CORRECTED VERSION*

Ohio Legislative Service Commission

Final Analysis

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(As Passed by the General Assembly)

Sens. Niehaus, Gibbs, Stewart, Carey, Harris, Seitz, Hughes, Schaffer, Wilson, Cates, Wagoner, Coughlin

Reps. Domenick, Boose, Hite, Balderson, J. Adams, R. Adams, Amstutz, Batchelder, Beck, Bubp, Carney, Chandler, Coley, Combs, Daniels, DeBose, Derickson, Evans, Gardner, Garland, Garrison, Gerberry, Grossman, Hall, Hottinger, Huffman, Koziura, Letson, Luckie, Martin, McClain, Phillips, Ruhl, Sayre, Snitchler, Stebelton, Szollosi, Uecker, Walter, Weddington, Yuko, Zehringer

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ACT SUMMARY

Definitions

- Revises the definitions of "owner" and "brine" in the Oil and Gas Law, and applies the definition of "urbanized area" to the entire Oil and Gas Law.
- Defines "well stimulation" or "stimulation of a well," "production operation," "annular overpressurization," "idle and orphaned well," "temporary inactive well," "material and substantial violation," and "severer" in the Oil and Gas Law.

Oil and gas regulatory cost recovery assessment

- Beginning July 1, 2010, levies on the owner of a well that is not an exempt domestic well an oil and gas regulatory cost recovery assessment on a quarterly basis, and establishes a formula for determining the amount of the assessment.
- Authorizes an owner to designate a severer to pay the assessment on the owner's behalf on a return that a severer is required to file under the Severance Tax Law, and authorizes such a severer to recoup the amount of the assessment from the owner.

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* This version replaces the incorrect phrase "reservoir productive area" with "reservoir protective area."

- Levies on the owner of a well that becomes an exempt domestic well on and after July 1, 2010, an annual oil and gas regulatory cost recovery assessment of $60.

- Establishes requirements and procedures for the collection of the assessment, and requires all money received from the assessment to be credited to the Oil and Gas Well Fund.

Injection well disposal fee

- Levies on the owner of an injection well a disposal fee of 5¢ per barrel of each substance that is 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 district or 20¢ per barrel of each such substance when the substance is not produced in such a district.

- Specifies that the injection well disposal fee may be levied only up to a maximum of 500,000 barrels of substance per injection well in a calendar year.

- Requires the Chief of the Division of Mineral Resources Management to adopt rules that establish requirements and procedures for the collection of the fee, and authorizes the owner of a well to retain up to 3% of the amount collected.

- Requires all money received from the fees to be credited to the Oil and Gas Well Fund.

Gas storage well regulatory fee

- Levies on an owner a gas storage well regulatory fee of $125 that must be paid not later than March 31 each year for each well that the owner owned as of December 31 of the previous year that is used for gas storage or that is used to monitor a gas storage reservoir and that is located in a reservoir protective area.

- Requires all money collected from the fee to be credited to the Oil and Gas Well Fund and used to administer the Underground Storage of Gas Law and the Oil and Gas Law.

Oil and Gas Well Fund

- Revises the uses of money in the Oil and Gas Well Fund, including adding a stipulation that the money be used solely and exclusively for certain plugging, restoration, and corrective activities, for the expenses of the Division associated with administering the Oil and Gas Law and the Underground Storage of Gas Law, and for expenses that are critical and necessary for the protection of human health and safety and the environment related to oil and gas production in the state.

- Prohibits expenditures from the Fund for the purchase of real property or to remove a dwelling in order to access a well.

Mandatory pooling

- Requires the owner of a tract of land that is of insufficient size or shape to comply with the requirements for drilling a well, and who is unable to form a drilling unit by agreement, to also own the mineral interest in order to submit an application for a mandatory pooling order.

- Revises the contents that a mandatory pooling order must contain, including provisions governing the allocation of a pro rata share of the production of a well to owners.

- Prohibits a person from submitting more than five applications for mandatory pooling orders per year unless the Chief approves additional applications.

- Prohibits surface operations or disturbances to the surface of the land from occurring on a tract pooled by an order without the written consent of or a written agreement with the owner of the tract that approves the operations or disturbances.

- Revises the criteria in accordance with which an owner of a tract that is pooled by a mandatory pooling order must be designated as a nonparticipating owner, and specifies that a nonparticipating owner is not liable for actions or conditions associated with the drilling or operation of the well.

Minimum acreage requirements

- Requires rules adopted by the Chief relative to minimum acreage requirements for drilling units to require a drilling unit to be compact and composed of contiguous land.

Restrictions governing surface location of a well, a tank battery, and other surface facilities

- Establishes minimum distances, under specified circumstances, of a well, a tank battery, and certain other oil and gas surface facilities from an occupied dwelling, the property line of a parcel of land, certain public buildings, railroad tracks and certain portions of public roads, existing inhabited structures, other wells and tank batteries, mechanical separators, certain vessels, and other similar oil and gas surface facilities.

- Establishes means by which written consent of an owner of land may be provided to a reduction of a minimum distance of a well or a tank battery from an occupied

dwelling or a property line of a parcel of land when the occupied dwelling or property line is located on land in an urbanized area and has become part of a drilling unit pursuant to a mandatory pooling order.

Application for a permit to drill a well

- Revises the application requirement concerning notification of the submission of an application for a permit to drill a new well by requiring the notice to be provided by regular mail to the owner of each parcel of real property, rather than to the owner of each occupied dwelling as in former law, that is within 500 feet of the surface location of the well and to the executive authority of the municipal corporation or the board of township trustees of the township, as applicable, in which the well is to be located, and applies that requirement only to a new well within an urbanized area.

- Establishes new time periods within which a permit must be issued if a well or proposed well will be or is within an urbanized area; increases the application fee for a permit to drill a well from $250 to $500 to conduct activities in a township with a population of fewer than 10,000, rather than 5,000 as in former law; and establishes an additional application fee of $5,000 if the application is for a permit that requires mandatory pooling.

- Requires the Division to conduct a site review prior to the issuance of a permit to identify and evaluate any site-specific terms and conditions that may be attached to a permit to drill a proposed well that will be located within an urbanized area, requires a representative of the Division at the site review to consider fencing, screening, and landscaping requirements for similar structures in the applicable community, and requires the terms and conditions that are attached to the permit to include the establishment of fencing, screening, and landscaping requirements for the surface facilities of a proposed well, including a tank battery of the well.

Subjects for terms and conditions of a permit

- Adds noise mitigation as an additional subject that the Chief must address when attaching terms and conditions to a permit with respect to a well and the production facilities of a well that are located within an urbanized area.

Term of a permit to drill

- Revises the time for which a permit to drill is valid by specifying that a permit for a well that is or is to be located in an urbanized area is valid for 12 months and all other permits are valid for 24 months rather than 12 months for all permits as in former law.

Public meeting by a political subdivision concerning a proposed lease agreement

- Requires the legislative authority of a political subdivision to 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 prior to entering into the agreement.

- Establishes procedures and requirements concerning the public meeting and notice of the meeting, including the provision of notice of the 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.

- Requires an owner of real property that receives notice of a public meeting to provide a copy of the notice to each residence in an occupied dwelling that is located on the owner's parcel of property, if any.

Notice of the filing of a permit application to residents in occupied dwellings

- Requires an owner of a parcel of real property who receives a notice concerning the filing of an application for a permit to drill a new well within an urbanized area to provide a copy of that notice within five days of receipt of the notice to each residence in an occupied dwelling that is located on the owner's parcel.

Surety bond

- Requires an owner of any well to execute and file a surety bond before operating or producing from a well in addition to prior to being issued a permit as in continuing law.

- Revises the requirements concerning updates of financial documents that are applicable to owners of exempt domestic wells and nonexempt domestic wells by requiring an owner of an exempt domestic well to file the updates and removing the requirement that the owner of a nonexempt domestic well file updates in accordance with a schedule established by rule of the Chief.

New surety bond in event of forfeiture of surety bond

- Establishes an owner's failure to comply with a final nonappealable order issued by or compliance agreement entered into with the Chief as an additional reason for surety bond forfeiture.

- Authorizes the Chief to require an owner, operator, producer, or other person who forfeited a surety bond to post a new surety bond in the amount of $15,000 for a single well, $30,000 for two wells, or $50,000 for three or more wells.

- Authorizes the owner of a well, in addition to a surety as in ongoing law, to cause a well to be properly plugged and abandoned and the area properly restored or pay to the Treasurer of State the cost of plugging and abandonment in lieu of total forfeiture.

Liability insurance

- Increases the amount of liability insurance coverage that an owner of a well must obtain from $300,000 bodily injury coverage and $300,000 property damage as in prior law to $1 million bodily injury coverage and property damage coverage unless the well is located in an urbanized area, in which case the liability coverage must be at least $3 million.

- Requires an owner to maintain insurance coverage until all of the owner's wells are plugged and abandoned, as in continuing law, or are transferred to an owner who has obtained insurance and who is not under a notice of material and substantial violation or under a suspension order.

Notification prior to commencement of drilling, reopening, converting, well stimulation, or plug back operations

- Requires a permittee to notify an inspector from the Division of Mineral Resources Management at least 24 hours, or within another time agreed to by the Chief's authorized representative, prior to the commencement of drilling, reopening, converting, well stimulation, or plug back operations.

Fluid drilling in Onondaga limestone in urbanized areas

- Requires a person who is issued a permit to drill a new well or drill an existing well deeper in an urbanized area to establish fluid drilling conditions prior to penetration of the Onondaga limestone and continue to use fluid drilling until total depth of the well is achieved unless the Chief authorizes drilling without using fluid.

Well construction requirements

- Eliminates standards in former law for the construction of a well, and establishes new standards for construction that must be specified in the permit, including a requirement that materials must be used that comply with industry standards for the type and depth of the well and the anticipated fluid pressures that are associated with the well.

- Authorizes the Chief to adopt rules that are consistent with the act's construction standards for evaluating the quality of well construction materials and for completing remedial cementing.

- Establishes requirements in accordance with which an owner must notify a mineral resources inspector concerning the cementing of a well, and requires an owner to submit to the Chief cement tickets and logs concerning cementing not later than 60 days after the cementing.

- Requires the Chief to grant exemptions from the well construction standards and related rules under specific circumstances.

Statement of production

- Revises the date by which an owner must submit a statement of production of oil, gas, and brine for the last preceding calendar year from on or before March 1 to on or before March 31, and requires an owner that has more than 100 wells in the state to submit the statement of production electronically.

Wireline electric logs

- Increases from 30 days after the completion of a well as in former law to 60 days after the completion of drilling to the proposed total depth or after a determination that a well is a dry or lost hole the time by which a person must file with the Division all logs, and requires a person also to file an accurate well completion record.

- Revises the information that must be designated in a log, requires it instead to be designated in a well completion record, and specifies additional information that must be designated, including the dates on which drilling was commenced and completed, the name of the person who drilled the well, the name of the company that performed the logging of the well, and, if applicable, certain fluids used in acidizing or stimulating the well.

- Requires an owner of a well to file with the Division a supplemental well completion record if the well is not completed within 60 days after completion of drilling operations, and specifies that the supplemental well completion record must include all of the information required under the act's provisions concerning logs and well completion records.

Well stimulation

- Establishes requirements concerning the stimulation of a well, including a requirement that the well be stimulated in a manner that will not endanger underground sources of drinking water, and requirements and procedures concerning damage to specified parts of a well during stimulation.

- Requires the owner or the owner's representative to notify a mineral resources inspector not later than 24 hours before commencing the stimulation of a well.

Defective wells or casing

- Revises the provisions that prohibit the construction of a defective well or casing.

Wells not completed or not producing

- Requires the owner of a well that has not been completed, a well that has not produced within one year after completion, or a well that has no reported production for two consecutive reporting periods to plug the well, obtain a temporary inactive well status for the well under the act, or perform another activity regarding the well that is approved by the Chief.

Temporary inactive well status

- Establishes temporary inactive well status for a well, provided that the owner and the well are in compliance with the Oil and Gas Law, rules adopted under it, any terms and conditions of the permit for the well, and any applicable orders issued by the Chief.

- Establishes application requirements for temporary inactive well status, requires a person to submit such an application to the Chief on a form prescribed and provided by the Chief, and requires that an application for temporary inactive well status include a $100 nonrefundable fee.

- Specifies that temporary inactive well status expires one year after the date of approval of the application or production from the well commences, whichever occurs sooner.

- Establishes requirements and procedures for the renewal of temporary inactive well status, and requires that an application for a renewal include a nonrefundable fee of $250 for the first renewal and $500 for each subsequent renewal.

- Specifies that a renewal of temporary inactive well status expires one year after the expiration date of the initial temporary inactive well status or one year after the expiration of the previous renewal of temporary inactive well status, or production from the well commences, whichever occurs sooner.

- Authorizes the Chief to require an owner after a third renewal to provide a surety bond in an amount not to exceed $10,000 for each of the owner's wells that has been approved for temporary inactive well status.

