



**West Virginia Surface Owners' Rights Organization**  
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September 18, 2023

U.S. Department of the Interior, Director (630),  
Bureau of Land Management, Room 5646  
1849 C St. NW  
Washington, D.C. 20240,

Attention: 1004-AE80

Re: Subpart 3104  
Comment on alternative to bonding  
(Which does not work and never has).

Dear Friend,

The West Virginia Surface Owner's Rights Organization (WVSORO) educates and speaks for West Virginia surface owners and small mineral interest owners when the oil and gas well drillers show up. We have more than 800 members who have paid dues. Our website gets hundreds of page visits – a day. We got three bills through the West Virginia Legislature in 2020 raising money to plug the more than 6,500 orphaned wells in West Virginia – though that money was a drop in a bucket – a bucket with a hole in the bottom until orphaned well prevention laws are passed, and government leases are fixed. We have been successful in getting surface owner provisions in cotenancy and forced pooling legislation. We are well qualified (pun intended) to comment on the proposed rule, and care most about Subpart 3104 on bonding.

A regulatory system is doomed to failure that expects a well driller/operator to come up with the money to plug a well and reclaim the site at the end of the life of the well. Such a system will not work -- has never worked.

Wells produce a lot of hydrocarbons (and money) after they are first drilled and when they are first turned on line; and then their production (and earnings) decline swiftly. At the end of their lives wells do not even produce enough hydrocarbons to pay for regular servicing. Expecting the well driller/operator to have the money to plug them at that point simply does not work. Please identify for us any mineral extraction regulatory program of the federal government or any state government where, when a producer went out of business, there was enough bonding to fully plug/reclaim the site. In the 45+ years WVSORO or its predecessor has

been involved in oil and gas exploration and production, we have never heard of that happening – anywhere.

We have been in negotiations with the oil and gas industry in our state legislature over orphaned well prevention laws on a number of occasions over the years. When bond amounts for the full cost of plugging are suggested, the industry says they cannot afford/get them. We believe them. Bonding companies are not foolish. They know from history that well owners will find ways to shirk plugging wells, and bonding companies do not want to have to pay the full-cost-of-plugging bond amount when that happens.

Instead, for all new wells, the entity responsible for drilling/operating the well should be required to set-aside monthly/quarterly payments for each well into a government owned and controlled financial account – one that can earn money through interest or investments. (If it is not a government account, then the operator's creditors will get the money in a bankruptcy instead of it being used for plugging.) If the principal amount of accumulated set-aside payments in a well's account ever exceeds the projected cost of plugging, the payments can be suspended and interest/investment income from the fund can be used to supplement the set aside amounts for other wells of that operator that have accounts that are underfunded, and if there are none of those, returned to the operator.

The amount of the monthly/quarterly set-aside payments should be determined using:

- Production estimates and declines based on similar wells.
- The projected life of the well based on similar wells or reservoir engineering estimates.
- Payment amounts that are higher at the beginning but reduce over time in accordance with the reduced production/income estimates.
- The projected cost of plugging at that time plugging will be needed based current actual costs and on historical inflation of such costs.
- Reduction of that future cost to present value so that the operating entity will have to pay less than the future cost of plugging, and interest or investment returns on the set-aside payments will result in the amount of the cost to plug in the account only at the time needed.

Legislation like this has been introduced in West Virginia.<sup>1</sup>

We strain to be diplomatic about Section 3104.30 which allows well operators to put all the wells they have in a State under just one \$500,000 bond. This is THE WAY TO GUARANTEE future orphaned wells – as history has shown. Statewide blanket bonding is the principal reason West Virginia has 12,500 inactive, unplugged wells right now including 6,500 orphaned wells, and that is counting only the ones drilled after 1929 when record keeping began – and why we expect 10,000 more from just one well operator by the year 2049.<sup>2</sup>

Sincerely,

David B. McMahon, J.D.  
Co-Founder

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<sup>1</sup> See for example SB 82 introduced in 2020.

[http://www.wvlegislature.gov/Bill\\_Status/bills\\_history.cfm?INPUT=82&year=2020&sessiontype=RS](http://www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=82&year=2020&sessiontype=RS)

<sup>2</sup> Documentation from that one operator, Diversified, can be provided.