

## INTRO & PROCEDURAL CONTEXT

### § 18.01.

Ohio's oil and gas well program [18.01–18.03]▲Ohio's coal mining program [18.04]▲Ohio's mining program relating to industrial mineral surface mining and in-stream mining [18.05]▲ Ohio's abandoned mines programs [18.06]▲ Appeals from decisions, findings and orders issued by DMRM relating to mining [18.07]

### § 18.02. Procedural Context—Ohio Mining and Minerals Programs

The Ohio Department of Natural Resources (ODNR) has authority over mining and mineral resource development activities in Ohio.

- Division of Oil and Gas Resources Management - oversees Ohio's regulatory program governing oil and gas wells.
- Division of Mineral Resources Management (DMRM) - oversees the regulation of coal mining, mine safety, and abandoned mine lands.

## II. OHIO MINERAL RESOURCE REGULATORY PROGRAMS

### § 18.03. Ohio and Gas Laws

#### [1] Introduction

Division of Oil and Gas Resources Management in ODNR regulates the permitting, locating, spacing, drilling, and operating of oil and gas wells within the state, including site restoration and disposal of wastes from those wells, in accordance with R.C. 1509 and rules adopted under it. The Chief of the Division of Oil and Gas Resources Management heads the Division.

#### [2] Authority of the Division

Chiefs have authority to issue Final Actions, like Director of OEPA.

- R.C. 1509 vests in the Division Oil and Gas Resources Management and its Chief sole and exclusive authority to regulate the permitting, locating, and spacing of oil and gas wells within the state. The Division has sole and exclusive authority to regulate production operations within the state. Litigation has mostly upheld this grant of exclusive authority.
  - But DOT and local authorities have authority to issue special permits regarding vehicle size, weight, or load, unless it unnecessarily impeded ODNR's regulation.

### **[3] Definitions**

- “Owner” means the person who has the right to drill on a tract or drilling unit, to drill into and produce from a pool, and to appropriate the oil or gas produced from the pool either for the person or for others, except that a person ceases to be an “owner” with respect to a well when the well has been RC 1509 plugged.
  - Excludes a person who obtains a lease of the mineral rights for oil and gas on a parcel of land if the person does not attempt to produce oil or gas from a well or obtain a permit.
  - “Well stimulation” or “stimulation of a well” means the process of enhancing well productivity, including hydraulic fracturing operations.

### **[4] Oil and Gas Regulatory Cost Recovery Assessment**

Beginning July 2010, RC 1509 imposed an oil and gas regulatory cost recovery assessment on an owner.

- The oil and gas regulatory cost recovery assessment is calculated on a quarterly basis, except for an exempt domestic well, and requires the assessment to be one of the following:
  - (a) If the sum of 10¢ per barrel of oil for all of the wells of the owner, ½¢ per 1,000 cubic feet of natural gas for all of the wells of the owner. (plus others)

### **[5] Injection Well Disposal Fee**

- Fees on owners and permit holders for an injection well:
  - (a) 5¢ per barrel of each substance that is delivered to a well to be injected in the well when the substance is produced within the Division of Mineral Resources Management regulatory district in which the well is located or within an adjoining regulatory district; or
  - (b) 20¢ per barrel of each substance that is delivered to a well to be injected in the well when the substance is not produced within a Division’s regulatory district in which the well is located or within an adjoining regulatory district.
- Quantity: maximum of 500,000 barrels of substance per injection well in a calendar year on which the fee may be levied.
  - if the owner of an injection well receives more than 500,000 barrels of substance to be injected in the owner’s well and if the owner receives at least one substance that is produced within the Division’s regulatory district in which the well is located or within an adjoining regulatory district and at least one substance that is not produced within the Division’s regulatory district in which the well is located or within an adjoining regulatory district, the fee must be calculated first on all of the barrels of substance that are not produced within the Division’s regulatory district in which the well is located or within an adjoining district at the rate established in item (b) above.

### **[6] Gas Storage Well Regulatory Fee**

## **[7] Oil and Gas Well Fund**

### **[a] Sources of Money Credited to the Fund**

- All money collected by the Chief from permit application fees, permit revision fees, forfeiture of bonds, fees for permits to plug and abandon a well, injection well permit fees, brine transporter registration fees, 90% of the money received from severance taxes on oil and gas, civil penalties, and criminal fines.