Permit to plug and abandon a well

- States that the period of time for which a permit to plug and abandon a well is valid is 24 months rather than a period of time from the date of issue established in rule by the Chief as in prior law.
- Increases the application fee for a permit to plug and abandon a well if oil or gas has been produced from the well from $50 to $250.
- Requires the owner of a well or the owner's authorized representative to notify a mineral resources inspector at least 24 hours prior to the commencement of the plugging of a well unless waived by a mineral resources inspector.
- Revises the requirements governing the notice that an owner of a well must provide to specified persons of the owner's intention to abandon the well.
- Increases the nonrefundable filing fee for an expedited review of an application for a permit to plug and abandon a well, unless the Chief has ordered the applicant to plug and abandon the well, from $250 to $500.

Payment for plugging of abandoned wells

- Revises from 1951 to 1978 the date prior to which wells must be abandoned in order for a board of county commissioners to submit to the electors the question of establishing a special fund to plug the abandoned wells.

Rules for drilling and treatment of wells, production of oil and gas, and plugging

- Authorizes the Chief to adopt rules that specify practices to be followed in the treatment of wells and plugging of wells in addition to rules adopted under continuing law specifying practices to be followed in the drilling of wells and production of oil and gas.
- Applies to brine, in addition to oil as in ongoing law, rules concerning procedures, methods, and equipment and other requirements for equipment to prevent and contain discharges.
- Authorizes the rules to specify procedures, methods, and equipment and other requirements for equipment to prevent and contain surface and subsurface discharges of fluids, condensates, and gases, and authorizes the rules to specify notifications.

Restoration requirements

- Requires an owner or an owner's agent to fill all pits for containing brine and other waste substances and to remove all drilling supplies and equipment within 14 days after a well is completed to total depth in an urbanized area and within two months in all other areas rather than within five months after the drilling of a well is commenced as in prior law.
- Requires an owner or an owner's agent to grade, plant, seed, or sod the area disturbed that is not required in the production of the well within three months after drilling is commenced in an urban area and within six months in all other areas, unless the Chief approves a longer time period, rather than within nine months after drilling of a well is commenced as in former law.
- Requires an owner or an owner's agent to remove all production and storage structures, supplies, and equipment, and any oil, salt water, and debris, and fill any remaining excavations within three months after the well is plugged in an urbanized area and within six months in all other areas, unless the Chief approves a longer time period, rather than within six months after the well is plugged as in prior law.

Secondary or additional recovery operations

- Requires a permit for the underground injection of carbon dioxide for the secondary or tertiary recovery of oil or natural gas.
- States that the Chief may authorize tests to evaluate if fluids or carbon dioxide may be injected in a reservoir and to determine the maximum allowable injection pressure.

Fluids associated with oil and gas development

- Prohibits a person from placing or causing to be placed crude oil, natural gas, or other fluids associated with the exploration or development of oil and gas resources, in addition to brine as in ongoing law, in surface or ground water or in or on the land if the placement causes or could reasonably be anticipated to cause either water that is used for consumption by humans or domestic animals to exceed Safe Drinking Water Act standards or damage or injury to the public health or safety or the environment.
- Revises the standards for the storage and disposal of brine and other waste substances, including requiring that pits and steel tanks must be used, rather than just pits, for containing brine and other waste substances in connection with drilling, well stimulation, reworking, reconditioning, plugging back, or plugging operations.

Permit to inject brine or other waste substances

- Increases from $100 to $1,000 the amount of the fee for a permit to inject into an underground formation brine or other waste substances resulting or obtained from or produced in connection with oil or gas drilling, exploration, or production.
- States that the Chief may authorize, in the rules regarding the injection of brine and other waste substances, tests to evaluate if fluids or carbon dioxide may be injected in a reservoir and to determine the maximum allowable injection pressure.

Brine transporters

- Requires a business entity that has been issued a registration certificate to transport brine to revise the required surety bonds or certificates of deposit and obtain a new certificate from an insurance company certifying that the business has the required liability insurance if the entity changes its name due to a business reorganization or merger.
- Revises the requirements in accordance with which the Chief may release the surety bond or other securities that must be executed and filed with the Division by a transporter of brine.

Application of brine to roads

- Permits only brine that is produced from a well to be spread on a road.
- Prohibits fluids from the drilling of a well, flowback from the stimulation of a well, and other fluids used to treat a well from being spread on a road.

Priority lien

- Establishes that the Division has a priority lien against an owner's interest in a well if the owner fails to pay the fees imposed under the Oil and Gas Law or if the Chief incurs costs to correct conditions associated with the owner's well, and states that such a lien is in addition to a lien imposed by the Attorney General for failure to pay the oil and gas cost recovery assessment or the severance tax on oil or gas.
- Authorizes the Tax Commissioner to request the Chief to impose a priority lien against an owner's interest in a well if the Attorney General cannot collect from a severer or an owner for an outstanding balance of amounts due from the oil and gas cost recovery assessment or of unpaid severance taxes on oil or gas, as applicable, and states that such a lien has priority in front of all other creditors.

- Establishes procedures and requirements concerning the recording of a lien, certificates of release of a lien, modification of a lien, and other related provisions, and requires all money from the collection of liens to be credited to the Oil and Gas Well Fund.

Enforcement actions and orders of the Chief

- States that the Chief's authority to enforce the Oil and Gas Law includes the authority to enter into compliance agreements.

- Authorizes the Chief or the Chief's authorized representative to issue an administrative order for a violation of the Oil and Gas Law or rules adopted under it, terms and conditions of a permit issued under it, a registration certificate issued under the Law, or orders issued under it, and authorizes the Chief to issue an order finding that an owner has committed a material and substantial violation.

- Revises continuing law to authorize the Chief, by order, to immediately suspend drilling, operating, or plugging activities that are related to a material and substantial violation and to suspend and revoke an unused permit under specified circumstances.

- Authorizes the Chief to issue a bond forfeiture order under the Oil and Gas Law for failure to comply with a final nonappealable order or a compliance agreement and to notify drilling contractors, transporters, service companies, or other similar entities of the compliance status of an operator, and authorizes the Chief to issue a suspension order if the owner fails to comply with a prior enforcement action of the Chief.

Database of permittee violations

- Requires the Chief to maintain a database on the Division's web site that is accessible to the public, and requires the database to list each final nonappealable order issued for a material and substantial violation, the violator, the date on which the violation occurred, and the date on which the violation was corrected.

Appeals by persons affected by an order of the Chief

- Authorizes any person adversely affected by an order of the Chief, rather than claiming to be aggrieved or adversely affected by an order of the Chief as in former law, to appeal to the Oil and Gas Commission for an order vacating or modifying the order.

- Requires an appeal to be filed within 30 days after the date on which the appellant received notice by certified mail rather than by registered mail as in prior law, and

requires the appeal to be filed within 30 days after the date of the order complained of for all other persons adversely affected by the order.

Transfer or assignment of the entire interest in an oil and gas lease

- Requires a notice to the Division of Mineral Resources Management of an assignment or transfer of the entire interest in an oil and gas lease to include a nonrefundable fee of $100 for each well.

Transfer or assignment of the entire interest in an oil or gas well

- Requires the owner of a well who has been issued a permit and who proposes to assign or transfer the entire interest in the well to the landowner for use as an exempt domestic well to submit to the Chief an application for the proposed assignment or transfer, requires the application to include a nonrefundable fee of $100, and establishes requirements governing the transfer or assignment of a well to a landowner for use as an exempt domestic well.

- Requires the proposed exempt domestic well owner to post a $5,000 bond prior to the assignment or transfer under certain circumstances, and specifies that a new exempt domestic well owner is not subject to severance taxes on oil and gas, but is subject to all applicable fees established in the Oil and Gas Law.

Authority of the Division

- Grants the Division of Mineral Resources Management sole and exclusive authority to regulate production operations, as defined by the act, within the state.

- Excludes the authority of a municipal corporation to regulate the use of streets from the Division's sole and exclusive authority under the Oil and Gas Law, provided that the authority of the municipal corporation, or of the Director of Transportation or local authorities to issue special permits regarding vehicle size, weight, or load as referenced in continuing law, is not exercised in a manner that discriminates against, unfairly impedes, or obstructs regulated oil and gas activities and operations.

Exemption from regulation of investments in natural gas gathering lines and storage facilities

- Requires the Public Utilities Commission of Ohio (PUCO) to exempt from most regulatory laws a natural gas company's investments in gathering lines or storage facilities placed into service on or after January 1, 2010, and any service related to the lines or facilities, provided that the company is in substantial compliance with state policy on the provision of natural gas service.

- Grants the PUCO continuous jurisdiction to enforce any terms of an exemption of a natural gas company's investments in gathering lines or storage facilities and related services.

- Permits the PUCO to alter, amend, or suspend an exemption of a natural gas company's investments in gathering lines or storage facilities and related services if the PUCO determines, after a hearing, that the exemption has adversely affected the quality, adequacy, or sufficiency of service.

- Requires a natural gas company to keep separate operations, resources, employees, and associated books and records involved in any service related to exempt investments in gathering lines or storage facilities from those involved in any nonexempt service, and requires that an exemption order for investments in gathering lines or storage facilities prescribe a functional separation plan for compliance with that requirement.

- Prohibits a natural gas company with exempt investments in gathering lines or storage facilities from using those lines or facilities to provide an unregulated or exempt commodity sales service, but provides for a waiver of the prohibition if the company demonstrates that the waiver is just and reasonable.

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CONTENT AND OPERATION

Introduction

The Division of Mineral Resources Management in the Department of Natural Resources is the state agency that is responsible for regulating the permitting, location, spacing, drilling, and operation of oil and gas wells within the state, including site restoration and disposal of wastes from those wells, in accordance with the Oil and Gas Law and rules adopted under it. The Chief of the Division of Mineral Resources Management heads the Division. The act revises the Oil and Gas Law.

Definitions

For purposes of the Oil and Gas Law, continuing law defines "owner" to mean 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 plugged in accordance with applicable rules adopted and orders issued under the Oil and Gas Law. The act revises the definition by adding that "owner" does not include 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 under the Oil and Gas Law for a well or if the entire interest of a well

is not transferred to the person in accordance with the Oil and Gas Law. (R.C. 1509.01(K).)

Law largely unchanged by the act defines "brine" to mean all saline geological formation water resulting from, obtained from, or produced in connection with the exploration, drilling, or production of oil or gas. The act adds that "brine" includes such saline water resulting from, obtained from, or produced in connection with well stimulation or plugging of a well. (R.C. 1509.01(U).)

Finally, law revised by the act defines "urbanized area," for the purpose of attaching terms and conditions to a permit, to mean an area where a well or production facilities of a well are located within a municipal corporation or within a township that has an unincorporated population of more than 5,000 in the most recent federal decennial census prior to the issuance of the permit for the well or production facilities (R.C. 1509.03). The act applies the definition of "urbanized area" to the entire Oil and Gas Law rather than only to the provisions pertaining to the subjects that the Chief must address when attaching terms and conditions to a permit (R.C. 1509.01(Y)).

For purposes of the Oil and Gas Law, the act defines all of the following:

(1) "Well stimulation" or "stimulation of a well" means the process of enhancing well productivity, including hydraulic fracturing operations (R.C. 1509.01(Z)).

(2) "Production operation" means site preparation, access roads, drilling, well completion, well stimulation, well operation, site reclamation, and well plugging. "Production operation" also includes all of the following:

(a) The piping and equipment used for the production and preparation of hydrocarbon gas or liquids for transportation or delivery;

(b) The processes of extraction and recovery, lifting, stabilization, treatment, separation, production processing, storage, and measurement of hydrocarbon gas and liquid; and

(c) The processes associated with production compression, gas lift, gas injection, and fuel gas supply. (R.C. 1509.01(AA).)

(3) "Annular overpressurization" means the accumulation of fluids within an annulus with sufficient pressure to allow migration of annular fluids into underground sources of drinking water (R.C. 1509.01(BB)).

(4) "Idle and orphaned well" means a well for which a bond has been forfeited or an abandoned well for which no money is available to plug the well in accordance with the Oil and Gas Law and rules adopted it (R.C. 1509.01(CC)).

(5) "Temporarily inactive well" means a well that has been granted temporary inactive status under the act (see "**Temporary inactive well status**," below) (R.C. 1509.01(DD)).

(6) "Material and substantial violation" means any of the following:

(a) Failure to obtain a permit to drill, reopen, convert, plug back, or plug a well under the Oil and Gas Law;

(b) Failure to obtain or maintain insurance coverage that is required under the Oil and Gas Law;

(c) Failure to obtain or maintain a surety bond that is required under the Oil and Gas Law;

(d) Failure to plug an abandoned well or idle and orphaned well unless the well has been granted temporary inactive status or the Chief has approved another option concerning the abandoned well or idle and orphaned well;

(e) Failure to restore a disturbed land surface as required under the Oil and Gas Law;

(f) Failure to reimburse the Oil and Gas Well Fund pursuant to a final order issued under the Oil and Gas Law; or

(g) Failure to comply with a final nonappealable order of the Chief issued under the Oil and Gas Law. (R.C. 1509.01(EE).)

(7) "Severer" has the same meaning as in the Severance Tax Law, that is, any person who actually removes the natural resources from the soil or water in Ohio (R.C. 1509.01(FF) by reference to R.C. 5749.01(H), not in the act).

