

ORIGINAL

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO ex rel. JACK MORRISON, JR., LAW DIRECTOR, CITY OF MUNROE FALLS, et al.)	
)	Case No. 2013-0465
)	
<i>Plaintiffs-Appellants</i>)	On Appeal from the Summit
)	County Court of Appeals,
v.)	Ninth Appellate District, Case
)	No. 25953
BECK ENERGY CORPORATION, et al.)	
<i>Defendants-Appellees</i>)	

BRIEF OF THE AMERICAN PETROLEUM INSTITUTE, THE OHIO CHAMBER OF COMMERCE, THE CANTON REGIONAL CHAMBER OF COMMERCE, THE YOUNGSTOWN/WARREN REGIONAL CHAMBER, AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 18 AS AMICI CURIAE IN SUPPORT OF APPELLEES

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INTERESTS OF AMICI

Representatives of industry, business and labor have come together as *amici* in support of appellee, because collectively *amici* have a significant interest in developing oil and natural gas resources across the State. Indeed, the oil and gas industry can play a key role in Ohio's continued recovery from the economic downturn by providing economic growth and creating jobs. But, if this Court allows onerous local ordinances such as the one enacted by Munroe Falls, the ensuing patchwork of local restrictions will discourage the investments, hiring, and other economic activity that oil and gas development brings to all citizens of Ohio.

Amici and their members thus have a direct interest in the scheme enacted by Munroe Falls, which—if upheld by this Court—would enable local governments across the State to unreasonably impede access to valuable natural resources, subject a highly regulated industry to dozens of potentially conflicting additional regulations, and leave important, highly technical regulatory matters to the judgment of local zoning authorities. This result would significantly inhibit Ohio's ability to ensure the safe, efficient recovery of subsurface resources located in geological formations that obviously do not correspond to municipal borders. *Amici* and their members have a vital interest in ensuring that the development of natural resources across the State of Ohio and the myriad economic benefits that flow from it are not held hostage by a patchwork of unjustified and unnecessary local bans and regulations.

The American Petroleum Institute (“API”) is a national trade association that represents all segments of America's technology-driven oil and natural gas industry. Its more than 550 members—including large integrated companies, exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms—provide much of the nation's energy. The industry also supports 9.8 million U.S. jobs and 8 percent of the U.S.

economy, delivers \$86 million a day in revenue to the federal government alone, and, since 2000, has invested over \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives. API's members have made substantial financial investments in Ohio in order to develop the State's oil and natural gas resources. API is also the worldwide leading standards-making body for the oil and natural gas industry. Accredited by the American National Standards Institute ("ANSI"), API has issued approximately 500 consensus standards governing all segments of the oil and gas industry. These include standards and guidelines on well construction and hydraulic fracturing, as well as standards and recommended practices incorporated or referenced in numerous state and federal regulations.

Founded in 1893, the Ohio Chamber of Commerce ("Ohio Chamber") is Ohio's largest and most diverse statewide business advocacy organization. The Ohio Chamber works to promote and protect the interests of its more than 6,000 business members and the thousands of Ohioans they employ while building a more favorable Ohio business climate. As an independent and informed point of contact for government and business leaders, the Ohio Chamber is a respected participant in the public policy and economic development arenas. Through its member-driven standing committees and the Ohio Small Business Council, the Ohio Chamber formulates policy positions on issues as diverse as energy, environmental regulations, education funding, taxation, public finance, health care and workers' compensation. The advocacy efforts of the Ohio Chamber of Commerce are dedicated to the creation of a strong pro-jobs environment—an Ohio business climate responsive to expansion and growth. In 2011, the Ohio Chamber launched a major economic development initiative aimed at supporting, promoting, and educating Ohioans about the development of shale energy. The initiative is a broad-based, statewide partnership of local chambers of commerce, businesses, development organizations,

education leaders, and individuals work together to ensure that Ohio maximizes the economic potential of shale gas and affordable energy production. Statewide and regional organizations with thousands of members provide guidance for the coalition's work. Shale energy has the potential to be a game changer for Ohio's economy—driving economic development and job growth in every corner of Ohio.

The Canton Regional Chamber of Commerce ("Canton Chamber") is a membership organization of nearly 1,600 institutions and individuals dedicated to the advancement of the economic, industrial, professional, cultural, and civic welfare of Stark County, Ohio. The Canton Chamber's mission is to serve its members through partnerships, programs, services, and events to advance the economic growth of Canton and the Stark County region. Since 2011, the Canton Chamber has been fully engaged in encouraging the growth of business around the Utica Shale, which presents significant economic opportunities for the Stark County region, including for many of the Canton Chamber's members.

