

Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907) 272-1481 Fax: (907) 279-8114
Email: moriarty@aoga.org
Kara Moriarty, President & CEO

November 27, 2018

Commissioner Hollis French, Chair
Alaska Oil & Gas Conservation Commission
333 W. 7th Avenue
Anchorage, AK 99501
Submitted by E-Mail to: jody.colombie@alaska.gov

**Re: Second Set of Proposed Revisions to 20 AAC
25.025 – Bonding Regulations**

Dear Commissioner French:

Thank you for the continued opportunity to comment on the Alaska Oil and Gas Conservation Commission's ("AOGCC" or "Commission") proposed revisions to the bonding requirements contained in 20 AAC 25.025 (the "Regulation"). The Alaska Oil and Gas Association ("AOGA") is the professional trade association for the oil and gas industry, representing the majority of oil and gas exploration, production, refining and transportation companies in Alaska.

AOGA adopts, by reference, the comments it submitted on behalf of its members in response to the first set of proposed revisions to the Regulation on October 16, 2018. Those comments are attached to this document as "Exhibit A."

AOGA's Request for An Agency and Stakeholder Process to Participate in Revising The Regulation Should be Adopted by AOGCC.

AOGA respectfully reiterates its conclusory paragraph from Exhibit A:

AOGA would like to participate in a holistic approach to modifying current bonding requirements that also takes into account the requirements of other state agencies. AOGA encourages an approach that requires more communication among State agencies than currently exists. Any effort by AOGCC to modify current regulations should be done in conjunction with DNR, private landowners, large and small producers and other stake holders. These modifications should strike an appropriate balance between addressing the concerns of the land owners while at the same time encouraging new and continued investment in our State.

AOGCC's release of the second set of proposed revisions to the Regulation shortly after the close of the first public comment period has not addressed AOGA's substantive concerns with the revisions, nor were other State agencies, AOGA or other stakeholders invited to work with AOGCC to develop a holistic solution. Rather, the second set of proposed revisions are identical to first set with one exception: AOGCC now suggests 5 tiers instead of 23, which results in even higher bonding amounts per well compared to the first set.

The Second Set's Reduced Tiers Further Exacerbate the Unfair Burdens on Small Companies and Newcomers.

The combination of reduced bonding tiers and higher costs of bonding per well adds to the burden on smaller companies operating in Alaska along with the barriers to entry for new producers seeking to invest in our State. This structure exacerbates the added burdens on small companies and newcomers detailed in Exhibit A.

Companies Should Be Allowed Flexibility in Forms of Financial Assurances to Satisfy the Regulation.

Exhibit A also compared Alaska's bonding requirements to other states. As noted in those comments, some states allow flexibility in the form of financial instruments accepted in addition to conventional sureties and personal bonds. If AOGCC persists in its higher bonding requirements, AOGA believes it is appropriate for the Commission to provide for additional flexibility in the form of financial instruments which might be used to meet the new requirements. Other instruments may offer equal or greater assurance, while in some cases potentially imposing less financial burden on operators. The costs of large bonds are a disincentive for investment which benefit neither operators nor the State. Flexibility in the form of the instruments provides additional opportunities both to meet the new requirements and potentially to reduce the costs.

This flexibility is already allowed under Alaska law. For example, AOGCC's current regulation allows a "personal bond" to be accompanied by security in the form of a certificate of deposit; irrevocable letter of credit, or "another form that the [C]ommission determines to be adequate to ensure payment."¹ AOGCC should also allow these forms of security in lieu of a personal bond or surety. Alaska Department of Environmental Conservation in its regulations governing financial responsibility requirements for oil shipping and facilities has recognized a number of forms in addition to bonds and insurance, including self-insurance, contracts of guaranty, letters of credit, and statements of indemnity issued by protection and indemnity clubs.² These securities cover substantial liabilities for spills which may exceed the proposed well bonding and security amounts here. AOGCC should consider adopting these forms of financial responsibility as well.

Under the proposed Regulation, the Commission will already have discretion to increase or decrease the amount of bonds. Broadening the scope of instruments which could be proposed would afford operators greater flexibility in the financial instruments to meet the greatly increased amounts of bonding and the Commission similar discretion to approve them.

¹ 20 AAC 25.025(a)(2).

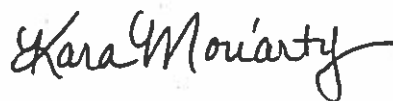
² See 18 AAC 75.245, .260, .265, and .270.

Commissioner Hollis French, Chair
Alaska Oil & Gas Conservation Commission
November 27, 2018

Page 3

Thank you again for this opportunity and we look forward to working with the agency.

Respectfully submitted,

A handwritten signature in black ink that reads "Kara Moriarty". The signature is written in a cursive, flowing style.

KARA MORIARTY
President & CEO

Attachment

Exhibit A

Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907) 272-1481 Fax: (907) 279-8114
Email: moriarty@aoga.org
Kara Moriarty, President & CEO

October 16, 2018

Commissioner Hollis French, Chair
Alaska Oil & Gas Conservation Commission
333 W. 7th Avenue
Anchorage, AK 99501
Submitted by E-Mail to: jody.colombie@alaska.gov

Re: Proposed Revisions to 20 AAC 25.025 – Bonding Regulations

Dear Commissioner French:

Thank you for the opportunity to comment on the Alaska Oil and Gas Conservation Commission's ("AOGCC" or "Commission") proposed revisions to the bonding requirements contained in 20 AAC 25.025. The Alaska Oil and Gas Association (AOGA) is the professional trade association for the oil and gas industry, representing the majority of oil and gas exploration, production, refining and transportation companies in Alaska.

