



CENTER for BIOLOGICAL DIVERSITY

August 21, 2024

Gerasimos Razatos, Acting Director
New Mexico Oil Conservation Division
1200 South Saint Francis Drive
Santa Fe, NM 87501

Gerasimos.Razatos@emnrd.nm.gov

Via Electronic Mail

Re: Request to Enforce Law Against Operators for Failing to Properly Plug and Remediate Inactive Oil and Gas Wells

Dear Acting Director Razatos:

The Center for Biological Diversity and EarthRights International hereby request that the Oil Conservation Division (“OCD” or “the Division”) fulfill its duty to enforce the Oil and Gas Act by taking action against operators who have illegally failed to timely plug inactive oil and gas wells. As you know, wells that have not produced in over a year are required to either be plugged and remediated, or put into approved temporary abandonment. NMAC § 19.15.25.8(B). Despite this clear obligation, the Division’s records show there are currently more than 3,350 noncompliant inactive oil and gas wells across New Mexico and more than 340 operators that are violating the law.

Unplugged idle wells are a public safety hazard and pose an unacceptable risk to human health and the environment. Those risks only grow the longer a well is left inactive and unplugged, as does the likelihood that the operator will become insolvent and go bankrupt, sticking the state with the costs of plugging and reclamation. Timely enforcement action to ensure that operators comply with inactive well plugging requirements is the most effective and efficient means available to the Division to minimize waste, curtail methane emissions, protect public safety and the environment, and minimize fiscal liabilities. By contrast, failure to enforce compliance with these obligations will significantly exacerbate the orphan well crisis, damage public health and the environment, and impair the Division’s ability to carry out its mandate.

We urge the Division to take action immediately against violators, before it is too late. We also request a meeting with the Division to discuss its inactive well data, operator prioritization, and the Division’s strategy for ensuring operators comply with their plugging and remediating duties.

I. The Division has a Duty to Enforce Regulations Governing Inactive Wells.

Pursuant to New Mexico law, an operator “shall either properly plug and abandon a well or place the well in approved temporary abandonment” within 90 days if the well has been “continuously inactive” for a year. NMAC § 19.15.25.8(B).¹ An “inactive well” is one “that is not being used for

¹There are limits on how many wells operators may have in temporary abandonment, § 19.15.25.12, and approval

beneficial purposes such as production, injection or monitoring and that is not being drilled, completed, repaired or worked over.” NMAC § 19.15.2.7(I)(4). “A well inactive for more than 15 months creates a rebuttable presumption that the well is out of compliance.” NMAC § 19.15.5.9.

The Division has the duty to prevent waste and protect correlative rights. NMSA 1978 § 70-2-11. The Division also has a duty to enforce the Oil and Gas Act (NMSA 1978 § 72-2-28), and the authority to enforce compliance against any person that has violated or is violating the Oil and Gas Act or any provision of any rule, order, permit or authorization issued pursuant to the act. NMSA 1978 § 70-2-31. As the Division states on its website, the Division “makes certain abandoned wells are properly plugged, and ensures the land is responsibly restored.”²

As of August 12, 2024, there are 3,359 wells on the Division’s “inactive well list” that are not plugged, are not in approved temporary abandonment, not subject to an agreed compliance order with a schedule, and have not produced in over 15 months. NMAC § 19.15.5.9(B)(1). The list is attached as Exhibit A. Each of these wells are out of compliance and each of these operators are violating the law. The Division must take immediate enforcement action to bring these operators into compliance, ensure the wells are plugged and the land restored, and prevent further violations.

II. Non-compliant, inactive oil and gas wells leak methane and other pollutants and pose significant health, safety and environmental risks.