The Youngstown/Warren Regional Chamber ("Youngstown/Warren Chamber") provides leadership and business services to promote the growth of nearly 2,600 members, representing more than 150,000 employees in the Mahoning Valley. The Youngstown/Warren Chamber, founded in 1993 as a result of the merger of the Youngstown, Warren and Niles chambers of commerce, serves as the private sector economic development agency for the Mahoning Valley. The Youngstown/Warren Chamber's goal is to enhance the essential partnership between economic development and education while advocating on behalf of the business community to improve the Valley's quality of life. A major part of the Youngstown/Warren Chamber's economic development efforts in the last three years has been educating its members, the public and Mahoning Valley elected officials about job growth and investment opportunities that are

available through the growing oil and gas industry in eastern Ohio. Because of the Mahoning Valley's long tradition as a manufacturing center, a number of companies that make products or provide services for the shale industry have located or expanded in the Youngstown-Warren area in recent years. The Youngstown/Warren Chamber estimates that about 4,000 direct and indirect jobs have been created in the area from oil and gas supply chain companies in the last three years. This year, the Youngstown/Warren Chamber helped to create the Mahoning Valley Coalition for Job Growth and Investment ("MV Coalition"), a group representing, businesses, labor unions, clergy, political parties, landowners, law firms and others united to support shale development. The Youngstown/Warren Chamber and its MV Coalition believe that the potential for shale development in the area is a game-changer for the Valley's economy and support strong state and federal laws that regulate the shale industry, providing processes that are uniform, understandable and enforceable throughout the Utica Shale play and throughout the entire state.

The International Union of Operating Engineers, Local 18 ("Local 18") is a labor organization representing the interests of over 15,000 Ohioans engaged in the operation, maintenance, and repair of heavy equipment for Ohio's building and construction industry. Significant portions of Local 18's membership are employed by construction firms that are heavily engaged in providing services for the state's burgeoning oil and natural gas industry. Presently, Local 18 estimates that no fewer than 4,000 of its members are employed by firms directly involved in Ohio's oil and gas industry. As such, Local 18 relies on the continued economic vitality of Ohio's oil and gas industry in order to provide a means of livelihood for thousands of its highly-skilled members and their families. The upholding of onerous local regulation that would curtail further development in Ohio's oil and natural gas industry threatens to emaciate this critical and core workforce. If Ohio's oil and gas industry becomes

economically unviable, Local 18's members could very well leave Ohio for other adjacent states—including Pennsylvania and West Virginia—that offer more compelling job opportunities in the oil and gas industry.

INTRODUCTION AND SUMMARY

The State of Ohio's vast oil and gas reserves can be recovered safely and cost-effectively through the use of conventional drilling, as well as through the use of hydraulic fracturing and directional drilling. Hydraulic fracturing, which has been used successfully and safely in Ohio for more than 50 years,¹ involves drilling a vertical well thousands of feet below the surface and—when accompanied by directional drilling—extending the well bore directionally into the target formation where the hydrocarbons are located. After multiple layers of protective casing are cemented into the wellbore, pumping fluids (typically 99.5% water and sand) are pumped into the well at high pressure to create small fractures in the target formation from which trapped hydrocarbons can flow once most of the fluid is removed. After a well is completed, a process that typically takes about six months (with the hydraulic fracturing process itself usually taking only three to five days), rigs and other equipment are removed, leaving a structure about the size of a two-car garage to support production over the life of the well.² Through proper design of elements such as the depth, location, and casing of the well, these established techniques have

¹ See Ohio Dep't of Natural Resources, *The Facts About Hydraulic Fracturing* ("ODNR Hydraulic Fracturing Fact Sheet"), available at <http://oilandgas.ohiodnr.gov/portals/oilgas/pdf/Facts-about-HFracturing.pdf>.

² See *id.* See also EnergyFromShale.org, *How Hydraulic Fracturing Works*, <http://www.energyfromshale.org/hydraulic-fracturing/how-hydraulic-fracturing-works>; API, *The Facts about Hydraulic Fracturing and Seismic Activity*, http://www.api.org/~media/Files/Policy/Hydraulic_Fracturing/Facts-HF-and-Seismic-Activity.ashx.

been and can continue to be used safely, as multiple current and former federal and state regulators have confirmed.³

To facilitate safe and efficient development for all Ohioans, Ohio's Oil and Gas Law, R.C. Ch. 1509, declares that "[t]he regulation of oil and gas activities is a matter of general statewide interest that requires uniform statewide regulation"; it therefore vests "sole and