### **[b] Expenditures From the Fund**

- Chief must spend Fund money to plug wells and to restore land surface properly for which bonds have been forfeited, plug abandoned wells, to inject oil or gas production wastes in abandoned wells, to correct conditions that the Chief reasonably has determined are causing imminent health or safety risks.

## **[8] Mandatory Pooling and Unitization**

### **[a] Statutory Provisions**

- Mandatory pooling may be requested when an operator is unable to acquire the leases necessary to meet the acreage and/or distance requirements when applying for a drilling permit.
  - If a tract of land is of insufficient size or shape to meet the requirements for drilling a well, and the owner has been unable to form a drilling unit by agreement on a just and equitable basis, the owner may submit an application to the Division of Oil and Gas Resources Management for a mandatory pooling order. Current law requires the owner of the tract also to own the mineral interest.
- Mineral Interests Definitions. "Pooling" - the integration of several tracts of land to allow for proper spacing between oil and gas wells. "Unitization" - the consolidation of mineral interests in a common oil and gas supply to most efficiently extract oil and gas while protecting correlating rights.
  - Rules governing unitization.
    - Affidavit of attempts to lease.
    - Visual depictions of the proposed unit.
    - Description of geological formations.
    - Large exhibits at hearings.

### **[b] Application**

The Chief must issue the drilling permit and a mandatory pooling order in the statutorily set time periods, if the Chief is satisfied that the application is proper and that mandatory pooling is necessary to protect correlative rights and to provide effective development, use, and conservation of oil and gas. The mandatory pooling application shall be accompanied by a nonrefundable fee of \$10,000.

### **[c] Contents of a Mandatory Pooling Order**

A mandatory pooling order shall:

- (1) Designate the boundaries of the drilling unit within which the well shall be drilled;
- (2) Designate the proposed production site;
- (3) Describe each separately owned tract or part thereof pooled by the order;
- (4) Allocate on a surface acreage basis a pro rata portion of the production to the owner of each tract;
- (5) Specify the basis on which each mineral rights owner of a tract pooled by the order must share all reasonable costs and expenses of drilling and producing if the mineral rights owner elects to participate in the drilling and operation of the well;

(6) Designate the person to whom the permit must be issued.

A person shall not submit more than five applications for mandatory pooling orders per year, unless the Chief approves additional applications.

#### **[d] Nonparticipating Owners**

- If an owner of a tract pooled by a mandatory pooling order does not elect to participate in the risk and cost of the drilling and operation of a well, the owner must be designated as a nonparticipating owner in the drilling and operation of the well on a limited or carried basis and is subject to terms and conditions determined by the Chief to be just and reasonable.
  - If an owner is designated as a nonparticipating owner, the owner is not liable for actions or conditions associated with the drilling or operation of the well. If the applicant bears the costs of drilling, equipping, and operating a well for the benefit of a nonparticipating owner, as provided for in the pooling order, then the applicant is entitled to the share of production from the drilling unit accruing to the interest of that nonparticipating owner.

#### **[e] Minimum Acreage Requirements**

The Chief, with the approval of the Technical Advisory Council on Oil and Gas, must adopt rules setting minimum acreage requirements for drilling units and minimum distances from which a new well may be drilled or an existing well deepened, plugged back, or reopened to a source of supply different from the existing pool from boundaries of tracts, drilling units, and other wells for the purpose of conserving oil and gas reserves. Drilling units must be compact and composed of contiguous land.

#### **[9] Restrictions Governing Surface Location of a Well, a Tank Battery, and Other Surface Facilities**

#### **[10] Application for a Permit to Drill a Well**

##### **[a] Contents**

An application is required for a permit to drill a new well, drill an existing well deeper, reopen a well, convert a well to any use other than its original purpose, or plug back a well to a different source of supply to be filed with the Chief.

##### **[b] Time Period for Issuance of a Permit**

The Chief shall not issue a permit for at least 10 days after the permit application filing date unless, upon a reasonable cause shown, the Chief waives that period or a request for expedited review is filed. However, the Chief shall issue a permit within 21 days of the filing of the application unless the Chief denies the application by order.

