



WYOMING LEGISLATIVE SERVICE OFFICE

# Memorandum

**DATE** April 15, 2024

**TO** Joint Minerals, Business and Economic Development Interim Committee

**FROM** Brian Fuller, Senior Staff Attorney

**SUBJECT** Topic Summary: Oil and Gas Bonding

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This summary provides background information on requirements for bonding for oil and gas operations in Wyoming.

## Approved Interim Topic

### Priority No. 1: Oil and Gas and Pipeline Issues.

*The Committee will study oil-and-gas issues and pipeline issues, including the regulation of intrastate carbon dioxide pipelines, the Wyoming Pipeline Corridor Initiative, incentives for enhanced oil recovery, and bonding issues related to oil and gas production.*

## Bonding Requirements in Statute

Wyoming law specifies that the Oil and Gas Conservation Commission has authority to require the "furnishing of a surety bond or other guaranty, conditioned for or securing the performance of the duty to plug each dry or abandoned well or the repair of wells causing waste and compliance with the rules and orders of the commission."<sup>1</sup> Statute defines what a "surety bond or other guaranty" is:

[A] surety bond, a first priority security interest in a deposit of the proceeds of a collected cashier's check, a first priority security interest in a certificate

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<sup>1</sup> W.S. 30-5-104(d)(i)(D).

of deposit or an irrevocable letter of credit, all in an amount and including other terms, conditions and requirements determined by the commission.<sup>2</sup>

Beyond this, there are only a few additional references to bonding for oil-and-gas purposes in statute:

- The Commission can adopt rules to require and fix the amount of a surety bond or other guaranty to ensure compliance with regulations governing geophysical operations and oil-and-gas operations occurring under the Split Estate Act.<sup>3</sup>
- The Commission is authorized to use funds collected under a statutory assessment (see W.S. 30-5-116(b)) to plug wells and seismic holes and complete reclamation if, among other things, the owner, contractor, or hole plugger doesn't have an adequate surety bond or other guaranty to cover reclamation and plugging costs.<sup>4</sup>

The Split Estate Act also specifies bonding requirements. An operator can execute a good and sufficient surety bond or other guaranty to the Commission in lieu of securing written consent and obtaining an executed surface-use agreement before entering for oil-and-gas operations.<sup>5</sup> The Act also specifies the type of bond that may be acceptable, establishes a minimum amount for a bond (generally, \$10,000 per well site), provides for a process if the surface owner objects to the amount or the type of the surety bond or guaranty and the Commission's resolution of the objection, and provides for the release of the surety bond or other guaranty upon completion of operations and resolution of any damages.<sup>6</sup>

### **Bonding Requirements/Oil and Gas Operations**

In accordance with W.S. 30-5-104(d)(i)(D), the bonding requirements are primarily found in the rules of the Commission. The Commission requires from the owner or operator "a good and sufficient bond running to the state of Wyoming" to ensure that each well and associated equipment are operated and maintained to not cause waste or damage the environment.<sup>7</sup>

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<sup>2</sup> W.S. 30-5-101(a)(x).

<sup>3</sup> W.S. 30-5-104(a)(v)(A).

<sup>4</sup> W.S. 30-5-104(a)(vii).

<sup>5</sup> W.S. 30-5-402(c)(iv).

<sup>6</sup> W.S. 30-5-404.

<sup>7</sup> Oil & Gas Conservation Comm'n Rules [Rules], Ch. 3, § 4(a).

The rules specify bond requirements for specific situations and types of bonds. Each owner<sup>8</sup> is required to furnish a bond of \$10.00 for each foot of the well bore; this amount must be adjusted every three years based on the Wyoming consumer price index or actual plugging costs.<sup>9</sup> In lieu of a per-foot bond, an operator can furnish a blanket bond of \$100,000 that will cover all of the operator's wells, regardless of the depth or length.<sup>10</sup>

If wells are idle,<sup>11</sup> then the State Oil and Gas Supervisor may require an increased bond amount of up to \$10.00 per foot for each idle well, accounting for the existing bond in place.<sup>12</sup> This amount is required to be adjusted every three years based on the actual costs of plugging orphan wells or by the percentage change in the Wyoming consumer price index.<sup>13</sup> If the operator has a blanket bond covering wells on fee or patented lands, then the Commission "will normally not ask for additional coverage" so long as the wells are producing, monitoring, injecting, or disposing.<sup>14</sup> An owner or operator may request a different bonding level based on an evaluation of the well's conditions and circumstances, and the idle well bond amount will be reviewed annually or upon the operator's request.<sup>15</sup> As part of the owner's or operator's plan, the owner or operator must commit to plugging or returning to active status at least 10% of the idle wells during each calendar year.<sup>16</sup>

The rules also provide separate provisions for commercial Class II disposal wells.<sup>17</sup> For these wells, the owner or operator must post an individual bond for each well, set at \$10.00 per well foot (identical to the per-foot bond amount generally).<sup>18</sup> An owner or operator may request the Supervisor to set a different bonding level based on the well's

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<sup>8</sup> The rules define an "owner" as the person who has the right to drill into and produce from a pool and to appropriate the oil or gas produced. Rules, Ch. 1, § 2(nn). An "operator" is a person that the owner authorizes as the person engaged in the business of drilling and producing wells for oil and gas. Rules, Ch. 1, § 2(mm).

