastructure on state trust land, the commissioner may require financial assurance to be provided on a joint and several basis.

H. [NEW SUBSECTION] High-Risk Operators.

1. The commissioner shall classify a lessee as a high-risk operator if, within the preceding ten years, the lessee has any of the following:
 - a. more than two spills in any twelve-month period;
 - b. any spill unremediated after one year;
 - c. more than 10% of wells in temporary abandonment;
 - d. any final enforcement order issued by the oil conservation division or state land office;
 - e. any bond claim by the commissioner; or
 - f. unpaid royalties, rentals, penalties, or surface damages.
2. High-risk operators shall be subject to mandatory cost-based bonding, risk multipliers, and insurance requirements and shall not be eligible for bulk bonds, bonding waivers, or downward bond adjustments.
3. The commissioner may deny new leases or lease assignments to high-risk operators until all financial and compliance obligations are resolved.
4. High-risk status shall remain in effect for at least three years after the most recent qualifying event.

F. Alternative Forms of Financial Assurance. 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:

1. 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.
2. A 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.

3. Other alternative forms of financial assurance may be considered on a case-by-case basis, at the commissioner's sole discretion.

4. Any alternative form of financial assurance accepted under this subsection shall be subject to the cost-based bonding requirements and risk multipliers set forth in Subsection (F) [Cost-Based Bonding and Risk Multipliers] and shall not be used to reduce or evade required financial assurance amounts.

5. Alternative forms of financial assurance shall not substitute for insurance or supplemental financial assurance required under Subsection (G) [Insurance and Supplemental Financial Assurance].

G. Waivers. A lessee may request a waiver of the bond requirement if the lessee does not intend to conduct or allow any development of oil and gas on the lease acreage, which is at the commissioner's sole discretion. Any request for a waiver must be made within 30 days of lease issuance or assignment. Waivers are not available for leases whose acreage contains producing or inactive wells, unremediated spills, or infrastructure related to oil and gas development from the lease acreage. Waivers are not available to any lessee classified as a high-risk operator under Subsection (H) [High-Risk Operators]. In the event a lessee obtains a waiver, but then proceeds, or allows another to proceed, with oil and gas development on the lease, the lessee must so notify the state land office and post the required bond prior to commencement of such development within 30 days of commencing said development. Any waiver granted under this subsection shall automatically terminate upon issuance of any drilling permit, commencement of construction, or installation of oil and gas or produced-water infrastructure. In the event a lessee obtains a bond waiver, proceeds with oil and gas development on the lease, but fails to notify the state land office and post the required bond, the lessee shall be ineligible for any bond waiver for a period of at least five years.

H. Bond "Riders" Limited. The commissioner will not accept bond riders or amendments that change the name of the guarantor (the lessee), that change the scope of coverage, or that add multiple lessees to the same bond without specific written approval of the same. Lessees who under the pre-existing version of this rule are sharing a bond via rider shall obtain their own separate bonds in conformity with the phase-in schedule listed in subsection K. High-risk operators under Subsection (H) [High-Risk Operators] are not eligible for bond riders or shared bonding arrangements under any circumstances.

I. Claims on Bonds.

1. The commissioner shall provide written notice to a lessee of any claim made against a surety bond, irrevocable letter of credit, or cash deposit on file with the commissioner, at the lessee's last address of record on file with the state land office's oil, gas, and minerals division. Such notification may be made by regular postal mail and no proof of delivery shall be required. The commissioner may, but has no obligation to, notify

any party other than the surety or issuing financial institution, and lessee of record, regarding any bond claim.

2. In the event a bond or other financial assurance is paid out to the commissioner, the affected lease will be canceled unless, after the commissioner provides 30 days written notice by certified mail to the lessee, the lessee cures the default by posting a replacement bond or other form of financial assurance in conformity with this rule. Payment of a bond claim shall constitute prima facie evidence of elevated risk and shall require reevaluation of financial assurance under Subsections (F), (G), and (H), including application of risk multipliers and insurance requirements. The commissioner may require a higher or different form of financial assurance based on payment of the bond claim or other compliance deficiencies of the lessee.

3. In the event a surety (for a surety bond) or issuing bank (for a letter of credit) fails to respond to a claim against the bond or letter of credit within a reasonable period of time, or fails to honor a substantiated claim, the commissioner may reject the bond or letter of credit and require the lessee to obtain a new bond or other form of financial assurance within 30 days that is in conformity with this rule.

J. Release of Bonds. Bonds or other approved forms of financial assurance may only be released upon one of the following events: (1) the lessee first submits a substitute form of financial assurance in compliance with this rule and the commissioner approves the substitution; or (2) the lessee no longer holds any state oil and gas leases and the commissioner has confirmed there are no outstanding compliance or performance issues with respect to lessee's lease(s). No bond, insurance policy, or supplemental financial assurance shall be released unless and until all plugging, remediation, reclamation, and waste-related obligations have been completed to the commissioner's satisfaction.

K. Phase-in Schedule. The requirements of this rule shall apply to all new oil and gas leases, or existing leases for which no good and sufficient bond acceptable to the commissioner has been filed (but which is required to be filed), immediately upon the effective date of the rule. The requirements of this rule shall become applicable to all oil and gas leases pre-existing the effective date of the rule, and for which a good and sufficient bond acceptable to the commissioner has been filed, according to the following schedule (the "Phase-In Schedule"):

1. Any lease subject to any heightened bond requirements shall be in compliance within 60 days of the effective date of this rule.

2. Lessees holding fifty or more oil and gas leases shall bring all their leases into compliance with this rule within 180 days of the effective date of the rule.

3. All other lessees shall bring their leases into compliance with this rule within 365 days of the effective date of the rule.

4. High-risk operators under Subsection (H) shall comply with all cost-based bonding, risk multiplier, and insurance requirements within 90 days of the effective date, regardless of portfolio size.