##### **[c] Fees**

##### **[d] Site Review; Fencing, Screening, and Landscaping**

Before issuing a permit to drill a proposed well in urbanized area, the Division of Oil and Gas Resources Management must conduct a site review to identify and evaluate any site specific terms and conditions that may be attached to a permit.

### **[e] Subjects for Terms and Conditions of a Permit**

The Chief must adopt rules according to Ohio's Administrative Procedures Act for the administration, implementation, and enforcement of R.C. 1509.60

- The rules must include an identification of the subjects that the Chief must address when attaching terms and conditions of a well and production facilities permit in an urbanized area.

These include:

- (1) safety concerning the well drilling or operation; (2) protection of public and private water supplies; (3) fencing and screening of surface facilities; (4) containment and disposal of drilling and production wastes; (5) construction of access roads for well construction and drilling; and (6) noise mitigation, except safety and maintenance operations.

### **[f] Term of a Permit to Drill**

Urban area permits valid for 12 months; all other permits are valid for 24 months.

### **[11] Public Meeting by a Political Subdivision Concerning a Proposed Lease Agreement**

A political subdivision must conduct a public meeting concerning a proposed lease agreement for the development of oil and gas resources on land that is located in an urbanized area and that is owned by the political subdivision before entering into the lease agreement.

- Must sent notice not later than 10 days before the date of the public meeting to the owner of each parcel of real property that is located within 500 feet of the surface location of the property that is the subject of the proposed lease agreement.

### **[12] Notice of the Filing of a Permit Application to Residents in Occupied Dwellings**

### **[13] Surety Bond**

Before the Director issues a permit to drill or before operating or producing from a well, an owner of any well must execute and file a surety bond that is conditioned on compliance with restoration requirements, plugging requirements, permit requirements for plugging and abandoning a well, and all rules and orders of the Chief relating to those requirements in an amount set by rule of the Chief.

OR

Provide proof of financial responsibility consisting of a sworn financial statement showing a net financial worth within this state equal to 2x the bond.

### **[14] New Surety Bond in Event of Forfeiture of Surety Bond**

### **[15] Liability Insurance**

owner of any well, except an exempt Mississippian well or an exempt domestic well, must obtain liability insurance coverage from a company authorized to do business in Ohio in an amount of not less than \$1 million bodily injury coverage and property damage coverage to pay damages for injury to persons or damage to property caused by the drilling, operation, or plugging of all the owner's wells in this state.

If well is located within an urbanized area, amount of not less than \$3 million for bodily injury coverage and property damage coverage to pay damages for injury to persons or damage to property caused by the drilling, operation, or plugging of all of the owner's wells in this state.

## **[16] Notification Prior to Commencement of Drilling, Reopening,**

### **[17] Fluid Drilling in Onondaga Limestone in Urbanized Areas**

A person who is issued a permit under R.C. 1509 to drill a new well or drill an existing well deeper in an urbanized area shall establish fluid drilling conditions before penetrating the Onondaga limestone and continue to use fluid drilling until total depth of the well is achieved unless the Chief authorizes such drilling without using fluid.

### **[18] Well Construction Requirements**

#### **[a] Standards for Constructing a Well**

A well must be constructed in a manner that is approved by the Chief and as specified in the permit, using materials that comply with industry standards for the type and depth of the well and the anticipated fluid pressures that are associated with the well.

#### **[b] Rules**

The Chief must adopt rules according to the APA, which are consistent with the standards for constructing a well, evaluating the quality of well construction materials and completing remedial cementing.

- The rules must consider local geology and various drilling conditions and require the use of reasonable methods that are based on sound engineering principles.

#### **[c] Cementing**

An owner must notify an oil and gas inspector each time that the owner instructs a person to perform the cementing of the conductor casing, the surface casing, or the production casing.

#### **[d] Exemption**

The Chief must grant an exemption from the standards for constructing a well if the Chief determines that a cement bond log confirms zonal isolation and there is a minimum of 500 feet between the uppermost perforation of the casing and the lowest depth of an underground source of drinking water.