³ See *Challenges Facing Domestic Oil and Gas Development: Review of Bureau of Land Management/U.S. Forest Service Ban on Horizontal Drilling on Federal Lands: Hearing before the Subcomm. on Energy and Mineral Resources of the H. Comm. on Natural Resources and the Subcomm. on Conservation, Energy and Forestry of the H. Comm. on Agriculture*, 112th Cong. 27 (July 8, 2011) (BLM Director Bob Abbey testimony that BLM "has never seen any evidence of impacts to groundwater ... from the use of fracking technology on wells that have been approved by" BLM and "that based upon the track record so far, [hydraulic fracturing] is safe."); *Pain at the Pump: Policies that Suppress Domestic Production of Oil and Gas: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 112th Cong. 87 (May 24, 2011) (EPA Administrator Lisa Jackson testimony that there is no "proven case where the fracking process itself has affected water"); *Energy in Depth, EPA's Lisa Jackson on Safe Hydraulic Fracturing* (Apr. 30, 2012), http://www.youtube.com/watch?v=_tBUTHB_7Cs&feature=youtu.be (EPA Administrator Jackson confirming more recently in an interview that "in no case have we made a definitive determination that the fracking process has caused chemical contamination of groundwater"); *The Future of U.S. Oil and Natural Gas Development on Federal Lands and Waters: Hearing Before the H. Comm. on Nat. Res.*, 112th Cong. (Nov. 16, 2011) (Former Secretary of the Interior Ken Salazar testimony that "[w]ith respect to hydraulic [fracturing], because it occurs so far underground, we don't know any examples of [impacts] on public lands"); *Questions for the Record, Gina McCarthy Confirmation Hearing: Hearing Before the S. Comm. on Env. and Pub. Works*, 113th Cong. (April 29, 2013), available at http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=9a1465d3-1490-4788-95d0-7d178b3dc320 (EPA Administrator Gina McCarthy testimony that "I am not aware of any definitive determinations that would contradict those statements [by Lisa Jackson, referenced above]"); *The Department of the Interior Operations, Management, and Rulemaking: Hearing Before the H. Comm. on Nat. Res.*, 113th Cong. (July 17, 2013), available at <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=341777> (Secretary of the Interior Sally Jewell testimony that "I'm not aware of documented cases"); Amy Harder, *Moniz: Natural Gas Will Need Carbon-Capture "Eventually"*, Nat'l J. (Aug. 1, 2013), available at <http://www.nationaljournal.com/energy/moniz-natural-gas-will-need-carbon-capture-eventually-20130801> (Secretary of Energy Ernest Moniz statement that "[t]o my knowledge I still have not seen any evidence of fracking, per se, contaminating groundwater"). See also *Energy Policy Act of 2005: Hearing Before the Subcomm. on Energy and Air Quality of the H. Comm. on Energy and Commerce*, 109th Cong. 115-16 (2005) (statement of Hon. Victor Carrillo, Chairman, Railroad Commission of Texas) (citing survey by the Interstate Oil and Gas Compact Commission showing that no instance of harm to drinking water had been found in over one million hydraulic fracturing operations nationwide).

exclusive authority” to regulate such activities, including the “permitting” and “location” of oil and gas wells, in an Ohio, expert regulatory body, the Ohio Department of Natural Resources (“ODNR”). R.C. 1509.02. This language, of course, unmistakably manifests a legislative intent to preempt conflicting local regulation. Moreover, in enacting this law, the General Assembly purposefully moved away from an earlier system of concurrent state and municipal regulation, under which municipal governments used their zoning and other police powers to impose an unworkable patchwork of restrictions and permitting requirements. The General Assembly chose instead to establish a “comprehensive plan with respect to *all aspects* of the locating, drilling, well stimulation, completing, and operating of oil and gas wells within this state.” *Id.* (emphasis added)

This comprehensive plan provides no occasion for local governmental officials to second-guess or disrupt ODNR’s expert decisionmaking. Under the Home Rule Amendment to Ohio’s Constitution, municipalities have no authority to exercise their police powers in a manner that conflicts with state general law. Ohio Constitution, Article XVIII, Section 3. A municipality thus may not use its police powers—whether exercised pursuant to its zoning authority or otherwise—to prohibit oil or gas drilling in a location where ODNR has decided, in the exercise of its exclusive authority, to permit it. The zoning and permitting scheme enacted by Munroe Falls, however, attempts to do exactly that. As explained by the court of appeals in its decision, the ordinances expressly prohibit oil and gas drilling—even after ODNR has issued a permit authorizing it in a specific location—unless Munroe Falls officials separately determine that the proposed use is permitted under the municipal zoning ordinances and issues a permit upon the applicant’s satisfaction of all applicable municipal permitting requirements, including provisions requiring a public hearing as a condition precedent to drilling and prohibiting a person from

drilling more than two wells at a time. *See* Mem. Op. 18-21, *Morrison v. Beck Energy Corp.*, No. 25953 (Ohio Ct. App. 9th Div. 2013), *available at* Munroe Falls Appendix (“M.F. App.”) 21-24; Munroe Falls Ordinances 1163.02, 1329.03, 1329.05, *available at* M.F. App. 101-02, 103, 105.

The justifications that Munroe Falls offers for its attempted intrusion on ODNR’s “sole and exclusive authority” misconstrue the scope of the State’s Oil and Gas Law. The statute does not, as Munroe Falls suggests, grant ODNR authority only to regulate technical operational matters, while leaving matters of land use to the municipalities. To the contrary, the statute establishes a comprehensive statewide scheme regarding “all aspects” of oil and gas drilling. R.C. 1509.02. ODNR’s exclusive authority over the permitting and location of wells includes not only the power to determine where drilling is most appropriate from a technical standpoint, but the obligation to consider potential impacts on the local community and to take measures to address them. ODNR is authorized to take into consideration community aesthetics, zoning districts and other community character concerns and to impose terms and conditions on the permits it issues to protect such interests by, among other things, setback, fencing and landscaping requirements and restoration plans. In any event, a municipality may not, under the guise of protecting traditional land use concerns, use its zoning powers to prohibit drilling after ODNR has permitted it, as Munroe Falls has attempted to do here. A contrary result would undermine the General Assembly’s objective of establishing uniform statewide permitting requirements and would significantly impede the ability of ODNR to ensure the safety and effectiveness of oil and gas operations throughout the State.