Oil and gas regulatory cost recovery assessment

Beginning July 1, 2010, the act imposes an oil and gas regulatory cost recovery assessment on an owner (Section 3 and R.C. 1509.50(A)). An owner must pay the assessment in the same manner as a severer who is required to file a return under the Severance Tax Law. However, an owner may designate a severer who must pay the owner's assessment on behalf of the owner on the return that the severer is required to file under the Severance Tax Law. If a severer so pays an owner's assessment, the

severer may recoup from the owner the amount of the assessment. The act states that except for an exempt domestic well, the assessment imposed is in addition to the taxes levied on the severance of oil and gas under the Severance Tax Law. (R.C. 1509.50(A).)

The act requires the oil and gas regulatory cost recovery assessment to be calculated on a quarterly basis, except for an exempt domestic well, and requires the assessment to be one of the following:

(1) 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, and the amount of the severance tax levied on each severer for all of the wells of the owner is greater than the sum of $15 for each well owned by the owner, the amount of the assessment is the sum of 10¢ per barrel of oil for all of the wells of the owner and ½¢ per 1,000 cubic feet of natural gas for all of the wells of the owner; or

(2) 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, and the amount of the severance tax levied on each severer for all of the wells of the owner is less than the sum of $15 for each well owned by the owner, the amount of the assessment is the sum of $15 for each well owned by the owner less the amount of the severance tax levied on each severer. (R.C. 1509.50(B)(1).)

The act states that the oil and gas regulatory cost recovery assessment for a well that becomes an exempt domestic well on and after July 1, 2010, is $60 to be paid to the Division of Mineral Resources Management on July 1 each year (R.C. 1509.50(B)(2)).

The act requires all money collected from the assessment to be deposited in the state treasury to the credit of the Oil and Gas Well Fund (see "**Oil and Gas Well Fund**," below) (R.C. 1509.50(C)).

Except for purposes of distribution of revenue from the severance taxes on oil and gas, the act requires the oil and gas regulatory cost recovery assessment to be treated the same and equivalent for all purposes as the taxes levied on the severance of oil and gas. However, the act states that the assessment imposed is not a tax under the Severance Tax Law. (R.C. 1509.50(D).) Furthermore, the act requires an owner or severer that is liable for the amounts due from the oil and gas regulatory cost recovery assessment to use and file the same return for the assessment that is prescribed by the Tax Commissioner under the Severance Tax Law for the return of severance taxes. However, the act states that the amounts due from the oil and gas regulatory cost assessment are not revenue from severance taxes. (R.C. 5749.06.) Finally, the act makes changes in applicable tax laws to provide for the collection of the assessment (R.C.

5703.052, 5703.21, 5749.01, 5749.03, 5749.06, 5749.07, 5749.08, 5749.10, 5749.12, 5749.13, 5749.14, 5479.15, and 5749.17).

Injection well disposal fee

The act levies on the owner of an injection well who has been issued a permit the following fees:

(1) 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

(2) 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. (See **COMMENT**.) (R.C. 1509.221(B)(1).)

The act establishes a maximum of 500,000 barrels of substance per injection well in a calendar year on which the fee may be levied. In addition, if in a calendar year 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 (2) above. The fee then must be calculated on the barrels of substance that are produced within the Division's regulatory district in which the well is located or within an adjoining district at the rate established in item (1) above until the maximum of 500,000 barrels has been attained. (R.C. 1509.221(B)(2).)

An owner of an injection well who is issued a permit for an injection well under the Oil and Gas Law must collect the fee on behalf of the Division of Mineral Resources Management and forward the fee to the Division. The Chief must transmit all money received from the fees to the Treasurer of State, who must deposit the money in the state treasury to the credit of the Oil and Gas Well Fund (see "**Oil and Gas Well Fund**," below). An owner of an injection well who collects the fee may retain, for administrative costs, up to 3% of the amount collected. (R.C. 1509.221(B)(3).)

The act requires the Chief to adopt rules in accordance with the Administrative Procedure Act establishing requirements and procedures for collection of the fee. (R.C. 1509.221(B)(4).)

Gas storage well regulatory fee

The act requires that after its effective date and thereafter not later than March 31 each year, the owner of a well that is used for gas storage or to monitor a gas storage reservoir and that is located in a reservoir protective area must pay to the Chief a gas storage well regulatory fee of $125 for each well that the owner owned as of December 31 of the previous year for the purposes of administering the Underground Storage of Gas Law and the Oil and Gas Law. The Chief may prescribe and provide a form for the collection of the fee and may adopt rules in accordance with the Administrative Procedure Act that are necessary for the administration of the fee. All of the money collected from the fee must be deposited in the state treasury to the credit of the Oil and Gas Well Fund (see "**Oil and Gas Well Fund**," below). (R.C. 1571.18.)

Oil and Gas Well Fund

Sources of money credited to the Fund

Continuing law creates the Oil and Gas Well Fund in the state treasury. 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 for violations of certain provisions of the Oil and Gas Law, and criminal fines imposed for violations of certain provisions of the Oil and Gas Law must be credited to the Fund. The act adds that temporary inactive well status fees (see "**Temporary inactive well status**," below), injection well disposal fees (see "**Injection well disposal fee**," above), money from the collection of liens under the Oil and Gas Law (see "**Priority lien**," below), and oil and gas regulatory cost recovery assessments (see "**Oil and gas regulatory cost recovery assessment**," above) also must be credited to the Fund. (R.C. 1509.02.)

Expenditures from the Fund

Law retained in part by the act requires the Chief to spend money in the Fund to plug wells and to restore land surface properly for which bonds have been forfeited, to plug abandoned wells in accordance with the Oil and Gas Law for which no funds are available, 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, for the expenses of the Division associated with the administration of the

Natural Gas Policy Act of 1978, and for the Division's other functions (R.C. 1509.02 and 1509.071(B)).

The act revises the uses of the money in the Fund. It requires that not less than 14% of the revenue credited to the Fund during the previous fiscal year must be used for two purposes. The first purpose is to plug idle and orphaned wells or to restore land surface properly. For those purposes, continuing law requires the expenditures to be made pursuant to contracts between the Chief and persons who agree to furnish all of the materials, equipment, work, and labor as specified in the contract. The act specifies that the contract is to be for activities associated with the restoration or plugging of a well as determined by the Chief. The act also adds that the activities may include excavation to uncover a well, geophysical methods to locate a buried well when clear evidence of leakage from the well exists, cleanout of wellbores to remove material from a failed plugging of a well, plugging operations, installation of vault and vent systems, including associated engineering certifications and permits, restoration of property, and repair of damage to property that is caused by those activities. However, the act prohibits the use of expenditures for salaries, maintenance, equipment, or other administrative purposes, except for costs directly attributed to the plugging of an idle and orphaned well. (R.C. 1509.071(B)(1) and (D)(1).)

Law retained in part by the act states that agents or employees of persons contracting with the Chief for restoration, plugging, and injection projects may enter upon any land on which the well is located for the purpose of performing the work. The act removes injection projects from that authorization. Law also retained in part by the act requires the Chief to give specified persons written notice of the existence of a contract for a project to restore, plug, or inject oil or gas production wastes into a well. The act removes injection of oil and gas production waste as an activity that requires such a notice. (R.C. 1509.071(D)(1).)

Law revised in part by the act authorizes certain owners of land on which a well is located who did not properly plug and abandon the well or who did not properly restore the land at the well site to be reimbursed by the Division of Mineral Resources for the reasonable cost of plugging the well under specified conditions. The act retains the reimbursement provisions, but requires that expenditures for such purposes must be consistent with the expenditures for activities described above. (R.C. 1509.071(D)(2)(a).) Law largely retained by the act requires such an owner to submit an application in order to plug such a well. If the Chief approves the application and issues a permit to plug and abandon the well, the plugging must be completed within 180 days after the landowner receives a notice of approval and permit from the Chief. The act eliminates the requirement that the well be plugged within 180 days. (R.C. 1509.071(D)(2)(c) and (d).)

The second purpose for which 14% of the revenue credited to the Fund must be used under the act is to correct conditions that the Chief reasonably has determined are causing imminent health or safety risks. The act specifies that the imminent health or safety risks must be at an idle and orphaned well. In addition, the act adds that money from the Fund may be used to initiate a corrective action, within a reasonable period of time as determined by the Chief, for a well for which the owner cannot be contacted. (R.C. 1509.071(B)(2).) The act adds that the Chief must issue an order that requires the owner of a well to pay the actual documented costs of such a corrective action concerning the well. The Chief must transmit the money so recovered to the Treasurer of State, who must deposit the money in the state treasury to the credit of the Oil and Gas Well Fund. (R.C. 1509.071(H).)

The act specifies that the Oil and Gas Well Fund must be used solely and exclusively for the two purposes discussed above, for the expenses of the Division associated with the administration of the Oil and Gas Law and the Underground Storage of Gas Law and rules adopted under those Laws, and for expenses that are critical and necessary for the protection of human health and safety and the environment related to oil and gas production in the state (R.C. 1509.02).

Finally, continuing law states that expenditures from the Fund can be made only for lawful purposes. The act adds that expenditures from the Fund cannot be made for the purchase of real property or to remove a dwelling in order to access a well. (R.C. 1509.071(B).)

Miscellaneous

Continuing law states that certain criminal fines imposed under the Oil and Gas Law for violations prosecuted by prosecuting attorneys that involve the transportation of brine by vehicle must be paid to the county treasury of the county where the violation occurred. The act adds that penalties associated with a compliance agreement entered into pursuant to the Oil and Gas Law also must be paid to the county treasury of the county where the violation occurred. (R.C. 1509.02.)

Mandatory pooling

Continuing law states that if a tract of land is of insufficient size or shape to meet the requirements for drilling a well on it as required by the Oil and Gas Law 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 Mineral Resources Management for a mandatory pooling order. The act requires the owner of the tract also to own the mineral interest. (R.C. 1509.27.)

Application

Under law revised in part by the act, the application for a mandatory pooling order must include such data and information as are reasonably required by the Chief. The act retains law that requires a person to submit an application, but eliminates the requirement that the application include data as reasonably required by the Chief; thus, the application need only include information as reasonably required by the Chief. In addition, former law required the Chief to notify all owners of land within the area proposed to be included within the order of the filing of the application and of their right to a hearing if requested. The act instead requires the Chief to notify all owners of land included within the drilling unit of the filing of the application and of their right to a hearing.

Law retained in part by the act states that after the hearing or after the expiration of 30 days from the date notice of the application was mailed to the owners of land, the Chief must issue a drilling permit and a mandatory pooling order if the Chief is satisfied that the application is proper in form and that mandatory pooling is necessary to protect correlative rights or to provide effective development, use, or conservation of oil and gas. The act revises the provision by stating that the Chief must issue the drilling permit and a mandatory pooling order in the time periods established in continuing law if the Chief is satisfied that the application is proper in form and that mandatory pooling is necessary to protect correlative rights and to provide effective development, use, and conservation of oil and gas. (R.C. 1509.27.)

Contents of a mandatory pooling order

Law revised in part by the act requires a mandatory pooling order to do all of the following:

(1) Designate the boundaries of the drilling unit within which the well must be drilled;

(2) Designate the proposed drilling site. The act instead requires designation of the proposed production site.

(3) Describe each separately owned tract or part of a tract pooled by the order;

(4) Allocate on a surface acreage basis a pro rata portion of the production to the owner of each tract. The act specifies that the pro rata portion is to be allocated to the owner of each tract pooled by the order. In addition, the act adds that the pro rata portion must be in the same proportion that the percentage of the owner's acreage is to the state minimum acreage requirements established in rules adopted under the Oil and Gas Law for a drilling unit unless the applicant demonstrates to the Chief using

geological evidence that the geologic structure containing the oil or gas is larger than the minimum acreage requirement, in which case the pro rata portion must be in the same proportion that the percentage of the owner's acreage is to the geologic structure.

(5) Specify the basis on which each owner must share all reasonable costs and expenses of drilling and producing. The act instead requires that the pooling order specify the basis on which each owner of a tract pooled by the order must share all reasonable costs and expenses of drilling and producing if the owner elects to participate in the drilling and operation of the well.

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

The act prohibits a person from submitting more than five applications for mandatory pooling orders per year unless the Chief approves additional applications. In addition, the act prohibits surface operations or disturbances to the surface of the land from occurring on a tract pooled by an order without the written consent of or a written agreement with the owner of the tract that approves the operations or disturbances. (R.C. 1509.27.)

Nonparticipating owners

Former law stated that if an owner did not elect to participate in the risk and cost of the drilling and operation or operation of a well, the owner could elect to be a nonparticipating owner in the drilling and operation or operation of the well on a limited or carried basis, on terms and conditions determined by the Chief to be just and reasonable. If one or more participating owners bore the costs of drilling, equipping, or operating a well for the benefit of a nonparticipating owner, as provided for in the pooling order, then the participating owner or owners were entitled to the share of production from the drilling unit accruing to the interest of each participating owner. However, the share of production from the drilling unit did not include the royalty interest if the fee holder had leased the fee holder's land to others; otherwise, the share of production was ⅛ of the fee holder's share of the production until there had been received the share of costs charged to that nonparticipating owner plus such additional percentage of the share of costs as the Chief determined. The total amount receivable could not exceed double the share of costs charged to the nonparticipating owner. (R.C. 1509.27.)