### **[19] Statement of Production**

The owner of any well must file a statement of production of oil, gas, and brine for the last preceding calendar year, except a horizontal well, on or before March 31. An owner that has more than 100 wells in Ohio must submit the statement electronically in a format approved by the Chief.

### **[20] Wireline Electric Logs and Well Completion Records**

### **[21] Well Stimulation**

An owner who elects to stimulate a well must stimulate the well in a manner that will not endanger underground drinking water sources. Not later than 24 hours before stimulating a well, the owner or the owner's authorized representative must notify a mineral resources inspector. If during the stimulation of a well damage to the production casing or cement occurs and results in the circulation of fluids from the annulus of the surface production casing, the owner must immediately notify the Chief.

**[22] Gas Flaring**

The owner of any well producing both oil and gas may burn such gas in flares when the gas is lawfully produced and there is no economic market at the well for the escaping gas. Also when it is necessary to protect the health and safety of the public.

**[23] Defective Wells or Casing**

Upon discovering that the casing in a well is defective or that a well was not adequately constructed, the owner of the well must notify the Chief within 24 hours of the discovery, and the owner must immediately repair the casing, correct the construction inadequacies, or plug and abandon the well.

**[24] Wells Not Completed or Not Producing**

The owner of a: (1) well that has not been completed, (2) well that has not produced within one year after completion, (3) an existing well that is not a horizontal well and that has no reported production for two consecutive reporting periods, or (4) an existing horizontal well that has no reported production for eight consecutive reporting periods must plug the well.

**[25] Temporary Inactive Well Status****[26] Permit to Plug and Abandon a Well**

A person is prohibited from plugging and abandoning a well without a permit. A permit to plug is valid for 24 months from the date of issue.

**[27] Written Report of Abandonment and Plugging Without Inspector Present**

Must file a written report to the Chief if inspector is not present.

**[28] Payment for Plugging of Abandoned Wells****[29] Emergency Planning Reporting**

A person regulated under R.C. 1509 and that is required to submit information under the federal Emergency Planning and Community Right-to-Know Act (EPCRA) must submit specified information regarding hazardous materials to the Chief on or before March 1 each year.

- The definition of “emergency planning district,” “facility,” and “fire department” have the same meaning as Ohio’s version of EPCRA.
  - An emergency planning district is an emergency planning district or joint emergency planning district designated under R.C. 3750.03.
  - A facility is all buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites and owned or operated by the same person or by any person who controls, is controlled by, or is under common control with that person.
  - A fire department is a fire department of a municipal corporation or township, township fire district, joint township fire district, private fire company, or volunteer fire company that has entered into an agreement for the use and operation of fire-fighting equipment.

### **[30] Rules for Drilling and Treatment of Wells, Production of Oil and Gas, and Plugging**

The Chief is authorized to set out procedures and practices for drilling of wells and producing oil and gas. These rules protect public health or safety, prevent damage to natural resources, and specify practices to be followed in the treating & plugging of wells.

### **[31] Restoration Requirements**

#### **[a] Duty to Restore Land Surface**

#### **[b] Filling of Pits and Grading**

must fill all pits for containing brine and other approved waste substances

#### **[c] Removal of All Production and Storage Equipment**

### **[32] Secondary or Additional Recovery Operations**

### **[33] Fluids Associated With Oil and Gas Development**

A person is prohibited, except when applying brine to roads, from placing or causing to be placed in ground water, on land, or in surface water brine, crude oil, natural gas, or other fluids associated with exploration, development, well stimulation or causing brine to be placed in surface or ground water or in or on the land in such quantities or in such manner as actually causes or could reasonably be anticipated to cause water that is used for consumption by humans or domestic animals to exceed the standards of the Federal Safe Drinking Water Act or damage or injury to public health or safety or the environment.