Finally, to the extent this Court reaches it, it should reject Munroe Falls’ argument that the Oil and Gas Law cannot preempt municipal ordinances because it is not a “general law.” This argument is based entirely upon the assertion that oil and gas drilling does not occur in the

western half of Ohio. That assertion, however, is demonstrably incorrect and unsupported by the record. In any event, this Court should reject the radical proposition that a comprehensive statewide regulatory program governing the use of a natural resource has no preemptive force unless the resource is distributed throughout the entire State. Such a rule would run contrary to this Court's precedent and would have a devastating effect on Ohio's oil and gas industry by enabling municipalities to override ODNR across the board, including on technical and safety-related matters.

LAW AND ARGUMENT

Proposition of Law No. 1:

R.C. CHAPTER 1509 ESTABLISHES A UNIFORM AND EXCLUSIVE STATEWIDE SYSTEM FOR THE REGULATION OF OIL AND GAS ACTIVITIES AND THEREBY PREEMPTS MUNICIPAL AUTHORITY TO IMPOSE CONFLICTING REGULATIONS ON SUCH ACTIVITIES.

The court of appeals correctly held that a municipal oil and gas permitting scheme like the one established by Munroe Falls is preempted by Ohio's Oil and Gas Law, R.C. Chapter 1509. This conclusion is compelled by the statute's unambiguous text and structure, and it is confirmed by the clear expressions of legislative intent in the statute's history.

Under the Home Rule Amendment, a municipal corporation like Munroe Falls may not exercise its police power in a manner that "conflict[s] with general laws." *State ex rel. Mill Creek Metro. Park Dist. Bd. of Commrs. v. Tablack*, 86 Ohio St.3d 293, 295, 714 N.E.2d 917 (1999). An ordinance is preempted by state law, and thus invalid, if (1) it involves the exercise of police powers, rather than local self-government; (2) the state law is a "general law"; and (3) there is a conflict between the ordinances and state law. *Id.* Munroe Falls does not dispute that it is exercising its police powers, and the court of appeals determined that Munroe Falls

conceded that the Oil and Gas Law is a “general law.” See MF App. at 19-20.⁴ The court of appeals also determined that the ordinances conflict with the Oil and Gas Law and that conclusion is mandated by this Court’s well-settled precedent and the unambiguous text and purpose of the Oil and Gas Law.

A. The Ordinances Are Invalid Because They Prohibit What Is Unambiguously Permitted Under State Law.

An ordinance conflicts with a state statute if it “prohibits that which the statute permits, or vice versa.” *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967, ¶ 26 (citing *Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923)). Here, the Munroe Falls ordinances prohibit drilling operations—even after ODNR has issued a permit—unless Munroe Falls provides an additional and separate approval. See M.F. App. 21-24, 101-02, 103, 105. But this Court has repeatedly emphasized that a municipal government has no authority to prohibit a State-authorized activity when a statute confers exclusive permitting authority on the State. For example, in *Fondessy Enterprises v. City of Oregon*, 23 Ohio St.3d 213, 217, 492 N.E.2d 797 (1986), this Court construed a statute that grants the State exclusive permitting authority over landfills, and explained that a local ordinance that “required [a party to] apply for a city permit for construction or operation of its landfill ... would be directly in conflict with the [statute] and would be declared invalid.” And, in *Village of Sheffield v. Rowland*, 87 Ohio St.3d 9, 12, 716 N.E.2d 1121 (1999), this Court held that once a state agency issues a license to construct and establish a demolition debris facility in accordance with state law, a local government may not “prohibit such a facility” because doing so would “prohibit what the statute permits” and therefore “conflict with” the statute.

⁴ On appeal, Munroe Falls argues that it did not concede this point and contends that the Oil and Gas Law is not, in fact, a general law. But, even if the argument had been preserved, it would be meritless. See *infra* pp.28-31.

By its plain terms, the Oil and Gas Law creates precisely the sort of exclusive regulatory and permitting scheme that precludes local governments from prohibiting conduct that has been permitted under state law. Indeed, the scope of its language is extraordinarily broad and expressly incorporates the well-recognized standard for Home Rule preemption articulated in many of this Court’s precedents. It unambiguously grants ODNR “*sole and exclusive authority* to regulate the *permitting, location, and spacing of oil and gas wells* and production operations within the state,” and declares that “[t]he regulation of oil and gas activities is a matter of general statewide interest that requires uniform statewide regulation, and this chapter ... constitute[s] a *comprehensive plan* with respect to *all aspects* of the *locating, drilling, well stimulation, completing, and operating of oil and gas wells* within this state.” R.C. 1509.02 (emphases added). The Oil and Gas Law contains no exception granting local governments authority to regulate—or to require permits for—certain aspects of oil and gas drilling, such as those aspects that might touch upon traditional land use concerns. To the contrary, the statute expressly provides that it, and the rules adopted under it, constitute a “comprehensive plan” regarding “all aspects” of, *inter alia*, “locating” and “drilling” oil and gas wells within the State, including “permitting related to those activities.” *Id.*

Munroe Falls effectively asks this Court to ignore the plain statutory language and to read into the statute an exception that would allow a local government to exercise its police powers over certain aspects of “locating” and “drilling” oil and gas wells. This request is improper. “[I]t is the duty of this court to give effect to the words used, not to delete words used or to insert words not used.” *Columbus-Suburban Coach Lines, Inc. v. Pub. Util. Comm.*, 20 Ohio St.2d 125, 127, 254 N.E.2d 8 (1969); *accord State ex rel. Butler Twp. Bd. of Trustees. v. Montgomery Cty. Bd. of Commrs.*, 124 Ohio St.3d 390, 2010-Ohio-169, 922 N.E.2d 945, ¶ 21 (“It is well

recognized that a court cannot read words into a statute but must give effect to the words used in the statute.”).