The act instead states that 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. In addition, 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. However, the share of production from the drilling unit does not include the nonparticipating owner's proportionate share of the royalty interest until there has been received the share of costs charged to that nonparticipating owner plus such additional percentage of the share of costs as the Chief determines. The total amount receivable cannot exceed 200% of the share of costs charged to that nonparticipating owner. In addition, the act states that after receipt of that share of costs by such an applicant, a nonparticipating owner must receive a proportionate share of the working interest in the well in addition to a proportionate share of the royalty interest, if any. (R.C. 1509.27.)

Miscellaneous

The act removes the provision of prior law that stated that in instances where a well was completed prior to the mandatory pooling of interests in a drilling unit, the sharing of production and adjustment of the original costs of drilling, equipping, and completing the well had to be from the effective date of the mandatory pooling order. In addition, the act removes the provision of former law that stated that from and after the date of a pooling order, all operations, including the commencement of drilling or the operating of or production from a well on any tract or portion of the drilling unit, were deemed for all purposes the conduct of such operations on and production from any lease or contract for lands any portion of which was included in the drilling unit. (R.C. 1509.27.)

Minimum acreage requirements

Continuing law requires the Chief, with the approval of the Technical Advisory Council on Oil and Gas created under the Oil and Gas Law, to adopt rules relative to 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. The act adds that the rules relative to minimum acreage requirements for drilling units must require a drilling unit to be compact and composed of contiguous land. (R.C. 1509.24.)

Restrictions governing surface location of a well, a tank battery, and other surface facilities

The act states that, on and after its effective date, all of the following apply:

Minimum distance of a well from an occupied dwelling in an urbanized area

The surface location of a new well or a tank battery of a well cannot be within 150 feet of an occupied dwelling that is located in an urbanized area unless: (1) the owner of the land on which the occupied dwelling is located consents in writing to the surface location of the well or a tank battery of a well less than 150 feet from the dwelling, and (2) the Chief of the Division of Mineral Resources Management approves the written consent of that owner. However, the Chief cannot approve the written consent of such an owner when the surface location of a new well or a tank battery of a well will be within 100 feet of an occupied dwelling that is located in an urbanized area. (R.C. 1509.021(A).)

Minimum distance of a well from a property line of land that is not in a drilling unit in an urbanized area when using directional drilling

The surface location of a new well cannot be within 150 feet from the property line of a parcel of land that is not in the drilling unit of the well if: (1) the parcel of land is located in an urbanized area, and (2) directional drilling will be used to drill the new well. The 150-foot minimum distance does not apply if the owner of the parcel of land consents in writing to the surface location of the well less than 150 feet from the property line of the parcel of land and the Chief approves the written consent of that owner. However, the Chief cannot approve the written consent of such an owner when the surface location of a new well will be within 100 feet from the property line of the owner's parcel of land. (R.C. 1509.021(B).)

Minimum distance of a well from an occupied dwelling in an urbanized area on land that is part of the drilling unit pursuant to a mandatory pooling order

The surface location of a new well cannot be within 200 feet of an occupied dwelling that is located in an urbanized area and that is located on land that has become part of the drilling unit of the well pursuant to a mandatory pooling order unless the owner of the land on which the occupied dwelling is located consents in writing to the surface location of the well at a distance that is less than 200 feet from the occupied dwelling. However, if the owner of the land on which the occupied dwelling is located provides such written consent, the surface location of the well cannot be within 100 feet of the occupied dwelling.

If an applicant cannot identify an owner of land or if an owner of land is not responsive to attempts by the applicant to contact the owner, the applicant may submit an affidavit to the Chief attesting to such an unidentifiable owner or to such unresponsiveness of an owner and attempts by the applicant to contact the owner and include a written request to reduce the distance of the location of the well from the occupied dwelling to less than 200 feet. If the Chief receives such an affidavit and

written request, the Chief must reduce the distance of the location of the well from the occupied dwelling to a distance of not less than 100 feet. (R.C. 1509.021(C).)

Minimum distance of a well from a property line of land in an urbanized area that is part of the drilling unit pursuant to a mandatory pooling order

Except as otherwise provided below (see "**Minimum distance of a well or a tank battery from a railroad track or public road**," below), the surface location of a new well cannot be within 150 feet of the property line of a parcel of land that is located in an urbanized area and that has become part of the drilling unit of the well pursuant to a mandatory pooling order unless the owner of the land consents in writing to the surface location of the well at a distance that is less than 150 feet from the owner's property line. However, if the owner of the land provides such written consent, the surface location of the well cannot be within 75 feet of the property line of the owner's parcel of land.

If an applicant cannot identify an owner of land or if an owner of land is not responsive to attempts by the applicant to contact the owner, the applicant may submit an affidavit to the Chief attesting to such an unidentifiable owner or to such unresponsiveness of an owner and attempts by the applicant to contact the owner and include a written request to reduce the distance of the location of the well from the property line of the owner's parcel of land to less than 150 feet. If the Chief receives such an affidavit and written request, the Chief must reduce the distance of the location of the well from the property line to a distance of not less than 75 feet. (R.C. 1509.021(D).)

Minimum distance of a tank battery from an occupied dwelling in an urbanized area on land that is part of the drilling unit pursuant to a mandatory pooling order

The surface location of a new tank battery of a well cannot be within 150 feet of an occupied dwelling that is located in an urbanized area and that is located on land that has become part of the drilling unit of the well pursuant to a mandatory pooling order unless the owner of the land on which the occupied dwelling is located consents in writing to the location of the tank battery at a distance that is less than 150 feet from the occupied dwelling. However, if the owner of the land on which the occupied dwelling is located provides such written consent, the location of the tank battery cannot be within 100 feet of the occupied dwelling.

If an applicant cannot identify an owner of land or if an owner of land is not responsive to attempts by the applicant to contact the owner, the applicant may submit an affidavit to the Chief attesting to such an unidentifiable owner or to such unresponsiveness of an owner and attempts by the applicant to contact the owner and

include a written request to reduce the distance of the location of the tank battery from the occupied dwelling to less than 150 feet. If the Chief receives such an affidavit and written request, the Chief must reduce the distance of the location of the tank battery from the occupied dwelling to a distance of not less than 100 feet. (R.C. 1509.021(E).)

Minimum distance of a tank battery from a property line of land in an urbanized area that is part of the drilling unit pursuant to a mandatory pooling order

Except as otherwise provided below (see "**Minimum distance of a well or a tank battery from a railroad track or public road**," below), the location of a new tank battery of a well cannot be within 75 feet of the property line of a parcel of land that is located in an urbanized area and that has become part of the drilling unit of the well pursuant to a mandatory pooling order unless the owner of the land consents in writing to the location of the tank battery at a distance that is less than 75 feet from the owner's property line. However, if the owner of the land provides such written consent, the location of the tank battery cannot be within the property line of the owner's parcel of land.

If an applicant cannot identify an owner of land or if an owner of land is not responsive to attempts by the applicant to contact the owner, the applicant may submit an affidavit to the Chief attesting to such an unidentifiable owner or to such unresponsiveness of an owner and attempts by the applicant to contact the owner and include a written request to reduce the distance of the location of the tank battery from the property line of the owner's parcel of land to less than 75 feet. If the Chief receives such an affidavit and written request, the Chief must reduce the distance of the location of the tank battery from the property line, provided that the tank battery cannot be within the property line of the owner's parcel of land. (R.C. 1509.021(F).)

Written consent of an owner of land

For purposes of reducing minimum distances of a well or a tank battery from an occupied dwelling located on a parcel of land in an urbanized area or from a property line of a parcel of land in an urbanized area when the land has become part of a drilling unit pursuant to a mandatory pooling order, written consent of an owner of land may be provided by any of the following:

(1) A copy of an original lease agreement as recorded in the office of the county recorder of the county in which the occupied dwelling or property is located that expressly provides for the reduction of the distance of the location of a well or a tank battery, as applicable, from an occupied dwelling or a property line;

(2) A copy of a deed severing the oil or gas mineral rights, as applicable, from the owner's parcel of land as recorded in the office of the county recorder of the county in which the property is located that expressly provides for the reduction of the distance of the location of a well or a tank battery, as applicable, from an occupied dwelling or a property line; or

(3) A written statement that consents to the proposed location of a well or a tank battery, as applicable, and that is approved by the Chief. The act requires an applicant to submit a copy of a written statement to the Chief. (R.C. 1509.021(G).)

Minimum distance of a well from an occupied private dwelling and certain public buildings in an area that is not an urbanized area

For areas that are not urbanized areas, the surface location of a new well cannot be within 100 feet of an occupied private dwelling or of a public building that may be used as a place of assembly, education, entertainment, lodging, trade, manufacture, repair, storage, or occupancy by the public. That minimum distance does not apply to a building or other structure that is incidental to agricultural use of the land on which the building or other structure is located unless the building or other structure is used as an occupied private dwelling or for retail trade. (R.C. 1509.021(H).)

Minimum distance of a well from any other well

The surface location of a new well cannot be within 100 feet of any other well. However, an applicant may submit a written statement to request the Chief to authorize a new well to be located at a distance that is less than 100 feet from another well. If the Chief receives such a written statement, the Chief may authorize a new well to be located within 100 feet of another well if the Chief determines that the applicant satisfactorily has demonstrated that the location of the new well at a distance that is less than 100 feet from another well is necessary to reduce impacts to the owner of the land on which the well is to be located or to the surface of the land on which the well is to be located. (R.C. 1509.021(I).)

Minimum distance of a tank battery from an existing inhabited structure in an area that is not an urbanized area

For areas that are not urbanized areas, the location of a new tank battery of a well cannot be within 100 feet of an existing inhabited structure (R.C. 1509.021(J)).

Minimum distance of a tank battery from any other well

The location of a new tank battery of a well cannot be within 50 feet of any other well (R.C. 1509.021(K)).

Minimum distance of a well or a tank battery from a railroad track or public road

The surface location of a new well or a new tank battery of a well cannot be within 50 feet of a railroad track or of the traveled portion of a public street, road, or highway. That minimum distance applies regardless of whether the public street, road, or highway has become part of the drilling unit of the well pursuant to a mandatory pooling order. (R.C. 1509.021(L).)

Minimum distance of an oil tank from another oil tank

A new oil tank cannot be within three feet of another oil tank (R.C. 1509.021(M)).

Minimum distances from a mechanical separator

The surface location of a mechanical separator cannot be within any of the following: (1) 50 feet of a well, (2) 10 feet of an oil tank, or (3) 100 feet of an existing inhabited structure (R.C. 1509.021(N)).

Minimum distances from a vessel that is equipped to heat its contents

A vessel that is equipped in such a manner that the contents of the vessel may be heated cannot be within any of the following: (1) 50 feet of an oil production tank, (2) 50 feet of a well, (3) 100 feet of an existing inhabited structure, or (4) if the contents of the vessel are heated by a direct fire heater, 50 feet of a mechanical separator (R.C. 1509.021(O)).

Application for a permit to drill a well

Contents

Continuing law requires an application 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. The act adds that plug back of a well to a different source of supply includes associated production facilities. (R.C. 1509.06(A).)

Continuing law also requires the application for a permit to contain specified information. One of the required pieces of information that an application for a permit to drill a new well must contain, retained in part by the act, is a sworn statement that the applicant has provided notice of the application to the owner of each occupied dwelling unit that is located within 500 feet of the surface location of the well if the surface location will be less than 500 feet from the boundary of the drilling unit and more than 15 occupied dwelling units are located less than 500 feet from the surface

location of the well, excluding any dwelling that is located on real property, all or any portion of which is included in the drilling unit. The act revises the requirement by instead stating that for an application for a permit to drill a new well within an urbanized area, the application must contain a sworn statement that the applicant has provided notice by regular mail to the owner of each parcel of real property that is located within 500 feet of the surface location of the well and to the executive authority of the municipal corporation or the board of township trustees of the township, as applicable, in which the well is to be located. In addition, the act adds that the notice must contain a statement that informs an owner of real property who is required to receive the notice that within five days of receipt of the notice, the owner must provide notice to each residence in an occupied dwelling that is located on the owner's parcel of real property (see "**Notice of the filing of a permit application to residents in occupied dwellings**," below). (R.C. 1509.06(A)(9).)

Law retained in part by the act requires the identity of the owners of occupied dwelling units for purposes of the notice requirement described above to be determined using the tax records of the municipal corporation or county in which the dwelling unit is located as of the date of the notice. The act revises the requirement to be consistent with the act's notice requirement discussed above by specifying that the identity of owners of parcels of real property, instead of owners of occupied dwelling units, must be determined using the tax records. (R.C. 1509.06(A)(9).)

Time period for issuance of a permit

Law revised by the act prohibits the Chief from issuing a permit for at least ten days after the date of filing of the application for the permit unless, upon a reasonable cause shown, the Chief waives that period or a request for expedited review is filed. However, the Chief must issue a permit within 21 days of the filing of the application unless the Chief denies the application by order. The act states that the above requirements apply unless the location of a well or proposed well will be or is within an urbanized area. If the well will be or is within an urbanized area, the Chief cannot issue a permit for at least 18 days after the date of filing of the application for the permit unless the Chief waives that period for reasonable cause or the Chief at the Chief's discretion grants a request for expedited review. However, the Chief must issue a permit for a well or proposed well within an urbanized area within 30 days of the filing of the application unless the Chief denies the application by order. (R.C. 1509.06(C).)