When companies postpone plugging, such wells are too often left to deteriorate without any real supervision or monitoring, risking a casing failure or other leakage that wastes hydrocarbon resources, infringes on correlative rights, degrades the value and utility of public and private lands, and threatens human health and safety. Unplugged inactive wells threaten to contaminate groundwater and land, emit dangerous pollutants into the air,³ and are a major source of methane emissions in the atmosphere that drive climate change. These methane emissions also create a danger of explosions – recent investigations in New Mexico found inactive wells emitting at explosive levels, with one inactive Remnant well clocking in at 10 times the concentration at which methane can explode.⁴ The longer wells sit idle, without being plugged or properly maintained, the greater the risk of harm to surface owners and the public.

III. Failure to promptly enforce plugging regulations risks substantial financial liabilities.

Failure to promptly enforce the limit on how long wells can sit inactive and unplugged exacerbates the orphan well crisis that the Division already lacks sufficient resources to address, leaving taxpayers on the hook for the costs of irresponsible operators.

requires an operator to provide “evidence demonstrating the well’s casing and cementing are mechanically and physically sound” so as to prevent leaks and pollution, and to satisfy additional financial assurance requirements. § 19.15.25.13.

² <https://www.emnrd.nm.gov/ocd/>

³ See, e.g. Mark Olalde and Nick Bowlin, *The Rising Cost of the Oil Industry’s Slow Death*, ProPublica and Capital & Main (Feb. 22, 2024), <https://www.propublica.org/article/the-rising-cost-of-the-oil-industrys-slow-death> (finding hydrogen sulfide at highly dangerous concentrations at several wells in New Mexico); see also e.g. Dominic C. DiGuilio et al, *Chemical Characterization of Natural Gas Leaking from Abandoned Oil and Gas Wells in Western Pennsylvania*, ACS Omega at 19444 (2023), <https://pubs.acs.org/doi/10.1021/acsomega.3c00676?ref=pdf>

⁴ Mark Olalde and Nick Bowlin, *The Rising Cost of the Oil Industry’s Slow Death*, ProPublica and Capital & Main (Feb. 22, 2024), <https://www.propublica.org/article/the-rising-cost-of-the-oil-industrys-slow-death>.

The transfer of low-producing wells from large operators to smaller, inexperienced, and undercapitalized operators that are likely to eventually file for bankruptcy is a tried-and-true industry practice that is already seen across New Mexico.⁵ Individual operators that have a high percentage of inactive unplugged wells pose an especially high risk of insolvency and the longer a well is left inactive, the greater the chances it never comes back online and is ultimately orphaned without proper decommissioning and plugging.⁶

When that happens, the responsibility falls to the Division which is required to “reclaim and properly plug all abandoned wells” and “restore and remediate abandoned well sites.” NMSA 1978 § 70-2-38(B). Although operators are required to put forth financial assurance that can be recovered and used for plugging costs if they refuse or are unable to carry out their obligations, current bonding levels in New Mexico do not come close to covering the full cost of proper plugging and remediation. A 2021 Center for Applied Research study, for example, found that for the well plugging, decommissioning, and surface reclamation costs there is an average financial assurance gap of approximately \$182,600 per well.⁷ With respect to well closure and clean up on state trust lands and private lands (excluding pipelines and other infrastructure), the study estimated total costs to be approximately \$5.591 billion.⁸ By contrast, the total amount of financial assurance held by NMOCDC-permitted entities operating on state and private lands was estimated to be only approximately \$173.18 million.⁹

The state – and the Division specifically, through administering the reclamation fund – is left to cover the difference. While the Division has the ability to bring suit against operators after the fact for indemnification of costs (NMSA 1978 § 70-2-38(B)), that is inefficient and costly, and is often not an option where an operator has gone bankrupt. For example, in the recent settlement with Ridgeway, the Division agreed to pay \$30 million in plugging costs while the oil company only reimburses the state \$30,000 a month, meaning that even if it remains solvent, it will take the company more than 80 years to repay that cost.¹⁰

New Mexico is already unable to cover the cost of plugging wells that are orphaned.¹¹ Operators cannot be allowed to let their wells sit indefinitely, languishing and degrading, contributing to air and water pollution, until they either go bankrupt or otherwise walk away without covering the

⁵ See, e.g. Mark Olalde and Nick Bowlin, *The Rising Cost of the Oil Industry's Slow Death*, ProPublica and Capital & Main (Feb. 22, 2024), <https://www.propublica.org/article/the-rising-cost-of-the-oil-industrys-slow-death>.