The conclusion that this language preempts municipalities from imposing additional zoning or permitting requirements is further compelled by the fact that R.C. 1509.02 includes an express exception for other local laws and ordinances—those governing the use of streets and bridges and the permitting of oversize vehicles—provided they do not “discriminate[] against, unfairly impede[], or obstruct[] oil and gas activities regulated under [R.C. Chapter 1509].” *See* R.C. 723.01 (municipality’s authority to regulate the use of streets and bridges); R.C. 4513.34 (authority of director of transportation or local authorities to regulate the use of oversize vehicles on highways under their jurisdiction). Because the General Assembly did not include local land-use ordinances within this express exception, the traditional canon of *expressio unius est exclusio alterius* precludes judicial recognition of an unexpressed exception for local land-use laws and regulations. *State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St.3d 322, 2009-Ohio-4900, 916 N.E.2d 462, ¶ 39 (interpreting constitutional provision to allow only those exceptions expressly stated in text and explaining that [t]he electorate could have expressly excepted other means of raising revenue from referendum, but it did not”); *accord Butler Twp.*, 124 Ohio St.3d 390, 2010-Ohio-169, 922 N.E.2d 945 at ¶ 21. By not including zoning or oil and gas permitting laws within the stated exceptions for regulations not preempted by R.C. 1509.02, the General Assembly made clear its intent not to create an exception for such zoning or permitting laws.

This reading of R.C. Chapter 1509—under which ODNR’s exclusive regulatory and permitting authority covers *all aspects* of oil and gas drilling, and not just the technical aspects of how those activities are conducted—is confirmed by the expansive subject matter that the General Assembly has placed within ODNR’s regulatory purview. The state law is explicit in

providing that ODNR's exclusive authority extends to the "location" and "spacing" of wells, R.C. 1509.02, and contains detailed requirements specifying the number of feet that a new well must be from boundary lines or structures such as occupied dwellings, R.C. 1509.21. The statute is also clear that ODNR's authority over the siting of wells is not limited to ensuring that wells conform to applicable technical and safety standards, but also covers a broad range of questions regarding where drilling is appropriate. Under R.C. 1509.23(A)(2), ODNR has authority to promulgate rules regarding the "[m]inimum distances that wells and other excavations, structures, and equipment" may be located from, *inter alia*, bodies of water, buildings and structures, thoroughfares, and even *zoning districts*. ODNR actively exercises this authority and has promulgated detailed rules regarding which parcels of land are available for drilling and where on those parcels drilling may occur. For example, ODNR has promulgated rules specifying that, absent certain exceptional circumstances, a permit will not be issued for a new well unless, *inter alia*, (1) the tract or drilling unit has a minimum acreage of between one and 40 acres, depending on the depth of the well, Ohio Adm.Code 1501:9-1-04(C); (2) the well will be located a minimum distance of between 75 and 500 feet from any boundary of the subject tract or drilling unit, depending on the municipal population and the depth of the well, *id.*; (3) the well will be located no less than 100 feet from any inhabited private dwelling house, public building, or other well, Ohio Adm.Code 1501:9-1-05; and (4) the well will be located no less than 50 feet from any railroad track or the traveled part of any public street, road, or highway, *id.* Given that ODNR has express and exclusive authority to determine where a well may be drilled and operated in relation to existing structures and even existing zoning districts, the statute necessarily conflicts with—and supersedes—any local zoning or permitting ordinance that purports to disallow these activities on land where ODNR has permitted them.

In addition, other provisions of R.C. Chapter 1509 grant ODNR authority over traditional land use concerns such as nuisance abatement, site review, and community input. For example, if the well is to be located in an “urbanized area” like Munroe Falls,⁵ ODNR “shall conduct a site review” in which it must “identify and evaluate *any* site-specific terms and conditions that may be attached to a permit.” R.C. 1509.06(H) (emphasis added). Any permit “shall include” nuisance abatement measures such as “fencing, screening, and landscaping,” and ODNR must consider how those measures will conform to the rest of the community by reviewing the measures adopted “for similar structures in the community in which the well is proposed to be located.” *Id.* For urbanized areas, ODNR has issued detailed requirements regarding what landscaping measures will be required—including, for example, a requirement to plant evergreen trees of a specified height. Ohio Adm.Code 1501:9-9-05(E)(6). In addition, the permitting process must address “noise mitigation,” R.C. 1509.03(A)(6), and ODNR requires operations in urbanized areas like Munroe Falls to be “conducted in a manner to mitigate noise, including the reasonable use of screening and appropriate mufflers on drilling and servicing equipment.” Ohio Adm.Code 1501:9-9-03(I). And, the statute provides additional protections for urbanized communities like Munroe Falls by requiring each permit applicant to provide notice to the owners and tenants of nearby property, as well as to local governmental authorities, R.C. 1509.06(A)(9), and by requiring ODNR to wait at least 18 days after the submission of an application to issue a permit, R.C. 1509.06(C)(2).