- The storage and disposal of brine and other waste substances and the Chief's rules relating to storage and disposal are subject to all of the following standards:
  - (1) Brine from any well except an exempt Mississippian well must be disposed of only by methods or procedures authorized by R.C. 1509.114
  - (2) Brine from exempt Mississippian wells shall not be discharged directly into the waters of the state.
  - (3) Muds, cuttings, and other waste substances cannot be disposed of in violation of any rule.
  - (4) Pits, or steel tanks, authorized by the act, must be used as authorized by the Chief for containing brine and other waste substances resulting from, obtained from, or produced in connection with drilling, well stimulation rather than fracturing, reworking, reconditioning, plugging back, or plugging operations. The pits and steel tanks must be constructed and maintained to prevent the escape of brine and other waste substances.
  - (5) A dike or pit may be used for spill prevention and control. A dike or pit so used must be constructed and maintained to prevent the escape of brine and crude oil, and the reservoir within such a dike or pit must be kept reasonably free of brine, crude oil, and other waste substances.
  - (6) Impoundments constructed utilizing a synthetic liner under the Division's specifications may be used for the temporary storage of waste substances used in the construction, stimulation, or plugging of a well.
  - (7) No pit or dike can be used for the temporary storage of brine or other waste substances except in accordance with items (4) to (5) above.
  - (8) No pit or dike can be used for the ultimate disposal of brine or other liquid waste substances.



- When analyzing material that results from constructing, operating or plugging a horizontal well, the owner shall determine the concentration of radium-226 and of radium-228 in representative samples of the material if it is Technologically Enhanced Naturally Occurring Radioactive Material (TENORM).
  - The owner is not required to determine the concentration of radium-226 and radium-228 if: (1) the material is reused in the horizontal well from where it originated or is transferred to another site for reuse in a horizontal well (2) the owner disposes of the material at an injection well where a permit has been issued. (3) the owner uses the material in association with a method of enhanced recovery for which a permit has been issued. (4) the material is transported out of the state for lawful disposal.

**[34] Permit to Inject Brine or Other Waste Substances**

A person must have a permit to inject brine or other waste substances resulting from, obtained from, or produced in connection with oil or gas drilling, exploration, or production into an underground formation unless a rule of the Chief expressly authorizes the injection without a permit. Application + \$1,000.

- Two-tier injection well disposal fee, depending on where the brine was generated:
  - (a) 5 cents per barrel of each substance that is delivered to a well to be injected when the substance is produced in the division of oil and gas resources management regulatory district or in an adjoining oil and gas resources management regulatory district; or (b) 20 cents per barrel of each substance that is delivered to a well to be injected when the substance is not produced in the division of oil and gas resources management regulatory district or in an adjoining oil and gas resources management regulatory district.

**[35] Brine Transporters**

**[a] Registration Certificate, Identification Number, and Surety Bond Requirements**

A person is prohibited from transporting brine by vehicle in Ohio unless the employing entity registers with and obtains a registration certificate and identification number from the Chief. Also submit a \$15,000 surety bond, cash, or negotiable certificates of deposit.

**[b] Release of Surety Bond**

**[36] Local Governments Application of Brine to Roads, [37] Priority Lien**

### **[38] Enforcement Actions, Orders of the Chief, and Civil and Criminal Penalties**

The Chief or representative must enforce Ohio's Oil and Gas laws and the rules, the terms and conditions of permits and registration certificates, and orders adopted or issued under it.

- The enforcement authority of the Chief includes the authority to enter into compliance agreements.
- The Chief may order the suspension of drilling, operating, or plugging activities that are related to a material and substantial violation and suspend and revoke an unused permit after finding either of the following:
  - (1) the owner has failed to comply with an order finding that the owner has committed a material and substantial violation and the order is final and nonappealable; or (2) an owner is causing, engaging in, or maintaining a condition or activity that the Chief determines presents an imminent danger to the health or safety of the public or that results in or is likely to result in immediate substantial damage to the natural resources of the state.
- The Chief may issue a bond forfeiture order for failure to comply with a final nonappealable order or a compliance agreement.
- Civil sanctions available for violations of R.C. Chapter 1509, rules adopted thereunder, or orders of the Chief include: See Chart
- A person may be subject to a civil penalty and a term of imprisonment for the same offense.

