

FINANCIAL ASSURANCE AND ENVIRONMENTAL RESPONSE FUND

701. SCOPE

The rules in this series pertain to the provision of financial assurance by operators to ensure the performance of certain obligations imposed by the Oil and Gas Conservation Act (the Act), §34-60-106 (3.5), (11), (12) and (17) C.R.S., as well as the use of the Environmental Response Fund (ERF), §34-60-124 C.R.S., as a mechanism to plug and abandon orphan wells, perform orphaned site reclamation, and remediation, and to conduct other authorized environmental activities.

702. GENERAL

Operators are required to provide financial assurance to the Commission to demonstrate that they are capable of fulfilling the obligations imposed by the Act, as described in this series. Except as otherwise specified herein, a surety bond, in a form and from a company acceptable to the Commission, is an approved method of providing financial assurance. Any other method of providing financial assurance identified in §34-60-106(13), C.R.S., shall be submitted to the Commission for approval, and shall be equivalent to the protection provided by a surety bond and may require detailed Commission review on an ongoing basis, including the use of third party consultants, the reasonable expense for which shall be charged to the operator proposing such alternative financial assurance.

- a. When the Director has reasonable cause to believe that the Commission may become burdened with the costs of fulfilling the statutory obligations described herein because an operator has demonstrated a pattern of non-compliance with oil and gas regulations in this or other states, because special geologic, environmental, or operational circumstances exist which make the plugging and abandonment of particular wells more costly, or due to other special and unique circumstances, the Director may petition the Commission for an increase in any individual or blanket financial assurance required in this series.
- b. The requirements of this series do not apply to situations where financial assurance has been provided to federal or Indian agencies for operations regulated solely by such agencies.

703. SURFACE OWNER PROTECTION

Operators shall provide financial assurance to the Commission, prior to commencing any operations with heavy equipment, to protect surface owners who are not parties to a lease, surface use or other relevant agreement with the operator from unreasonable crop loss or land damage caused by such operations. The determination that crop loss or land damage is unreasonable shall be made by the Commission after the affected surface owner has filed an application in accordance with the 500 Series rules. Financial assurance for the purpose of surface owner protection shall not be required for operations conducted on state lands when a bond has been filed with the State Board of Land Commissioners.

The financial assurance required by this section shall be in the amount of two thousand dollars (\$2,000) per well for non-irrigated land, or five thousand dollars (\$5,000) per well for irrigated land. In lieu of such individual amounts, operators may submit statewide, blanket financial assurance in the amount of twenty five thousand dollars (\$25,000).

704. CENTRALIZED E&P WASTE MANAGEMENT FACILITIES

An operator which makes application for an offsite, centralized E&P waste management facility shall, upon approval and prior to commencing construction, provide to the Commission financial assurance in the amount of fifty thousand dollars (\$50,000) to ensure the proper reclamation, closure and abandonment of such facility. This section does not apply to underground injection wells and multi-well pits covered under Rules 706. and 707.

705. SEISMIC OPERATIONS

Any operator submitting a Notice of Intent to Conduct Seismic Operations, Form 20, shall, prior to commencing such operations, provide financial assurance to the Commission in the amount of twenty five thousand dollars (\$25,000) statewide blanket financial assurance to ensure the proper plugging and abandonment of any shot holes and any necessary surface reclamation.

706. SOIL PROTECTION AND PLUGGING AND ABANDONMENT

Prior to commencing the drilling of a well, an operator shall provide financial assurance to the Commission to ensure the protection of the soil and the proper plugging and abandonment of the well in accordance with the 300 Series of drilling regulations, the 900 Series of E&P waste management, the 1000 Series of reclamation regulations, and the 1100 Series of flowline regulations. The financial assurance required by this section shall be

in the amount of five thousand dollars (\$5,000) per well. In lieu of such individual amount, an operator may submit statewide blanket financial assurance in the amount of thirty thousand dollars (\$30,000) for the drilling and operation of less than one hundred (100) wells, or one hundred thousand dollars (\$100,000) for the drilling and operation of one hundred (100) or more wells.

707. INACTIVE WELLS

a. To the extent that an operator's inactive well count exceeds such operator's financial assurance amount divided by five thousand dollars (\$5,000), such additional wells shall be considered "excess inactive wells". For each excess inactive well, an operator's required financial assurance amount under Rule 706. shall be increased by five thousand dollars (\$5,000). This requirement shall be modified or waived if the Commission approves a plan submitted by the operator for reducing such additional financial assurance requirement, for returning wells to production in a timely manner, or for plugging and abandoning such wells on an acceptable schedule.