⁵ An “urbanized area” includes a municipal corporation that has a population of “more than five thousand in the most recent federal decennial census prior to the issuance of the permit.” R.C. 1509.01(Y). In the 2010 Census, the population of Munroe Falls was more than five thousand. *See* United States Census Bureau, American Fact Finder, http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml (listing population of Munroe Falls, Ohio as 5,012).

Regulating the location of wells, moreover, is not merely ancillary or incidental to ODNR's function, but is part of its core responsibility. One of ODNR's critical functions is to ensure that regulated parties take requisite measures to "stop and prevent waste of oil or gas," R.C. 1509.20, and "waste" is defined to include "[l]ocating" or "spacing" any gas well "in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations," R.C. 1509.01(H)(4). This definition reflects the reality that oil and gas do not exist in formations that follow jurisdictional boundaries or zoning districts, and efficient development that minimizes waste of valuable, finite resources should prioritize full development of a particular field or formation. If municipalities had the authority to prohibit drilling in certain locations—and thus potentially to leave significant portions oil deposits and gas formations out of reach, ODNR would be powerless to prevent this sort of waste.⁶ In some instances, any production from a particular formation may be foreclosed if certain portions of it are closed to drilling, depending on the formation's particular geology, pressure, depth, and surface topography.

⁶ The importance of location to effective regulation of the oil and gas industry is reflected in industry guidance and technical standards, which provide a framework based on proven engineering practices for safe and reliable natural gas production. These documents make clear that proper site selection and layout are essential to the success of hydraulic fracturing operations, and contain detailed recommendations to ensure that the relevant considerations are taken into account. *See, e.g.,* API, *Practices for Mitigating Surface Impacts Associated With Hydraulic Fracturing* (1st ed. Jan. 2011), http://www.api.org/~media/Files/Policy/Exploration/HF3_e7.ashx. (explaining the importance of site selection and layout and discussing relevant considerations); API Recommended Practice 51R, *Environmental Protection for Onshore Oil and Gas Production Operations and Lease* (1st ed. July 2009), http://www.api.org/~media/Files/Policy/Exploration/API_RP_51R.ashx; § 1 (Scope), § 6 (explaining detailed considerations for the planning and placement of wells), § 7 (explaining detailed considerations for the planning and placement of lease gathering and system lines).

B. The Legislative History Makes Clear That The Oil And Gas Law Precludes Local Permitting Of Well Locations.

The history and circumstances of a law's adoption are recognized as valid and important tools for courts to use in determining legislative intent. *See* R.C. 1.49(B) (providing that “[i]f a statute is ambiguous, the court, in determining the intention of the legislature, may consider ... “[t]he circumstances under which the statute was enacted”); R.C. 1.49(C) (providing the same for the statute’s “legislative history”). *See also* *Butler Twp.*, 124 Ohio St.3d 390, 2010-Ohio-169, 922 N.E.2d 945 at ¶ 21 (“In construing statutes, reviewing courts must ascertain the intent of the legislature in enacting the statute.”).

The history of R.C. Chapter 1509 and the circumstances under which the General Assembly enacted it make clear that the statute precludes local governments from using their zoning or permitting authority to prohibit oil and gas drilling. Prior to 2004, Ohio’s Oil and Gas Law actually permitted local governments to enact and enforce their own “health and safety standards for the drilling and exploration for oil and gas” to operate concurrently with state-level requirements, R.C. 1509.39 (1993), *available at* M.F. App. 69, and an applicant could only obtain a state permit upon sworn declaration that it would comply with all applicable local requirements. *See* 2004 Sub.H.B. 278 (amending R.C. 1509.06(I)). The 2004 amendment to the Oil and Gas Law (H.B. 278)—which, among other things, repealed R.C. 1509.39 and the prior version of R.C. 1509.06(I) and added the preemptive language in R.C. 1509.02—was designed to alleviate the problems created by this bifurcated regulatory system. It did so by “repeal[ing] all provisions of current law that grant or allude to the authority of local governments to adopt concurrent requirements with the state concerning oil and gas exploration and operation,” and establishing in its place a system that treats “the regulation of oil and gas activities [as] a matter of general statewide interest that requires uniform statewide regulation.” Legislative Service

Commission, *Bill Analysis: H.B. 278, 125th General Assembly (As Introduced)*, at 2, available at <http://www.lsc.state.oh.us/analyses125/h0278-i-125.pdf>.