Fees

Ongoing law requires each application for a permit to be accompanied by a nonrefundable fee, revised by the act as follows:

(1) $250 for a permit to conduct activities in a township with a population of fewer than 5,000. The act increases the amount of the fee from $250 to $500 and increases the population of the township from 5,000 to 10,000.

(2) $500 for a permit to conduct activities in a township with a population of 5,000 or more, but fewer than 10,000. The act eliminates that fee.

(3) $750 for a permit to conduct activities in a township with a population of 10,000 or more, but fewer than 15,000;

(4) $1,000 for a permit to conduct activities in a township with a population of 15,000 or more or in a municipal corporation regardless of population; and

(5) An additional $5,000 fee, added by the act, if the application is for a permit that requires mandatory pooling (see above). (R.C. 1509.061(G).)

Site review; fencing, screening, and landscaping

The act adds that prior to the issuance of a permit to drill a proposed well that will be located within an urbanized area, the Division of Mineral Resources Management must conduct a site review to identify and evaluate any site-specific terms and conditions that may be attached to a permit. At the site review, a representative of the Division must consider fencing, screening, and landscaping requirements, if any, for similar structures in the community in which the well is proposed to be located. The terms and conditions that are attached to the permit must include the establishment of fencing, screening, and landscaping requirements for the surface facilities of the proposed well, including a tank battery of the well. (R.C. 1509.06(H).)

Miscellaneous

The act adds that the issuance of a permit cannot be considered an order of the Chief (R.C. 1509.06(F)).

Subjects for terms and conditions of a permit

Continuing law requires the Chief to adopt rules for the administration, implementation, and enforcement of the Oil and Gas Law. The rules must include an identification of the subjects that the Chief must address when attaching terms and conditions to a permit with respect to a well and production facilities of a well that are located within an urbanized area. Under law largely retained by the act, the subjects must include all of the following: (1) safety concerning the drilling or operation of a well, (2) protection of the public and private water supplies, (3) location of surface facilities of a well, (4) fencing and screening of surface facilities of a well, (5) containment and disposal of drilling and production wastes, and (6) construction of

access roads for purposes of the drilling and operation of a well. The act eliminates location of surface facilities of a well, item (3), because of the specific distance requirements that it establishes (see above). It adds noise mitigation for purposes of the drilling of a well and the operation of a well, excluding safety and maintenance operations, as an additional subject that the Chief must address. (R.C. 1509.03(A).)

Term of a permit to drill

Law retained in part by the act states that 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 source of supply different from the existing pool is valid for 12 months. The act relocates the provision and instead provides that such a permit for a well that is or is to be located in an urbanized area is valid for 12 months, and all other permits are valid for 24 months. (R.C. 1509.06(I).)

Public meeting by a political subdivision concerning a proposed lease agreement

The act requires the legislative authority of a political subdivision to 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 prior to entering into the lease agreement. The public meeting must be conducted in a public venue in the municipal corporation or township in which the proposed well is to be located. The public meeting must not occur at the same meeting at which the legislative authority of the political subdivision votes to enter into a proposed lease, if applicable. (R.C. 1509.61(A).)

The legislative authority of the political subdivision must send notice not later than ten days prior to 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 (R.C. 1509.61(A)). The legislative authority must provide the notice in accordance with requirements established by the legislative authority governing public meetings that are held by the legislative authority (R.C. 1509.61(B)). The act requires the notice to contain a statement that the legislative authority of the political subdivision is considering entering into an oil or gas lease agreement. The statement also must provide the location, date, and time of the public meeting. In addition, the statement must contain a statement that informs an owner of real property who is required to receive notice of the public meeting under the act that, within five days of receipt of the notice, the owner is required to provide notice to each residence in an occupied dwelling that is located on the owner's parcel of real property. (R.C. 1509.61(A).)

The act then requires the owner of a parcel of real property that receives such a notice to provide to each residence in an occupied dwelling that is located on the owner's parcel of real property, if any, a copy of that notice within five days of receipt of the notice (R.C. 1509.61(C)).

Notice of the filing of a permit application to residents in occupied dwellings

The act requires the owner of a parcel of real property who receives a notice concerning the filing of an application for a permit to drill a new well within an urbanized area as required under the act (see above) to provide to each residence in an occupied dwelling that is located on the owner's parcel of real property, if any, a copy of that notice within five days of receipt of the notice (R.C. 1509.60).

Surety bond

Continuing law requires an owner of any well, before being issued a permit to drill a well, to execute and file with the Division 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. The act also requires an owner of any well to execute and file such a surety bond before operating or producing from a well. It prohibits an owner, operator, producer, or other person from operating a well or producing from a well at any time if the owner, operator, producer, or other person has not executed and filed the surety bond or other acceptable form of financial security that is required under ongoing law.

Law retained in large part by the act authorizes the Chief to accept, instead of a surety bond, proof of financial responsibility consisting of a sworn financial statement showing a net financial worth within this state equal to twice the amount of the bond for which it substitutes and, as may be required by the Chief, a list of producing properties of the owner within this state or other evidence showing ability and intent to comply with the law and rules concerning restoration and plugging that may be required by rule of the Chief. The owner of an exempt domestic or exempt Mississippian well is not required to file scheduled updates of the financial documents, but must file updates of those documents if requested by the Chief. The owner of a nonexempt domestic or nonexempt Mississippian well must file updates of the financial documents in accordance with a schedule established by rule of the Chief. The act revises the requirements for the filing of scheduled updates for owners of exempt domestic and nonexempt domestic wells. It requires an owner of an exempt domestic well to file scheduled updates of the financial documents and removes the requirement

that the owner of a nonexempt domestic well file updates of financial documents in accordance with a schedule established by rule of the Chief. (R.C. 1509.07.)

New surety bond in event of forfeiture of surety bond

Continuing law states that when the Chief finds that an owner has failed to comply with restoration requirements, plugging requirements, or certain permit provisions, or rules and orders relating to them, the Chief must make a finding of that fact and declare any surety bond filed to ensure compliance with those requirements, provisions, and rules forfeited in the amount set by rule of the Chief. The act adds that an owner's failure to comply with a final nonappealable order issued by or compliance agreement entered into with the Chief is an additional ground for surety bond forfeiture. In addition, the act authorizes the Chief to require an owner, operator, producer, or other person who forfeited a surety bond to post a new surety bond in the amount of $15,000 for a single well, $30,000 for two wells, or $50,000 for three or more wells.

Ongoing law also states that in lieu of total forfeiture, the surety, at its option, may cause the well to be properly plugged and abandoned and the area properly restored or pay to the Treasurer of State the cost of plugging and abandonment. The act adds that the owner has the same options in lieu of total forfeiture as the surety. (R.C. 1509.071(A).)

Liability insurance

Law retained in part by the act requires an owner of any well, except an exempt Mississippian well or an exempt domestic well, to obtain liability insurance coverage from a company authorized to do business in this state in an amount of not less than $300,000 bodily injury coverage and $300,000 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. The owner must maintain that coverage until all the owner's wells are plugged and abandoned as required by law. The act revises the liability insurance coverage by requiring such an owner to obtain coverage 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. However, the act states that if any well is located within an urbanized area, the owner must obtain liability insurance coverage in an 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. In addition, the act requires the owner to maintain the coverage until all the owner's wells are plugged and abandoned or are transferred to an owner who

has obtained the required insurance and who is not under a notice of material and substantial violation or under a suspension order. The act prohibits an owner, operator, producer, or other person from operating a well or producing from a well at any time if the owner, operator, producer, or other person has not obtained the required insurance coverage. (R.C. 1509.07.)

Notification prior to commencement of drilling, reopening, converting, well stimulation, or plug back operations

The act requires a permittee or a permittee's authorized representative to notify an inspector from the Division of Mineral Resources Management at least 24 hours, or within another time period agreed to by the Chief's authorized representative, prior to the commencement of drilling, reopening, converting, well stimulation, or plug back operations (R.C. 1509.06(J)).

Fluid drilling in Onondaga limestone in urbanized areas

The act requires a person who is issued a permit under the Oil and Gas Law to drill a new well or drill an existing well deeper in an urbanized area to establish fluid drilling conditions prior to penetration of 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 (R.C. 1509.073).

Well construction requirements

Former law

Former law required any person who drilled a well, before drilling into the principal or major producing formation, to encase the well with good and sufficient wrought iron or steel casing so as to exclude all surface, fresh, or salt water from any part of the well penetrating the oil or gas bearing sand or rock or fresh water strata. The method of placing the casing had to be approved by the Chief and had to be in accord with the most approved method used in the operation of the type of well. The Chief, in lieu of the casing method, could accept adequate mudding methods with prepared clay in the annular space behind the casing in sufficient quantities to shut off all gas or oil and that would exclude all surface, fresh, or salt water from any part of the well penetrating the oil, gas, or mineral bearing formation or fresh water strata.

Written approval from the Chief was required in each case. In the operation of a gas well, prior law authorized, with the written consent of the Chief, all casing in such a well to be withdrawn, leaving only the tubing and the packer, provided that the well was filled with prepared clay from the top of the pack to the surface as each succeeding string of casing in the well was withdrawn. (R.C. 1509.17.)

The act

Standards for constructing a well. The act generally eliminates the provisions described above. Instead, the act requires a well to be constructed in a manner that is approved by the Chief 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. In addition, a well must be constructed using sufficient steel or conductor casing in a manner that supports unconsolidated sediments, that protects and isolates all underground sources of drinking water as defined by the Safe Drinking Water Act, and that provides a base for a blowout preventer or other well control equipment that is necessary to control formation pressures and fluids during the drilling of the well and other operations to complete the well. An oil and gas reservoir must be isolated during well stimulation and during the productive life of the well using steel production casing with sufficient cement. In addition, sour gas zones and gas bearing zones that have sufficient pressure and volume to over-pressurize the surface production casing annulus resulting in annular overpressurization must be isolated using approved cementing, casing, and well construction practices. However, isolating an oil and gas reservoir cannot exclude open-hole completion. A well cannot be perforated for purposes of well stimulation in any zone that is located around casing that protects underground sources of drinking water without written authorization from the Chief as provided under the provisions discussed below. The act retains a provision of law that states that when the well penetrates the excavations of a mine, the casing must remain intact and be plugged and abandoned in accordance with the requirements of the Oil and Gas Law. (R.C. 1509.17(A).)

Rules. The Chief may adopt rules in accordance with the Administrative Procedure Act, which are consistent with the standards for constructing a well discussed above, for evaluating the quality of well construction materials and for completing remedial cementing. In addition, the standards established in rules must consider local geology and various drilling conditions and must require the use of reasonable methods that are based on sound engineering principles. (R.C. 1509.17(B).)

Cementing. An owner or an owner's authorized representative must notify a mineral resources inspector each time that the owner or the authorized representative notifies a person to perform the cementing of the conductor casing, the surface casing, or the production casing. In addition, not later than 60 days after the completion of the cementing of the production casing, an owner must submit to the Chief a copy of the cement tickets for each cemented string of casing and a copy of all logs that were used to evaluate the quality of the cementing. (R.C. 1509.17(C).)

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 (R.C. 1509.17(D)).

Statement of production

Law largely retained by the act requires the owner of any well producing or capable of producing oil or gas to file with the Chief of the Division of Mineral Resources Management, on or before March 1, a statement of production of oil, gas, and brine for the last preceding calendar year. The act revises the date on which the statement must be filed to on or before March 31. In addition, the act requires an owner that has more than 100 wells in this state to submit electronically the statement of production in a format that is approved by the Chief. (R.C. 1509.11.)

Wireline electric logs and well completion records

Law retained in part by the act requires any person drilling within the state, within 30 days after completion of the well, to file with the Division of Mineral Resources Management an accurate log that designates all of the following:

(1) The purpose for which the well was drilled;

(2) The character, depth, and thickness of geological formations encountered, including fresh water, coal seams, mineral beds, brine, and oil and gas bearing formations;

(3) The length in feet of the various sizes of casing and tubing used in drilling the well, the amount removed after completion, the type and setting depth of each packer, and other data relating to mudding in the annular space behind the casing or tubing, indicating completion as a dry, gas, oil, combination oil and gas, brine, or artificial brine well; and

(4) The elevation above mean sea level of the point from which the depth measurements were made, stating also the height of the point above ground level at the well.

The log must be in a form that has been approved by the Chief. The log must be submitted in duplicate with one copy retained by the Chief as a permanent record and the second copy transmitted by the Chief to the Division of Geological Survey. Any electric log, radioactivity log, or other geophysical log, if made in connection with the

well, must be filed with the Division of Mineral Resources Management, and the Chief must transmit such logs to the Division of Geological Survey. (R.C. 1509.10.)