⁶ See, e.g. Mark Olalde & Ryan Menezes, *The toxic legacy of old oil wells: California's multibillion-dollar problem*, Los Angeles Times & the Center for Public Integrity (Feb. 6, 2020), <https://www.latimes.com/projects/california-oil-well-drilling-idle-cleanup/>.

⁷ The Center for Applied Research, *An Analysis of the Adequacy of Financial Assurance Requirements for Oil and Gas Infrastructure Located on State Trust and Private Lands in New Mexico* at 3 (Apr. 30, 2021), <https://www.nmstatelands.org/wp-content/uploads/2021/05/NM-Assurance-Assessment-May-FINAL.pdf>. Note that saltwater disposal wells on state trust lands are not included in this calculation. At the time the study was prepared, saltwater disposal wells accounted for only 340 of the 16,174 wells on state trust land.

⁸ *Id.* at 6, 12.

⁹ *Id.* at 21-22.

¹⁰ Jerry Redfern, *It's settled: New Mexico to bankroll plugging of oil wells for Texas company*, Capital & Main (Dec. 22, 2023), <https://sourcenm.com/2023/12/22/its-settled-new-mexico-to-bankroll-plugging-of-oil-wells-for-texas-company/>.

¹¹ Letter from Todd Leahy to Secretary Haaland (Dec. 22, 2021), <https://www.documentcloud.org/documents/21197856-new-mexico-ocd-correspondence-infrastructure-investment-and-jobs-act>.

costs of plugging and saddling taxpayers with potentially billions of dollars in what should have been industry costs. The Division must take prompt enforcement action before it is too late.

IV. The Division must act immediately, prioritizing high risk wells and high risk operators.

There is presently widespread non-compliance with plugging and abandonment regulations. The Division’s list of inactive wells (as of August 4, 2024) reveals more than 341 operators – more than half of all operators in the state - currently have inactive wells that have not produced in 15 months, are not properly plugged, and are not subject to an agreed compliance order, or in approved temporary abandonment status. We urge the Division to take immediate action to compel compliance, beginning with high risk operators and high risk wells.

Wells that have been inactive for many years are particularly concerning; the longer a well is left inactive and unplugged the more likely it is to be orphaned, and the longer a well sits unplugged, non-producing and not in approved temporary abandonment status, the greater the health, safety and environmental risks it poses. Many wells on the list have been inactive for over a decade (not including those listed as “Reclamation Fund Approved.”).

Operators with high numbers of inactive wells, and especially those with a high percentage of inactive wells, represent another area of high risk, given the likelihood of future insolvency. There are numerous operators that have a concerning percentage of their wells inactive – in many cases 100%

- Dominion Production Company, LLC has 124 of its 129 wells are inactive
- Northern Pacific Oil and Gas Incorporated: 65 of its 79 wells are inactive
- Sellers & Fulton Oil LLC: All 36 of its wells are inactive (one is Reclamation Fund Approved)
- Energy Acumen LLC: 36 of its 50 wells are inactive
- Petrolia Energy Corporation: 28 of its 36 wells are inactive
- POCO Resources LLC: 66 of its 67 wells are inactive (nine are Reclamation Fund Approved)

Without prompt action to enforce operators’ legal obligations before it is too late, the Division risks significant health, environmental, and fiscal liabilities.

Again, we would like to meet with you to review the data and discuss your strategy for ensuring operators comply with their duty to plug and remediate inactive wells. Thank you for your consideration of this request.

Sincerely,

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