The testimony and floor statements on H.B. 278 likewise reflect a clear and common understanding that local governments would *not* retain zoning and permitting authority over oil and gas activities—and, indeed, that the exercise such authority was one of the primary problems that the Ohio General Assembly intended to address by the 2004 amendment. Senator Larry Mumper, who managed the 2004 amendment, explained that “‘Ohio’s oil and gas industry [was being] hindered by inconsistent, sometimes unreasonable implementation of local zoning regulations intended to prohibit, not regulate, oil and gas exploration.’” *Senate Votes to Give State Authority to Issue Permits for Oil, Gas Drilling*, 73 Gongwer Ohio News Service 80, Art. 4 (Apr. 27, 2004). Likewise, in testimony before the House, Thomas E. Stewart, executive director of the Ohio Oil and Gas Association, explained that the oil and gas industry was subject to “a ‘mishmash’ of local regulations,” including those ostensibly related to “the aesthetics of locating wells in more populated areas,” that were “sometimes disguised as being safety regulations but which [were] aimed at preventing drilling operations,” with the effect of “keeping needed resources from the market.” *House Committee Hearings*, 72 Gongwer Ohio News Service 195, Art. 11 (Oct. 8, 2003). By establishing “uniform and consistent regulation” of the oil and gas industry, H.B. 278 was designed to eliminate this patchwork such that “the permitting process [would] be uniform without regard to jurisdictional boundaries.” 73 Gongwer Ohio News Service 80, Art. 4 (discussing testimony of Senator. Mumper). Indeed, the Ohio Environmental Council, which opposed the amendment and now appears as counsel to certain *amici* in support of Munroe Falls, testified at the time that “passage of the bill would ‘say goodbye to home rule’ by effectively preempting virtually any local controls on oil and gas

drilling.” *Senate Committee Hearings*, 73 Gongwer Ohio News Service 53, Art. 12 (Mar. 18, 2004). Now, nearly a decade after the law’s passage, this Court should not accept Munroe Falls’ revisionist history and construe the statute in a manner that conflicts with both the plain language and the General Assembly’s clear intent when it enacted the 2004 amendment.

C. The Munroe Falls Ordinances Cannot Be Reconciled With Ohio’s Oil and Gas Law.

In challenging the holding below that its ordinances conflict with Ohio’s Oil and Gas Law, Munroe Falls contends that R.C. Chapter 1509 “can be harmonized” with local zoning and permitting schemes, such that “no conflict exists” between the two. Merit Br. 12. Munroe Falls and its *amici* offer various theories as to how the Oil and Gas Law can be reconciled with a patchwork of local permitting requirements and prohibitions on oil and gas activities. None is persuasive.

Munroe Falls attempts to reconcile its ordinances with the Oil and Gas Law primarily by arguing that they “regulate two different things” and therefore “operate independently of one another.” *Id.* at 12, 16. It bases this argument on the assertion that “the traditional concerns of zoning are not considered or applied by the ODNR in its decision to grant a drilling permit” and, as a result, a state-issued permit does not preclude a local government from enforcing a concurrent zoning and permitting system because it does not “cover[] the same topic as the local ordinances.” *Id.* at 14, 15. This assertion is incorrect. The Oil and Gas Law grants ODNR exclusive authority to regulate the “location” of wells, and the statute and agency rules contain a variety of provisions designed to ensure that this regulation protects local interests. As discussed above, these provisions include, *inter alia*, requirements that ODNR conduct site visits; requirements that permit applicants provide notice to local residents and governments; detailed provisions governing required setbacks from boundary lines, existing structures, roads, and

bodies of water; and requirements that permit-holders take measures to lessen community impacts, such as noise mitigation, landscaping and planting trees. *See supra* pp.12-14. Indeed, the statute even authorizes ODNR to consider existing zoning districts and to promulgate rules regarding where wells may be located in relation to them. R.C. 1509.23(A)(2). Thus, far from addressing issues wholly apart from zoning, the Oil and Gas Law expressly authorizes ODNR to carefully consider local zoning, but not take a backseat to it.

In any event, once ODNR issues a permit under the Oil and Gas Law authorizing drilling at a specific location, a municipal government has no authority to “prohibit[] that which the statute permits.” *Clyde*, 120 Ohio St.3d 96, 2010-Ohio-4605, 896 N.E.2d 967 at ¶ 26. A state-issued permit is not, as Munroe Falls suggests, a conditional license that applies only if the applicant complies with “local ordinances and zoning classifications.” Merit Br. 17. To the contrary, the 2004 amendments to the Oil and Gas Law specifically eliminated the requirement that a permit applicant provide a sworn statement that it will comply with all applicable local requirements. *See* H.B. 278 (repealing former R.C. 1509.06(I)). Instead, ODNR is vested with “sole and exclusive” permitting authority, R.C. 1509.02, and a zoning or permitting restriction that prohibits drilling where ODNR has authorized the same activity to occur imposes a clear and irreconcilable conflict. *See Sheffield*, 87 Ohio St.3d at 12, 716 N.E.2d 787 (municipality may not prohibit activity authorized under a state permit); *Fondessy*, 23 Ohio St.3d at 217, 492 N.E.2d 798 (same). As this Court recognized in *Newbury Township Board of Trustees v. Lomak Petroleum (Ohio) Inc.*, 62 Ohio St.3d 387, 583 N.E.2d 302 (1992), a law that disallows drilling in certain zoning districts operates as a “prohibit[ion]” on that activity, and thus conflicts with a state-issued permit allowing drilling on land within that district. *Id.* at 391 (holding invalid local

zoning restriction that prohibited drilling in residential districts but permitted it in commercial and industrial zones).