The act revises and expands the law governing those logs. Under the revised provisions, any person drilling within the state, within 60 days after the completion of drilling operations to the proposed total depth or after a determination that a well is a dry or lost hole, must file with the Division of Mineral Resources Management all wireline electric logs and an accurate well completion record on a form that is approved by the Chief and that designates all of the following:

(1) The purpose for which the well was drilled;

(2) The character, depth, and thickness of geological units encountered, including coal seams, mineral beds, associated fluids such as fresh water, brine, and crude oil, natural gas, and sour gas if such seams, beds, fluids, or gases are known;

(3) The dates on which drilling operations were commenced and completed;

(4) The types of drilling tools used and the name of the person that drilled the well;

(5) The length in feet of the various sizes of casing and tubing used in drilling the well, the amount removed after completion, the type and setting depth of each packer, and other data relating to cementing in the annular space behind such casing or tubing, and data indicating completion as a dry, gas, oil, combination oil and gas, brine injection, or artificial brine well or a stratigraphic test;

(6) The number of perforations in the casing and the intervals of the perforations;

(7) The elevation above mean sea level of the point from which the depth measurements were made, stating also the height of the point above ground level at the well, the total depth of the well, and the deepest geological unit that was penetrated in the drilling of the well;

(8) If applicable, the type, volume, and concentration of acid, and the date on which acid was used in acidizing the well;

(9) If applicable, the type and volume of fluid used to stimulate the reservoir of the well, the reservoir breakdown pressure, the method used for the containment of fluids recovered from the fracturing of the well, the methods used for the containment of fluids when pulled from the wellbore from swabbing the well, the average pumping rate of the well, and the name of the person that performed the well stimulation. In

addition, the owner must include a copy of the log from the stimulation of the well, a copy of the invoice for each procedure and method that was used on the well, and a copy of the pumping pressure and rate graphs. However, the owner may redact from the copy of each invoice the costs of and charges for the procedures and methods that were used on the well.

(10) The name of the company that performed the logging of the well and the types of wireline electric logs performed on the well.

The well completion record must be in a form that has been approved by the Chief and must be submitted in duplicate with one copy retained by the Chief as a permanent record and the second copy transmitted by the Chief to the Division of Geological Survey. Not later than 60 days after the completion of drilling operations to the proposed total depth, the owner must file all wireline electric logs with the Division of Mineral Resources Management, and the Chief must transmit such logs electronically, if available, to the Division of Geological Survey. If a well is not completed within 60 days after the completion of drilling operations, the owner must file with the Division of Mineral Resources Management a supplemental well completion record that includes all of the required information within 60 days after the completion of the well. (R.C. 1509.10(A).)

Finally, the act states that if there is a material listed on the invoice that is required in item (9), above, for which the Division of Mineral Resources Management does not have a material safety data sheet, the Chief must obtain a copy of the material data safety sheet for the material and post a copy of it on the Division's web site (R.C. 1509.10(E)).

Well stimulation

The act requires an owner who elects to stimulate a well to stimulate the well in a manner that will not endanger underground sources of drinking water. Not later than 24 hours before commencing the stimulation of 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. If the Chief determines that the casing and the cement may be remediated in a manner that isolates the oil and gas bearing zones of the well, the Chief may authorize the completion of the stimulation of the well. If the Chief determines that the stimulation of a well resulted in irreparable damage to the well, the Chief must order that the well be plugged and abandoned within 30 days of the issuance of the order. For purposes of determining the integrity of the remediation of the casing or cement of a well that was damaged during the stimulation of the well, the

Chief may require the owner of the well to submit cement evaluation logs, temperature surveys, pressure tests, or a combination of those logs, surveys, and tests. (R.C. 1509.19.)

Gas flaring

Continuing law authorizes the owner of any well producing both oil and gas to burn such gas in flares when the gas is lawfully produced and there is no economic market at the well for the escaping gas. The act adds that the owner also may burn gas when it is necessary to protect the health and safety of the public. (R.C. 1509.20.)

Defective wells or casing

Law retained in part by the act prohibits an owner of any well from permitting defective casing or tubing in the well to leak fluids or gas that may cause damage to other permeable strata. Upon notice from the Chief, the owner must immediately repair the tubing or casing or plug and abandon the well. The act revises that prohibition by prohibiting an owner of any well from constructing a well, or from permitting defective casing in a well to leak fluids or gases, that causes damage to other permeable strata, underground sources of drinking water, or the surface of the land or that threatens the public health and safety or the environment. 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. (R.C. 1509.12(A).)

Under former law, unless written permission was granted by the Chief, any well that was or became incapable of producing oil or gas in commercial quantities had to be plugged, but no well could be required to be plugged that was being used to produce oil or gas for domestic purposes or that was being lawfully used for a purpose other than production of oil or gas. The act eliminates that provision. (R.C. 1509.12(A).)

Under law slightly revised by the act, where the plugging method prescribed by rules adopted under the Oil and Gas Law cannot be applied or if applied would be ineffective in carrying out the protection that the Law is meant to give, the Chief, by order, may designate a different method of plugging. The act eliminates the requirement that the Chief do so by order. (R.C. 1509.12(B).)

Wells not completed or not producing

The act requires the owner of a well that has not been completed, a well that has not produced within one year after completion, or an existing well that has no reported production for two consecutive reporting periods to plug the well in accordance with

the plugging requirements of the Oil and Gas Law, obtain a temporary inactive well status for the well (see "**Temporary inactive well status**," below), or perform another activity regarding the well that is approved by the Chief. If a well has a reported annual production that is less than 1,000 cubic feet of natural gas or 15 barrels of crude oil, or a combination of natural gas or crude oil, the Chief may require the owner of the well to submit an application for a temporary inactive well status for the well. (R.C. 1509.062(A).)

Temporary inactive well status

The act states that in order for the owner of a well to submit an application for temporary inactive well status for the well, the owner and the well must be in compliance with the Oil and Gas Law and rules adopted under it, any terms and conditions of the permit for the well, and applicable orders issued by the Chief (R.C. 1509.062(B)).

Application requirements

The act requires that an application for temporary inactive status for a well be submitted to the Chief on a form prescribed and provided by the Chief and contain all of the following:

(1) The owner's name and address and, if the owner is a corporation, the name and address of the corporation's statutory agent;

(2) The signature of the owner or of the owner's authorized agent. When an authorized agent signs an application, the application must be accompanied by a certified copy of the agent's appointment as agent.

(3) The permit number assigned to the well. If the well has not been assigned a permit number, the Chief must do so.

(4) A map, on a scale not smaller than 400 feet to the inch, that shows the location of the well and the tank battery, that includes the latitude and longitude of the well, and that contains all other data that are required by the Chief;

(5) A demonstration that the well is of future utility and that the applicant has a viable plan to utilize the well within a reasonable period of time;

(6) A demonstration that the well poses no threat to the health or safety of persons, property, or the environment; and

(7) Any other relevant information that the Chief prescribes by rule.

The act authorizes the Chief to waive any of the above application requirements if the Division possesses a current copy of the information or a document that is required in the application. (R.C. 1509.062(B).)

The act requires that an application for temporary inactive well status be accompanied by a nonrefundable fee of $100 (R.C. 1509.062(E)).

Approval or denial of an application

Upon receipt of an application for temporary inactive well status, the Chief must review the application and must either deny the application by issuing an order or approve the application. The act requires the Chief to approve the application only if the Chief determines that the well that is the subject of the application poses no threat to the health or safety of persons, property, or the environment. If the Chief approves the application, the Chief must notify the applicant of that approval. Upon receipt of the Chief's approval, the owner must shut in the well and empty all liquids and gases from all storage tanks, pipelines, and other equipment associated with the well. In addition, the owner must maintain the well, other equipment associated with the well, and the surface location of the well in a manner that prevents hazards to the health and safety of people and the environment. The owner must inspect the well at least every six months and submit to the Chief within 14 days after the inspection a record of the inspection on a form prescribed and provided by the Chief. (R.C. 1509.062(C).)

The act states that temporary inactive well status approved by the Chief expires one year after the date of approval of the application for temporary inactive well status or production from the well commences, whichever occurs sooner (R.C. 1509.062(G)).

Renewal

The act authorizes the owner of a well, not later than 30 days before the expiration of temporary inactive well status or a renewal of temporary inactive well status approved by the Chief, to submit to the Chief an application for renewal of the status on a form prescribed and provided by the Chief. The application must include a detailed plan that describes the ultimate disposition of the well, the time frames for that disposition, and any other information that the Chief determines is necessary. The Chief must either deny an application by order or approve the application. If the Chief approves the application, the Chief must notify the owner of the well of that approval. (R.C. 1509.062(D).) The act requires that an application for a renewal of temporary inactive well status be accompanied by a nonrefundable fee of $250 for the first renewal and $500 for each subsequent renewal (R.C. 1509.062(E)).

The act states that a renewal of temporary inactive well status expires one year after the expiration date of the initial temporary inactive well status or one year after

the expiration date of the previous renewal of the temporary inactive well status, as applicable, or production from the well commences, whichever occurs sooner (R.C. 1509.062(G)).

Surety bond

After a third renewal of temporary inactive well status, the Chief may require an owner to provide a surety bond in an amount not to exceed $10,000 for each of the owner's wells that has been approved by the Chief for temporary inactive well status (R.C. 1509.062(F)).

Miscellaneous

The owner of a well that has been approved by the Chief for temporary inactive well status may commence production from the well at any time. The act requires the owner to notify the Chief of the commencement of production not later than 60 days after the commencement. (R.C. 1509.062(H).)

Finally, the act states that the Oil and Gas Law and the rules adopted under it, any terms and conditions of the permit for a well, and applicable orders issued by the Chief apply to a well that has been approved by the Chief for temporary inactive well status or renewal of that status (R.C. 1509.062(I)).

Permit to plug and abandon a well

Law largely retained by the act prohibits a person from plugging and abandoning a well without having a permit to do so issued by the Chief. The permit must be issued by the Chief in accordance with the Oil and Gas Law, and the Chief may establish by rule a period of time from the date of issue during which permits will be valid. The act retains the requirement for a permit to plug and abandon a well, but states that such a permit is valid for 24 months from the date of issue rather than for a period established by rule. (R.C. 1509.13(A).)

Law also largely retained by the act requires an application for a permit to plug and abandon a well to be filed with the Chief and establishes application requirements. If oil or gas has been produced from the well, the application fee is $50. The act retains the application filing requirement and application requirements, but increases the application fee if oil or gas has been produced from the well from $50 to $250. (R.C. 1509.13(B) and (C).)

Law revised by the act states that if a new dry well has been drilled in accordance with law and the permit is still valid, the permit holder may receive approval to plug the well from a mineral resources inspector or, if the well is located in

a coal bearing township, both a deputy mine inspector and a mineral resources inspector so that the well can be plugged and abandoned without undue delay. The act instead states that if a well has been drilled in accordance with law and the permit is still valid, the permit holder may receive approval to plug the well from a mineral resources inspector so that the well can be plugged and abandoned without undue delay. The act adds that unless waived by a mineral resources inspector, the owner of a well or the owner's authorized representative must notify a mineral resources inspector at least 24 hours prior to the commencement of the plugging of a well. (R.C. 1509.13(C).)

Law revised in part by the act prohibits the plugging and abandonment of a well without a mineral resources inspector present unless permission has been granted by the Chief. The owner of the well must give written notice at the same time to the owner of the land on which the well is located, the owners or agents of adjoining land, adjoining well owners or agents, and, if the well penetrates or passes within 100 feet of the excavations and workings of a mine, the owner or lessee of that mine of the well owner's intention to abandon the well and of the time when the well owner will be prepared to commence plugging it. The act retains the requirement that a mineral resources inspector be present for the plugging and abandonment of a well unless permission has been granted by the Chief. It eliminates the requirement that notice be given to the owners or agents of adjoining land and adjoining well owners or agents, but adds that the owner of a well that has produced oil or gas must give written notice at the same time to the owner of the land on which the well is located and to all lessors that receive gas from the well pursuant to a lease agreement. Furthermore, the act requires the owner of the well, if the well penetrates or passes within 100 feet of the excavations and workings of a mine, to give written notice to the owner or lessee of that mine of the owner's intention to abandon the well and of the time when the well owner will be prepared to commence plugging it. (R.C. 1509.13(C).)

Law largely unchanged by the act authorizes an applicant to file a request for an expedited review of an application for a permit to plug and abandon a well. The applicant must include a nonrefundable filing fee of $250 unless the Chief has ordered the applicant to plug and abandon the well. The act increases that nonrefundable filing from $250 to $500. (R.C. 1509.13(D).)

Written report of abandonment and plugging without inspector present

Law largely unchanged by the act requires a person who abandons a well, when written permission has been granted by the Chief to abandon and plug the well without an inspector present to supervise the plugging, to make a written report of the abandonment to the Chief. The report must contain specified information. Included in that information is the depth of each seam of coal drilled through. The act qualifies that

required information by stating that the report must indicate the depth of each seam of coal drilled through, if known. (R.C. 1509.14(H).)

Payment for plugging of abandoned wells

Law largely retained by the act states that in the case of oil or gas wells abandoned prior to September 1, 1951, the board of county commissioners of the county in which the wells are located may submit to the electors of the county the question of establishing a special fund, by special levy, by bond issue, or out of current funds, which must be approved by a majority of the electors voting on that question for the purpose of plugging the wells. The fund must be administered by the board and the plugging of oil and gas wells must be under the supervision of the Chief, and the board must let contracts for that purpose, provided that the fund cannot be used for the purpose of plugging oil and gas wells that were abandoned subsequent to September 1, 1951. The act revises from 1951 to 1978 the date prior to which a well may be abandoned for purposes of the levy and use of money in the special fund. In addition, the act states that the question of establishing a special fund must be by general levy, by general bond issue, or out of current funds rather than by special levy, by bond issue, or out of current funds. (R.C. 1509.12(C).)