### **[39] Database of Permittee Violations, [40] Suspension Order Concerning a Well in a Coal Bearing Township, [41] Appeals by Persons Affected by an Order of the Chief, [42] Transfer or Assignment of the Entire Interest in an Oil and Gas Lease, [43] Transfer or Assignment of the Entire Interest in an Oil and Gas Well**

### **[44] Oil and Gas Commission**

R.C. 1509 creates the Oil and Gas Commission. The Commission consists of five members appointed by the Governor. One of the appointees to the Commission must be a person who, by reason of the person's previous training and experience, can be classed as one learned and experienced in geology. The Commission does not have jurisdiction to review permitting actions of the Chief.

### **[45] Oil and Gas Exploration of State Lands**

Allowed. A special commission reviews requests.

### **[46] Seismic Monitoring**

### **§ 18.04. Coal Mining**

- The requirements of Ohio's surface coal mining regulatory program are driven in large measure by the requirements of the federal Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 et seq. Like the federal program, Ohio's program prohibits conducting surface coal mining operations without a permit. In Ohio, coal surface mining permits are issued by DMRM under R.C. Chapter 1513.
  - To obtain a permit under the Ohio program, the applicant must publish a notice of intent to mine in a newspaper of general circulation in the area where the proposed mining activity will be located. Permits are issued for a term of five years and are renewable and transferable.

- The Chief may require:
  - Permitted coal mining and reclamation operators to restore on the permit area streams and wetlands affected by mining operations unless the Chief approves mitigation activities off the permit area (such as wetlands banking) without a permit, provided that the Chief first makes certain determinations;
  - The Operator, if the Chief approves restoration off the permit area, to complete all mitigation construction or other activities required by the mitigation plan; and
  - That performance security for reclamation activities on the permit area must be released pursuant to continuing law, except that any release of the remaining portion of performance security must not be approved prior to the construction of required mitigation activities off the permit area.
  
- By administrative order, the Chief of DMRM may require persons who violate any requirement of Ohio's surface coal mining regulatory program to cease such violations.
  - In addition to cessation and revocation orders, the Chief of DMRM may assess, by administrative order, a civil penalty of not more than \$5,000 against any person who has violated a permit condition or other provision of the regulatory program. Each day of continuing violation constitutes a separate violation.
  
- Any person aggrieved or affected adversely by a DMRM order or notice of violation, including the issuance or denial of a permit or a civil penalty assessment order, may file a notice of appeal challenging the order or notice before the Ohio Reclamation Commission. The Commission's jurisdiction over matters falling within its statutory purview is exclusive. The Commission may overturn the appealed from order or notice of violation only after conducting an evidentiary hearing, and only if it finds that the order or notice is arbitrary, capricious, or otherwise inconsistent with law.

## **§ 18.05. Industrial Minerals**

### **[1] Definitions**

In Ohio, surface mining and in-stream mining for industrial minerals are also regulated by DMRM. Industrial minerals include sand, gravel, clay, sandstone, and other materials excavated in a solid form from natural deposits that have commercial value—but do not include coal or peat. Surface mining refers generally to the extraction of minerals by excavation of the surface of the land—such as open pit mining and quarrying. In-stream mining refers to the extraction of minerals from the bottom of watercourses meeting certain criteria.

### **[2] History, [3] Structure, [4] Permitting Preconditions, [5] Permit Term, [6] Enforcement, [7] Exemptions, [8] Specifics Regarding Surface or In-Stream Mining**

## **§ 18.06. Abandoned Mine Lands**

DMRM manages two primary programs to address the environmental consequences of abandoned mines: the Abandoned Mine Reclamation Fund; and the Acid Mine Drainage Abatement and Treatment Fund. The Abandoned Mine Reclamation Fund is intended to support activities to restore qualified lands impacted by historic mining operations. The Acid Mine Drainage Abatement and Treatment Fund is specifically dedicated to abating the impacts of acid mine drainage to water.

**§ 18.07. Appellate Review of Orders Issued by DMRM**

Appeals relating to decisions issued by DMRM concerning oil and gas wells are heard by the Oil and Gas Commission. Appeals from decisions of the Oil and Gas Commission are heard by the Franklin County Court of Common Pleas. R.C. 1509.37 mandates that the court entertain such appeals in advance of any other pending civil matters. The Court shall apply a “lawful and reasonable” standard of review to the certified record.