<sup>9</sup> Rules, Ch. 3, § 4(b)(i)(A).

<sup>10</sup> Rules, Ch. 3, § 4(b)(i)(B).

<sup>11</sup> The rules provide that wells are idle if they are "not producing, injecting, or disposing in an economic manner." Rules, Ch. 3, § 4(b)(ii)(A).

<sup>12</sup> Rules, Ch. 3, § 4(b)(ii)(A).

<sup>13</sup> Rules, Ch. 3, § 4(b)(ii)(B).

<sup>14</sup> Rules, Ch. 3, § 4(b)(ii)(A).

<sup>15</sup> Rules, Ch. 3, § 4(b)(ii)(B)–(C).

<sup>16</sup> Rules, Ch. 3, § 4(b)(ii)(C).

<sup>17</sup> Class II disposal wells are wells used to dispose of water or other fluids directly associated with oil-and-gas production; also included are wells used to inject fluids or gas for enhanced oil recovery and any well used for the storage of liquid hydrocarbons. Rules, Ch. 1, § 2(i) and (m).

<sup>18</sup> Rules, Ch. 3, § 4(b)(iii).

conditions or circumstances.<sup>19</sup> The owner and operator must submit a written cost estimate from an experienced Wyoming contractor to provide plugging, abandonment, and site remediation; at the Supervisor's discretion, the Supervisor can accept or reject the cost estimate when determining whether to adjust the bonding level for these disposal wells.<sup>20</sup>

The rules also provide for bonding for pits that are constructed to receive water or other wastes or noncommercial, centralized pits used for field operations. The Commission may require "a good and sufficient bond running to the state of Wyoming."<sup>21</sup> The Supervisor is to set separate bonding amounts for these pits after evaluating the conditions and circumstances of the specific site.<sup>22</sup> Similar to bonding for Class II wells, the owner must, upon request, provide a written cost estimate for remediation after closure of the pit.<sup>23</sup> The Supervisor has authority to waive bonding associated with pits for the retention of water produced solely in association with recovering coalbed methane gas under certain specified conditions.<sup>24</sup>

Finally, the rules provide requirements for bonds associated with split estates. After an owner attempts good-faith negotiations with the surface owner, the owner may submit a bond or other guaranty to cover all oil-and-gas operations identified in the notice required under W.S. 30-5-402(e).<sup>25</sup> The Supervisor is to determine the amount of the bond, but the minimum bond is \$10,000 per well site.<sup>26</sup> For seismic operations, the bond must be at least \$5,000 for the first 1,000 acres, and at least \$1,000 for each additional 1,000 acres for each surface owner over whose property access is sought.<sup>27</sup>

The Supervisor can require a separate blanket or surety bond to cover other activities like accessing roads, pipelines, and production facilities.<sup>28</sup> The rules also provide factors that the Supervisor must consider in determining the amount of bond to be posted, whether

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<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Rules, Ch. 3, § 4(b)(iv).

<sup>22</sup> Rules, Ch. 3, § 4(b)(iv)(A).

<sup>23</sup> Id.

<sup>24</sup> Rules, Ch. 3, § 4(b)(iv)(B) and (C).

<sup>25</sup> Rules, Ch. 3, § 4(b)(v)(B).

<sup>26</sup> Id.

<sup>27</sup> Rules, Ch. 3, § 4(b)(v)(C).

<sup>28</sup> Rules, Ch. 3, § 4(b)(v)(B).

the bond is a blanket bond or for a single well site.<sup>29</sup> After the Commission receives a bond, the Commission must give written notice to the surface owner by certified mail that describes the amount and type of bond, among other things.<sup>30</sup> The surface owner has 30 days to object to the bond or the guaranty amount; if the owner objects, the Commission must consider the matter at its next meeting.<sup>31</sup>

### **Bonding Requirements/Types of Bonds and Disposition**

The Commission's rules specify the types of guarantees that may be used to satisfy the bonding requirements. They are:

- Surety bonds. This appears to be the default form of guarantee required for bonding for oil and gas operations. The bond must be "good and sufficient" and issued by a surety company.<sup>32</sup>
- Cashier's Check. An owner can deposit a cashier's check with the Commission in lieu of a surety bond. Among other conditions required, the check must be drawn for an amount equal to or greater than the amount required, and the owner must execute a valid, binding, first-priority pledge agreement as to the proceeds of the collected cashier's check.<sup>33</sup>
- Certificate of Deposit (CD). An owner may deposit a certificate of deposit with the Commission in lieu of a surety bond. Similar to cashier's checks, the CD must be drawn for an amount equal to or greater than the required amount; the CD must be issued by an FDIC-insured bank with a branch or its main office in Wyoming or by any other bank that the Supervisor deems acceptable.<sup>34</sup> The CD must be issued for an initial term of at least one year and must be automatically renewable from year-to-year.<sup>35</sup> The owner must execute a valid, binding, first-priority pledge agreement as to the CD.<sup>36</sup>

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<sup>29</sup> Rules, Ch. 3, § 4(b)(v)(D). The Supervisor must consider the proposed plan of work and operations and may consider any other factor that would materially impact the bond amount needed to secure payment of damages, including the loss of production and income, the loss of land value, and the loss of value of improvements caused by operations. Id.

<sup>30</sup> Rules, Ch. 3, § 4(b)(v)(E).

<sup>31</sup> Rules, Ch. 3, § 4(b)(v)(F).

<sup>32</sup> Rules, Ch. 3, § 4(c)(i).

<sup>33</sup> Rules, Ch. 3, § 4(c)(ii).

<sup>34</sup> Rules, Ch. 3, § 4(c)(iii).

<sup>35</sup> Id.

<sup>36</sup> Id.

- Letter of Credit. An owner may deposit a letter of credit with the Commission in lieu of a surety bond. The letter must have a face amount equal to or greater than the required amount; must be issued by an FDIC-insured bank with a branch or its main office in Wyoming or by any other bank that the Supervisor deems acceptable; must be payable in current funds "at sight"<sup>37</sup> at the FDIC-insured bank located within Wyoming; and must be issued with an initial expiration of not less than one year from the date of issuance and automatically extended from year-to-year up to four years.<sup>38</sup> If the letter expires without the owner providing or depositing a replacement for the letter, then the rules specify that the owner is deemed to have authorized and directed the Commission to draw the entire face amount of the letter and retain the proceeds as a deposit.<sup>39</sup>

The bond or other guarantees that are required must remain in full force and effect until one of the following occurs:

- The Supervisor has approved the permanent plugging and abandonment of the well (or wells).
- The well has been properly converted to a water well in a manner that the Supervisor approves (and in conjunction with the State Engineer).
- A successor owner or operator or the purchaser of a well has provided a bond or other surety in an amount and form acceptable to the Commission.
- The bond has been forfeited or otherwise released.<sup>40</sup>

If the Commission determines that the principal on the bond (or other form of guarantee) delivered to the Commission has complied with all statutory requirements, rules, and Commission orders related to facility removal, closure, plugging, and reclamation, then the Commission must release the obligation of the bond or other guarantee.<sup>41</sup> The Supervisor may forfeit the bond or other guarantee if the principal or person fails to comply with statutes, rules, or the Commission's orders and after notice and a hearing.<sup>42</sup>

The rules for the release of split-estate bonds are different. An owner may request that the bond or other guarantee posted with the Commission be released upon written request and a certified statement that:

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<sup>37</sup> "At sight" means that the payment will be provided on demand when a financial institution is presented with appropriate documentation.

<sup>38</sup> Rules, Ch. 3, § 4(c)(iv).

<sup>39</sup> Rules, Ch. 3, § 4(c)(iv).

<sup>40</sup> Rules, Ch. 3, § 4(d)(i).

<sup>41</sup> Rules, Ch. 3, § 4(d)(ii).

<sup>42</sup> Rules, Ch. 3, § 4(d)(iii).

- Compensation for damages has occurred.
- All parties reach an agreement for release.
- Final resolution of the judicial process for any action for damages has occurred and all damages have been paid.
- The surface owner failed to give written notice as required under the Split Estate Act, or the surface owner has failed to bring an action for damages within the required time.<sup>43</sup>

When an owner requests a release, the Commission must notify the surface owner by certified mail, after which the surface owner has 15 days to dispute the release request.<sup>44</sup> If there is no dispute, if the surface owner affirmatively agrees to the release, or if there is just cause, then the bond may be released.<sup>45</sup>

This summary is meant to provide a broad and basic overview of oil-and-gas bonding in Wyoming. Please let me know if you have any questions.

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<sup>43</sup> Rules, Ch. 3, § 4(e)(i).

<sup>44</sup> Rules, Ch. 3, § 4(e)(ii).

<sup>45</sup> Id.