Rules for drilling and treatment of wells, production of oil and gas, and plugging

Continuing law authorizes rules of the Chief of the Division of Mineral Resources Management to specify practices to be followed in the drilling of wells and in the production of oil and gas for protection of public health or safety and to prevent damage to natural resources. The act adds that the rules also may specify practices to be followed in the treatment of wells and plugging of wells.

The rules, under law as revised by the act, may specify all of the following:

(1) Appropriate devices;

(2) Minimum distances that wells and other excavations, structures, and equipment must be located from water wells and bodies of water, streets, roads, railroad tracks, and other similar structures, public or private recreational areas, zoning districts, and buildings or other structures. The act prohibits the rules concerning minimum distances from conflicting with the act's setback provisions (see above).

(3) Other methods of operation;

(4) Procedures, methods, and equipment and other requirements for equipment to prevent and contain discharges of oil from oil production facilities and oil drilling

and workover facilities consistent with and equivalent in scope, content, and coverage to specified provisions of the Federal Water Pollution Control Act Amendments of 1972. The act adds that the procedures, methods, and equipment are to prevent and contain discharges of brine, in addition to oil as in continuing law, from the facilities. It also adds that the rules may specify procedures, methods, and equipment and other requirements for equipment to prevent and contain surface and subsurface discharges of fluids, condensates, and gases.

(5) Notifications as added by the act. (R.C. 1509.23(A).)

Restoration requirements

Ongoing law prohibits an oil or gas well owner or agent of an oil or gas well owner from failing to restore the land surface within the area disturbed in siting, drilling, completing, and producing the well (R.C. 1509.072).

Filling of pits and grading

Under law retained in part by the act, within five months after the date on which the surface drilling of a well is commenced, the owner or the owner's agent, in accordance with the restoration plan filed under the Oil and Gas Law, must fill all the pits for containing brine, other waste substances resulting, obtained, or produced in connection with exploration or drilling for, or production of, oil or gas, or oil that are not required by other state or federal laws or regulations and remove all concrete bases, drilling supplies, and drilling equipment. Within nine months after the date on which the surface drilling of a well is commenced, the owner or the owner's agent must grade or terrace and plant, seed, or sod the area disturbed that is not required in production of the well where necessary to bind the soil and prevent substantial erosion and sedimentation. If the Chief finds that a pit used for containing brine, other waste substances, or oil is in violation of specified provisions of the Oil and Gas Law and rules adopted or orders issued under it, the Chief may require the pit to be emptied and closed before expiration of the five-month restoration period. (R.C. 1509.072(A).)

The act revises the law governing the filling of pits and grading. Under the revised provisions, within 14 days after the date on which the drilling of a well is completed to total depth in an urbanized area and within two months after the date on which the drilling of a well is completed in all other areas, the owner or the owner's agent, in accordance with the restoration plan that is filed under the Oil and Gas Law, must fill all pits for containing brine and other waste substances resulting, obtained, or produced in connection with exploration or drilling for oil or gas that are not required by other state or federal laws or regulations and remove all drilling supplies and drilling equipment. Unless the Chief approves a longer time period, within three

months after the date on which the surface drilling of a well is commenced in an urbanized area and within six months after the date on which the surface drilling of a well is commenced in all other areas, the owner or the owner's agent must grade or terrace and plant, seed, or sod the area disturbed that is not required in production of the well where necessary to bind the soil and prevent substantial erosion and sedimentation. If the Chief finds that a pit used for containing brine, other waste substances, or oil is in violation of specified provisions of the Oil and Gas Law and rules adopted or orders issued under it, the Chief may require the pit to be emptied and closed before expiration of the 14-day or three-month restoration period. (R.C. 1509.072(A).)

Removal of all production and storage equipment

Law retained in part by the act requires the owner or the owner's agent, within six months after a well that has produced oil or gas is plugged or after the plugging of a dry hole, to remove all production and storage structures, supplies, and equipment, and any oil, salt water, and debris, and fill any remaining excavations. The act instead states that within three months after a well that has produced oil or gas is plugged in an urbanized area and within six months after a well that has produced oil or gas is plugged in all other areas or after the plugging of a dry hole, unless the Chief approves a longer time period, the owner or the owner's agent must remove all production and storage structures, supplies, and equipment, and any oil, salt water, and debris, and fill any remaining excavations. (R.C. 1509.072(B).)

Secondary or additional recovery operations

Continuing law prohibits a person, without first having obtained a permit, from conducting secondary or additional recovery operations, including any underground injection of fluids for the secondary or tertiary recovery of oil or natural gas or for the storage of hydrocarbons that are liquid at standard temperature or pressure, unless a rule of the Chief expressly authorizes such operations without a permit. The act adds that a permit also is required for the underground injection of carbon dioxide for the secondary or tertiary recovery of oil or natural gas.

Ongoing law states that secondary or additional recovery operations must be conducted in accordance with rules and orders of the Chief and any terms or conditions of the permit authorizing those operations. The act adds that the Chief may authorize tests to evaluate whether fluids or carbon dioxide may be injected in a reservoir and to determine the maximum allowable injection pressure. The tests must be conducted in accordance with methods prescribed in rules of the Chief or conditions of the permit. (R.C. 1509.21.)

Fluids associated with oil and gas development

Continuing law prohibits a person, except when applying brine to roads in accordance with the Oil and Gas Law, from placing brine 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 Safe Drinking Water Act or damage or injury to public health or safety or the environment. The act retains the prohibition and adds crude oil, natural gas, or other fluids associated with the exploration or development of oil and gas resources to it. (R.C. 1509.22(A).)

Ongoing law requires the Chief to adopt rules and issue orders regarding storage and disposal of brine and other waste substances. However, the storage and disposal of brine and other waste substances, as added by the act, and the Chief's rules relating to storage and disposal are subject to all of the following standards as revised by the act:

(1) Brine from any well except an exempt Mississippian well must be disposed of only by methods or procedures authorized by the Oil and Gas Law.

(2) Muds, cuttings, and other waste substances cannot be disposed of in violation of any rule.

(3) Pits, or steel tanks as authorized by the act, must be used as authorized by the Chief under the act 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.

(4) 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 the reservoir within such a dike or pit must be kept reasonably free of brine and other waste substances. The act adds that a dike or pit also must prevent the escape of crude oil and the reservoir within a dike or pit also must be kept reasonably free of crude oil.

(5) Earthen impoundments constructed pursuant to the Division's specifications may be used for the temporary storage of fluids used in the stimulation of a well rather than brine and other waste substances in association with a saltwater injection well, an enhanced recovery project, or a solution mining project as in former law.

(6) No pit, earthen impoundment, or dike can be used for the temporary storage of brine except in accordance with items (3) to (5) above. The act also prohibits a pit,

earthen impoundment, or dike from being used for the temporary storage of other substances.

(7) No pit or dike can be used for the ultimate disposal of brine. The act adds that no pit or dike can be used for the ultimate disposal of other liquid waste substances. (R.C. 1509.22(C).)

Permit to inject brine or other waste substances

Continuing law prohibits a person, without first having obtained a permit from the Chief, from injecting 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. An application for such a permit must include a fee that formerly was $100. The act increases the amount of the fee for such a permit to $1,000.

Under continuing law, the Chief must adopt rules in accordance with the Administrative Procedure Act regarding the injection into wells of brine and other waste substances resulting from, obtained from, or produced in connection with oil or gas drilling, exploration, or production. The act adds that the rules may authorize tests to evaluate whether fluids or carbon dioxide may be injected in a reservoir and to determine the maximum allowable injection pressure, which must be conducted in accordance with methods prescribed in the rules or in accordance with conditions of the permit. (R.C. 1509.22(D).)

Brine transporters

Update of bond and certificate to reflect business name change

Continuing law prohibits a person from transporting brine by vehicle in this state unless the business entity that employs the person registers with and obtains a registration certificate and identification number from the Chief (R.C. 1509.222(A)(1)). Before being issued a registration certificate, the applicant must execute and file with the Division a $15,000 surety bond, cash, or negotiable certificates of deposit (R.C. 1509.225(A)). In addition, the applicant must submit a certificate from an insurance company authorized to do business in this state certifying that the applicant has in force a liability insurance policy in an amount not less than $300,000 bodily injury coverage and $300,000 property damage coverage (R.C. 1509.222(A)(2)). The act states that if a business entity that has been issued a registration certificate changes its name due to a business reorganization or merger, the business entity must revise the required surety bond or certificates of deposit and obtain a new certificate from an insurance company to reflect the change in the name of the business entity (R.C. 1509.222(A)(3)).

Release of surety bond

Law revised by the act prohibits the Chief from releasing the surety bond or other securities discussed above except by court order or until two years after the date on which a registration is terminated. The act instead states that the Chief cannot release the surety bond or other securities except by court order or until the registration is terminated. (R.C. 1509.225(C).)

Application of brine to roads

Continuing law establishes requirements in accordance with which a board of county commissioners or township trustees or the legislative authority of a municipal corporation may adopt a resolution permitting the application of brine to roads and other similar land surfaces. In addition, continuing law establishes standards for the application of brine to roads. The act adds to the standards that only brine that is produced from a well is allowed to be spread on a road. In addition, the act prohibits fluids from the drilling of a well, flowback from the stimulation of a well, and other fluids used to treat a well from being spread on a road. (R.C. 1509.226(B)(10).)

Priority lien

The act establishes that if an owner fails to pay the fees imposed under the Oil and Gas Law, or if the Chief incurs costs to correct conditions associated with an owner's well that the Chief reasonably has determined are causing imminent health or safety risks, the Division of Mineral Resources Management has a priority lien against that owner's interest in the applicable well in front of all other creditors for the amount of any such unpaid fees and costs incurred. The Chief must file a statement in the office of the county recorder of the county in which the applicable well is located of the amount of the unpaid fees and costs incurred. The statement constitutes a lien on the owner's interest in the well as of the date of the filing. The lien remains in force so long as any portion of the lien remains unpaid or until the Chief issues a certificate of release of the lien. If the Chief issues a certificate of release, the Chief must file it in the office of the applicable county recorder. (R.C. 1509.34(A)(1).)

The act states that a lien imposed as discussed above is in addition to any lien imposed by the Attorney General for failure to pay the oil and gas regulatory cost recovery assessment imposed by the act (see above) or the tax levied on the severance of oil or gas under continuing law (R.C. 1509.34(A)(2)). In addition, the act states that if the Attorney General cannot collect from a severer or an owner for an outstanding balance of amounts due from the oil and gas regulatory cost recovery assessment or of unpaid severance taxes on oil or gas, as applicable, the Tax Commissioner may request

the Chief to impose a priority lien against the owner's interest in the applicable well. Such a line has priority in front of all other creditors. (R.C. 1509.34(A)(3).)

The act requires the Chief to promptly issue a certificate of release of a lien under either of the following circumstances:

(1) Upon the repayment in full of the amount of unpaid fees imposed under the Oil and Gas Law or costs incurred by the Chief to correct conditions associated with the owner's well that the Chief reasonably has determined are causing imminent health or safety risks; or

(2) Any other circumstance that the Chief determines to be in the best interest of the state. (R.C. 1509.34(B).)

The act authorizes the Chief to modify the amount of a lien. If the Chief modifies a lien, the Chief must file a statement in the office of the county recorder of the applicable county of the new amount of the lien. (R.C. 1509.34(C).) An owner regarding which the Division has recorded a lien against the owner's interest in a well cannot transfer a well, lease, or mineral rights to another owner or person until the Chief issues a certificate of release for each lien against the owner's interest in the well (R.C. 1509.34(D)). The act states that all money from the collection of liens must be deposited in the state treasury to the credit of the Oil and Gas Well Fund (R.C. 1509.34(E)).

Enforcement actions and orders of the Chief

Continuing law requires the Chief, or the Chief's authorized representative, to enforce the Oil and Gas Law and the rules, the terms and conditions of permits and registration certificates, and orders adopted or issued under it. The act adds that the enforcement authority of the Chief includes the authority to enter into compliance agreements. (R.C. 1509.04(A).) The act also authorizes the Chief or the Chief's authorized representative to issue an administrative order to an owner for a violation of the Oil and Gas Law or rules adopted under it, the terms and conditions of a permit issued under it, a registration certificate that is required under that Law, or orders issued under it (R.C. 1509.04(B)(1)). Finally, the act adds that the Chief may issue an order finding that an owner has committed a material and substantial violation (R.C. 1509.04(B)(2)).

Law retained in part by the act authorizes the Chief to order the immediate suspension of drilling, operating, or plugging activities after finding that any person is causing, engaging in, or maintaining a condition or activity that in the Chief's judgment presents an imminent danger to public health or safety or results in or is likely to result in immediate substantial damage to natural resources or for nonpayment of a fee. That

law provides for notification of the order, an opportunity for a hearing, and appeal of the order. (R.C. 1509.06(H).) The act relocates and revises those provisions as discussed below.