In determining whether such plan is acceptable, the Commission shall take into consideration such factors as: the number of excess inactive wells; the cost to plug and abandon such wells; the proportion of such wells to the total number of wells held by the operator; any business reason the operator may have for shutting-in or temporarily abandoning such wells; the extent to which such wells may cause or have caused a significant adverse environmental impact; the financial condition of the operator; the capability of the operator to manage such plan in an orderly fashion; and the availability of plugging and abandonment services. If an increase in financial assurance is ordered pursuant to this subsection, the operator may, at its option and in compliance with these 700 Series rules, submit new financial assurance or supplement its existing financial assurance.

b. Operators shall identify and list any shut-in or temporarily abandoned wells on their monthly production/injection report. In addition, when equipment is removed from a well so as to render it temporarily abandoned, operators shall file a Sundry Notice, Form 4, with the Commission within thirty (30) days describing such activity.

c. Any person, other than the operator, who causes equipment from a well to be removed so as to render it temporarily abandoned shall, prior to conducting such activity, file a notice of intent to remove equipment and receive the approval of the Director. The Director may condition such approval on concurrent plugging and abandonment of the well or on provision of the financial assurance required of operators in this series.

708. PUBLIC HEALTH, SAFETY AND WELFARE

All operators shall maintain general liability insurance coverage for property damage and bodily injury to third parties in the minimum amount of five hundred thousand dollars (\$500,000) per occurrence. Operators with wells or production facilities located in "high density areas" as defined in Rule 603.b. shall maintain such coverage in the minimum amount of one million dollars (\$1,000,000) per occurrence. Such policies shall include the Commission as a "certificate holder" so that the Commission may receive advance notice of cancellation.

709. FINANCIAL ASSURANCE

All financial assurance provided to the Commission pursuant to this Series shall remain in place until such time as the Director determines an operator has complied with the statutory obligations described herein, or until such time the Director determines a successor-in-interest has filed satisfactory replacement financial assurance, at which time the Director shall provide written approval for release of such financial assurance. Whenever an operator fails to fulfill any statutory obligation described herein, and the Commission undertakes to expend funds to remedy the situation, the Director shall make application to the Commission for an order calling or foreclosing the operator's financial assurance.

a. Operators and third party providers of financial assurance shall be served with a copy of such application pursuant to Rule 503. and shall be accorded an opportunity to be heard thereon. Any third party provider of financial assurance which subsequently fails to comply with a Commission order to make such financial assurance available shall be considered an unacceptable provider of any new financial assurance to operators in Colorado, until such time as it applies for and receives an order of reinstatement. This provision shall be stayed by the filing of a judicial appeal. In addition, the Commission may institute suit to recover such monies.

b. If an operator's financial assurance is called or foreclosed by the Commission, the called or foreclosed amount shall be deposited in the Environmental Response Fund to be expended by the Director for the purposes referenced in Rule 701., and an overhead recovery fee of ten percent (10%) of the funds expended by the Director as direct costs shall be charged against any excess of the financial assurance over such costs. Any remainder of such financial assurance after such cost recovery shall be returned to its provider. In no circumstances will the liability of a third party provider of financial assurance exceed the face amount of such financial assurance.

c. If an operator's financial assurance is called or foreclosed by the Commission, such operator's Certificates of Clearance, Form 10, are forthwith suspended and no sales of gas or oil shall be allowed, except as may be allowed by the Commission order, until such time as the operator's financial assurance has been replaced or restored.

710. ENVIRONMENTAL RESPONSE FUND

It is the intent of the Commission that an Environmental Response Fund (ERF) "emergency reserve" of unobligated funds be maintained in the amount of one million dollars (\$1,000,000), which may be used in accordance with the Act and Rule 701.

711. NATURAL GAS GATHERING, NATURAL GAS PROCESSING AND UNDERGROUND NATURAL GAS STORAGE FACILITIES

Operators of natural gas gathering, natural gas processing, or underground natural gas storage facilities shall be required to provide statewide blanket financial assurance to ensure compliance with the 900 Series rules in the amount of fifty thousand dollars (\$50,000), or in an amount voluntarily agreed to with the Director, or in an amount to be determined by order of the Commission. Operators of small systems gathering or processing less than five (5) MMSCFD may provide individual financial assurance in the amount of five thousand dollars (\$5,000).