AOGA's members recognize their obligations to Alaskans and the environment for responsible resource development, part of which includes the necessity for bonding to ensure the safe and sufficient plugging and abandonment of a well when it is no longer in use. Although AOGA believes the combination of current Department of Natural Resources ("DNR"), AOGCC and Federal bonding requirements are sufficient, our member companies would consider modifications to current bonding requirements. The bonding thresholds in the proposed revisions are, however, too high. AOGA respectfully opposes these proposed revisions for the following reasons.

The Proposed Bonding Requirements Are Too High and Could Discourage New Investment
Currently producers with more than one well on non-federal lands, are required to have statewide bonds up to \$700,000; \$200,000 for AOGCC¹ and \$500,000 for DNR.² While, facially, those are the regulatory requirements, many producers are required to provide the State additional bonding or other financial assurances well beyond those amounts. These assurances often reach well into the millions.

The proposed regulations represent a graduated schedule of bonding that creates significant increases from the current scheme. For example, a small producer with two wells would see an increase of 150%, a mid-size producer with 100 wells sees an increase of 4,900% while a large producer with 500 wells sees a 6,900% increase. Increases of this order of magnitude are both unprecedented and unreasonable.

¹ 20 AAC 25.025.

² 11 AAC 83.160(c).

Current Alaska Bonding Requirements Already Parallel or Exceed Other States

Alaska's current bonding requirements either parallel or exceed other states. For example, New Mexico's counterpart to AOGCC has a law similar to Alaska's which allows producers to provide a "blanket plugging financial assurance" not to exceed \$250,000.³ Texas is also similar to Alaska. It has a three-tiered bonding schedule which is capped at \$250,000 for producers with more than 100 wells.⁴ Texas is also flexible in the form of assurances it accepts, allowing for letters of credit, cash deposits, escrow, insurance, etc...⁵ North Dakota allows a blanket bond for all wells of \$100,000.⁶ Oklahoma requires either a bond, letter of credit, certificate of deposit, cashier's check or other negotiable instrument in the amount of \$25,000,⁷ combined with a binding agreement between the producer and the State to plug all wells in accordance with State law.⁸ The proposed bonding requirements are not in line, and in fact far exceed, those of other states.

The Immediate Vesting Schedule for New Wells Unduly Burdens Small Companies

The costs of oil production in Alaska already far exceed those of Alaska's competitor states in the Lower 48. Perhaps recognizing the burden these proposed bonding requirements would place on existing producers, AOGCC proposes a three-year vesting schedule for current producers to come into compliance. No such courtesy is given to incoming producers bringing new investment to our State. As written, the proposed changes could discourage new investment in Alaska and add to the already high barriers to entry to doing business in our State.

The Proposed Regulation Creates Uncertainty

Under the current regulation, the AOGCC Commissioner must release the surety bond if the wells are plugged and abandoned in accordance with 20 AAC 25.105. The proposed revision transforms a requirement of AOGCC, specifically that it "will" release the bond when plugging and abandonment is completed, into something discretionary; AOGCC "may" release the bond in the proposed regulation. This creates an added level of uncertainty as to what is expected of AOGA's members before a bond is released.

Additionally, the proposed revision would allow AOGCC to, on its own initiative, increase or decrease the bonding requirements based on "evidence that engineering, geotechnical, environmental, or location conditions warrant an adjustment of those amounts." The ability of the Commissioner to increase the bond required is not based on clearly defined conditions and standards.

AOGCC Should Consider A Producer's Agreements with DNR

Many of our member companies are required by the DNR Commissioner to address the estimated cost of dismantlement, removal and restoration ("DR&R") through Financial Assurance Agreements or DR&R Agreements (collectively, "Agreements"). These Agreements address the anticipated DR&R costs for not only wells in operation, but also anticipated future wells. The proposed revisions neither acknowledge nor require AOGCC to take these Agreements into account. If AOGCC is to have discretion in setting different bonding requirements from what is set forth in the proposed regulation, AOGCC should also consider the Agreements a producer may have with DNR.

³ NMSA 70-2-14 (A).

⁴ Texas Admin Code, Title 16, Part 1, Chapter 3, Rule 3.78.

⁵ Id.

⁶ N.D. Admin. Code Section 43-02-03-15.

⁷ 52 O.S. 318.1

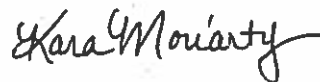
⁸ Oklahoma Admin. Code Section 165:10-1-10, et. seq.

AOGA Would Like to Participate in a Collaborative Approach to Revising Bonding Requirements

AOGA would like to participate in a holistic approach to modifying current bonding requirements that also takes into account the requirements of other state agencies. AOGA encourages an approach that requires more communication among State agencies than currently exists. Any effort by AOGCC to modify current regulations should be done in conjunction with DNR, private landowners, large and small producers and other stake holders. These modifications should strike an appropriate balance between addressing the concerns of the land owners while at the same time encouraging new and continued investment in our State.

Thank you again for this opportunity and we look forward to working with the agency.

Respectfully submitted,

A handwritten signature in black ink that reads "Kara Moriarty". The signature is written in a cursive, flowing style.

KARA MORIARTY
President & CEO