Under the act, the Chief, by order, may immediately suspend 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 (R.C. 1509.04(C)). The Chief may issue such an order without prior notification if reasonable attempts to notify the owner have failed or if the owner is currently in material breach of a prior order, but in that event notification must be given as soon thereafter as practical (R.C. 1509.04(D)(1)).

Also under the act, not later than five days after the issuance of such an order, the Chief must provide the owner an opportunity to be heard and to present evidence that one of the following applies: (1) the condition or activity does not present an imminent danger to the public health or safety or is not likely to result in immediate substantial damage to natural resources, or (2) required records, reports, or logs have been submitted. If the Chief, after considering such evidence presented by the owner, determines that the activities do not present such a threat or that the required records, reports, or logs have been submitted, the Chief must revoke the order. The owner may appeal an order to the court of common pleas of the county in which the activity that is the subject of the order is located. (R.C. 1509.04(D)(2).)

The act adds that the Chief may issue a bond forfeiture order under the Oil and Gas Law for failure to comply with a final nonappealable order or a compliance agreement (R.C. 1509.04(E)). In addition, the Chief may notify drilling contractors, transporters, service companies, or other similar entities of the compliance status of an operator (R.C. 1509.04(F)).

The act also adds that if the owner fails to comply with a prior enforcement action of the Chief, the Chief may issue a suspension order without prior notification, but in that event the Chief must give notice as soon thereafter as practical. Not later than five calendar days after the issuance of an order, the Chief must provide the owner an opportunity to be heard and to present evidence that required records, reports, or logs have been submitted. If the Chief, after considering the evidence presented by the owner, operator, producer, or other person, determines that the requirements have been satisfied, the Chief must revoke the suspension order. The owner may appeal a

suspension order to the court of common pleas of the county in which the activity that is the subject of the suspension order is located. (R.C. 1509.04(F).)

Database of permittee violations

The act requires the Chief to maintain a database on the Division of Mineral Resources Management's web site that is accessible to the public. The database must list each final nonappealable order issued for a material and substantial violation under the Oil and Gas Law. The list must identify the violator, the date on which the violation occurred, and the date on which the violation was corrected. (R.C. 1509.041.)

Suspension order concerning a well in a coal bearing township

The act relocates and slightly revises the statute that authorizes the Chief to order the immediate suspension of the drilling or reopening of a well in a coal bearing township after determining that the drilling or reopening activities present an imminent and substantial threat to public health or safety or to a miner's health or safety (R.C. 1509.06(H) and 1509.181(A)). Under that revised statute, before issuing such an order, the Chief must notify the owner in any manner that the Chief determines would provide reasonable notification of the Chief's intent to issue a suspension order. However, the Chief may order the immediate suspension of the drilling or reopening of a well in a coal bearing township without prior notification if the Chief has made reasonable attempts to notify the owner and the attempts have failed. If the Chief orders the immediate suspension of such drilling or reopening, the Chief must provide the owner notice of the order as soon as practical. (R.C. 1509.181(B).)

Not later than five days after the issuance of an order to immediately suspend the drilling or reopening of a well in a coal bearing township, the Chief must provide the owner an opportunity to be heard and to present evidence that the drilling or reopening activities will not likely result in an imminent and substantial threat to public health or safety or to a miner's health or safety, as applicable. If the Chief, after considering all evidence presented by the owner, determines that the activities do not present such a threat, the Chief must revoke the suspension order. (R.C. 1509.181(C).) Notwithstanding any other provision of the Oil and Gas Law, an owner may appeal such a suspension order to the Reclamation Commission in accordance with the Coal Mining Law (R.C. 1509.181(D)).

Appeals by persons affected by an order of the Chief

Law largely retained by the act states that any person claiming to be aggrieved or adversely affected by an order of the Chief may appeal to the Oil and Gas Commission for an order vacating or modifying the order. The act instead states that any person adversely affected by an order of the Chief may so appeal. Law retained in part by the

act requires the appeal to be filed with the Commission within 30 days after the date on which the appellant received notice by registered mail of the making of the order complained of. The act revises the provision by requiring the appeal to be filed with the Commission within 30 days after the date on which the appellant received notice of the order by certified mail and, for all other persons adversely affected by the order, within 30 days after the date of the order complained of. (R.C. 1509.36.)

Transfer or assignment of the entire interest in an oil and gas lease

Continuing law establishes certain requirements and procedures governing whenever the entire interest in an oil and gas lease is assigned or otherwise transferred. When notice of any such assignment or transfer is required to be provided to the Division of Mineral Resources Management, it must be provided on a form prescribed and provided by the Division and verified by both the assignor or transferor and by the assignee or transferee. The act adds that such a notice must include a nonrefundable fee of $100 for each well. (R.C. 1509.31(A).)

Transfer or assignment of the entire interest in an oil and gas well

The act adds that when the entire interest of a well is proposed to be assigned or otherwise transferred to the landowner for use as an exempt domestic well, the owner who has been issued a permit under the Oil and Gas Law for the well must submit to the Chief an application for the assignment or transfer that contains all documents that the Chief requires and a nonrefundable fee of $100. The application for such an assignment or transfer must be prescribed and provided by the Chief. The Chief may approve the application if the application is accompanied by a release of all of the oil and gas leases that are included in the applicable formation of the drilling unit, the release is in a form such that the well ownership merges with the fee simple interest of the surface tract, and the release is in a form that may be recorded. However, if the owner of the well does not release the oil and gas leases associated with the well that is proposed to be assigned or otherwise transferred or if the fee simple tract that results from the merger of the well ownership with the fee simple interest of the surface tract is less than five acres, the proposed exempt domestic well owner must post a $5,000 bond with the Division of Mineral Resources Management prior to the assignment or transfer of the well to ensure that the well will be properly plugged. The Chief, for good cause, may modify the requirements governing the assignment or transfer of the interests of a well to the landowner. Upon the assignment or transfer of the well, the owner of an exempt domestic well is not subject to the severance taxes on oil and gas, but is subject to all applicable fees established in the Oil and Gas Law. (R.C. 1509.31(B).)

Foreclosed mortgaged property that is subject to an oil or gas lease or other instrument

The act states if a mortgaged property that is being foreclosed is subject to an oil or gas lease, pipeline agreement, or other instrument related to the production or sale of oil or natural gas and the lease, agreement, or other instrument was recorded subsequent to the mortgage, and if the lease, agreement, or other instrument is not in default, the oil or gas lease, pipeline agreement, or other instrument, as applicable, has priority over all other liens, claims, or encumbrances on the property so that the oil or gas lease, pipeline agreement, or other instrument is not terminated or extinguished upon the foreclosure sale of the mortgaged property. If the owner of the mortgaged property was entitled to oil and gas royalties before the foreclosure sale, the oil or gas royalties must be paid to the purchaser of the foreclosed property. (R.C. 1509.31(D).)

Authority of the Division

Law largely unchanged by the act vests in the Division of Mineral Resources Management sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells within the state. The act adds that the Division has sole and exclusive authority to regulate production operations (see above) within the state.

Continuing law excludes from the Division's sole and exclusive authority the authority of the Director of Transportation and local authorities to issue special permits regarding vehicle size, weight, or load. The act retains that exclusion and also excludes from the Division's sole and exclusive authority the authority of a municipal corporation to regulate the use of streets, provided that the authority of the municipal corporation, or of the Director of Transportation or local authorities to issue such special permits, is not exercised in a manner that discriminates against, unfairly impedes, or obstructs regulated oil and gas activities and operations. (R.C. 1509.02.)

Oil and Gas Commission

Ongoing law creates the Oil and Gas Commission consisting 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 act adds that the person can be classed as one learned and experienced in petroleum engineering as well. (R.C. 1509.35(A).)

Exemption from regulation of investments in natural gas gathering lines and storage facilities

Procedure for receiving exemption

The act requires the Public Utilities Commission of Ohio (PUCO) to exempt from most regulatory laws a natural gas company's investments in gathering lines or storage facilities placed into service on or after January 1, 2010. The act requires a company to apply to the PUCO for the exemption, and the only condition for receiving the exemption is that the company is in substantial compliance with continuing state policy on the provision of natural gas service. (R.C. 4929.041(A).) That state policy includes, among other policy objectives: (1) promoting the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods, (2) encouraging innovation and market access for cost-effective natural gas services and goods, (3) ensuring that the risks and rewards of a natural gas company's offering of nonjurisdictional and exempt services and goods do not affect the rates, prices, terms, or conditions of nonexempt, regulated services and goods or the financial capability of a company to comply with state policy, and (4) promoting alignment of company interests with consumer interests in energy efficiency and conservation.[1] The exemption, if granted, also extends to any service related to the lines or facilities for which the investments are exempt (R.C. 4929.041(A)).

Scope of exemption order

The exemption is from all laws governing public utilities and their provision of service except for: (1) assessments on public utilities for the operation of the PUCO (R.C. 4905.10, not in the act), (2) the prohibition against service discrimination (R.C. 4905.35, not in the act), (3) pipeline-safety requirements (R.C. 4905.90 to 4905.96, not in the act), and (4) energy-emergency requirements (R.C. 4935.03, not in the act). The exemption extends to all rules or orders issued under any of the exempted laws. (R.C. 4929.041(A).)

PUCO jurisdiction over exemption orders

The act grants the PUCO continuous jurisdiction to enforce any terms imposed in an exemption order regarding a natural gas company's investments in, and services related to, gathering lines or storage facilities. The act also permits the PUCO to alter, amend, or suspend the exemption order if the PUCO determines, after a hearing upon complaint or upon the PUCO's own initiative, that the exemption has adversely affected the quality, adequacy, or sufficiency of the company's service. (R.C. 4929.04(D).)

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[1] R.C. 4929.02, not in the act.

Separation requirement

The act requires a natural gas company to keep separate the operations, resources, employees, and associated books and records involved in any company-provided service related to exempt investments in gathering lines or storage facilities from the operations, resources, employees, and associated books and records involved in any company-provided service that is not exempt under the exemption order or any other Ohio statute. An exemption order for investments in gathering lines or storage facilities is to prescribe a functional separation plan for compliance with that requirement. (R.C. 4929.041(B).)

Although the separation requirement would seem to permit a natural gas company to combine operations involved in services related to investments in gathering lines or storage facilities exempted under the act with operations involved in other exempt services, the act specifically prohibits a natural gas company from using such gathering lines or storage facilities to provide an exempted commodity sales service (R.C. 4929.041(C)(1)). A commodity sales service may be exempt under ongoing law that requires the PUCO, if certain requirements are met, to exempt, from most regulatory requirements, similar in scope to the act's exemption for gathering lines and storage facilities, a natural gas company's commodity sales service or ancillary service (R.C. 4929.04, not in the act). A commodity sales service is defined in continuing law as the sale of natural gas to consumers, exclusive of any distribution or ancillary service.[2] An ancillary service is defined as a service ancillary to the receipt or delivery of natural gas to consumers, including, but not limited to, storage, pooling, balancing, and transmission.[3] The act's prohibition against using the exempted gathering lines and storage facilities to provide unregulated or exempt commodity sales services does not extend to ancillary services (R.C. 4929.041(C)(1)). The act, however, provides for a waiver of the prohibition if the company demonstrates that the waiver is just and reasonable (R.C. 4929.041(C)(2)).

COMMENT

Article I, Section 8, clause 3 of the United States Constitution grants Congress the exclusive power to ". . . regulate Commerce . . . among the several States . . . ." The United States Supreme Court has held that the Commerce Clause has a "negative" or "dormant" aspect that limits the scope of state regulation of commerce, which denies the states the power to unjustifiably discriminate against or burden interstate flow of articles of commerce (*Oregon Waste Sys. v. Department of Envtl. Quality*, 511 U.S. 93, 98

[2] R.C. 4929.01, not in the act.

[3] *Id.*

(1970)). In *Oregon Waste Sys. v. Department of Envtl. Quality*, the United States Supreme Court stated that the first step in analyzing a state law under the Dormant Commerce Clause is to determine whether the law regulates commerce evenhandedly with only incidental effects on interstate commerce or whether it discriminates against interstate commerce.[4] As used by the Court, "discrimination" means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter. If a restriction on commerce is discriminatory, it is virtually per se invalid.[5] However, if a state law is nondiscriminatory and has only incidental effects on interstate commerce, the courts will uphold the law unless "the burden imposed on such commerce is clearly excessive in relation to the . . . [reputed] local benefits." (*Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).)

A constitutional issue may be raised with regard to the act's provisions that establish a two-tier injection well disposal fee on the disposal of waste from oil and gas operations. Under the act, a lower fee is levied on each barrel of substance that is produced within the Division of Mineral Resources Management regulatory district in which the well is located or within an adjoining district. A higher fee is levied on each barrel of substance that is produced outside of such a district. If a court determines that the higher fee, which would be levied on waste generated out of state that is disposed of in this state, results in a differential treatment of in-state and out-of-state economic interests, it is conceivable that the court would hold that the higher fee violates the Commerce Clause of the United States Constitution.

HISTORY

ACTION	DATE
Introduced	09-01-09
Reported, S. Environment & Natural Resources	12-09-09
Passed Senate (23-9)	12-15-09
Reported, H. Agriculture & Natural Resources	03-11-10
Passed House (95-3)	03-24-10
Senate concurred in House amendments (26-6)	03-24-10

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[4] *Oregon Waste*, at 99.

[5] *Id*.