Munroe Falls cannot avoid this result by suggesting that its municipal zoning and permitting scheme does not “impede the driller’s seminal operations in any substantive or significant way.” Merit Br. 29 (quoting *Fondessy*, 23 Ohio St.3d at 217). As the court of appeals correctly noted, Munroe Falls is claiming the authority to *completely prohibit* a party from drilling a well as authorized by ODNR unless local governmental authorities determine that the use is permitted under the local zoning law and issue a permit based upon satisfaction of all local permitting requirements. M.F. App. 21-24. If, for example, the municipality determines that drilling at the ODNR-approved location is not permitted under the zoning ordinance, the drilling could never commence on the ODNR-approved well. Munroe Falls Ordinance § 1163.02(a), *available at* M.F. App. 101. Likewise, the permitting conditions that Munroe Falls purports to impose touch upon core operational considerations such as the number of wells that may be simultaneously drilled. *See id.* § 1329.03(b), *available at* M.F. App. 103. These prohibitions are not ancillary impediments but strike at the core of what state law permits.

Munroe Falls and its *amici* cite other statutes that permit concurrent state and local regulation, but these laws simply are not comparable. In *Cincinnati v. Baskin*, 112 Ohio St.3d 279, 2006-Ohio-6422, 859 N.E.2d 514, this Court held that a state law prohibiting firearms capable of firing more than 31 rounds without reloading did not preempt a local ordinance prohibiting firearms capable of firing more than 10 rounds without reloading. Merit Br. 17. But the Court reached that conclusion because the state law was merely a prohibition that did not “permit or authorize” any conduct, which meant that the local law did not “prohibit what the

statute permits.” *Id.*, 112 Ohio St.3d at ¶ 23. In contrast, the Munroe Falls ordinances prohibit drilling activity that has been expressly permitted under state law.

Amici Health Professionals’ reliance on R.C. Ch. 1514, which governs surface mining, is just as far afield. Although this Court has recognized that municipal zoning laws may exist concurrently with the State’s permitting scheme for surface mining, *see Set Prods., Inc. v. Bainbridge Township Bd. of Zoning Appeals*, 31 Ohio St.3d 260, 265, 510 N.E.2d 373 (1987), that outcome was mandated by “the specific requirement that the state permit applicant insure in his application that future land uses within the site will not conflict with local zoning plans,” *id.* The Oil and Gas Law, in contrast, was amended in 2004 specifically to eliminate any comparable requirement, and thereby to address policy issues inherent in subsurface mineral extraction that do not exist for surface mining.

Finally, Munroe Falls is incorrect that this Court suggested in *Sheffield* that a municipality could use its zoning authority to prohibit construction of a state-authorized debris facility. To the contrary, this Court *expressly recognized* that a municipal government *cannot* altogether prohibit the construction of a facility that has been licensed by the State. 87 Ohio St.3d at 12. Although the Court noted in dicta that “[n]othing in this decision should be construed to suggest that Sheffield cannot restrict state-authorized facilities to certain districts with appropriate zoning,” *id.*, that statement was based on the recognition that an ordinance restricting the locations in which a debris facility may be located does not in practice amount to a prohibition on the facility. The same is not true of zoning restrictions on oil and gas drilling. Unlike waste facilities, oil and gas wells can be drilled only where oil or gas deposits are found, and those deposits do not conform to local zoning districts. As a result, zoning restrictions have

a prohibitive impact on oil and gas drilling that is completely unlike their effect on debris facilities.

There is likewise no merit to Munroe Falls' argument that a state statute cannot preempt a municipal zoning law unless it contains language expressly stating that zoning is preempted. Merit Br. 11. There is no reason to require an "express" statement specifically addressing zoning to find preemption of local zoning laws because the Ohio Constitution prohibits municipalities from enacting zoning laws that are inconsistent with any general law. *See, e.g., Lomak*, 62 Ohio St.3d at 391; *Sheffield*, 87 Ohio St.3d at 12. Unsurprisingly, neither Munroe Falls nor its *amici* has identified any case in which this Court allowed a municipality to prohibit through zoning what the statute permits because the statute did not refer expressly to zoning. Such a rule would be particularly unfounded when applied to the Oil and Gas Law, given that the General Assembly in 2004 expressly repealed the provision that had authorized municipalities to enact concurrent requirements and replaced it with a provision granting ODNR "sole and exclusive" authority to regulate the location and permitting of wells, R.C. 1509.02.

In addition, contrary to the assertions of Munroe Falls and *amici*, *see* Munroe Falls Br. 13, Health Professionals Br. 20-21, this Court's decision in *Lomak* is no exception. In that case, the Court held that a zoning law prohibiting oil and gas drilling conflicted with the previous version of the Oil and Gas Law, 62 Ohio St.3d at 391-92, but held that other restrictions were permissible because they did not fall within the statutory list of subjects on which municipalities could not concurrently regulate, *id.* at 393-94 (applying canon of *expressio unius est exclusio alterius*). Under the version of the statute in place at the time, however, concurrent municipal regulation was expressly *permitted*, unless it fell within certain specified exceptions. *See id.*; M.F. App. 69. Now that the General Assembly has repealed the provision permitting concurrent

municipal regulation, the statutory default has been reversed to confine the subjects of concurrent municipal regulation to those set forth in the statute's narrow exceptions. R.C. 1509.02.

Munroe Falls further misreads *Lomak* by suggesting that it indicates that “[t]his Court previously recognized that oil and gas drilling is an activity incompatible with residential neighborhoods.” Merit Br. 6. The Court did no such thing. It *held invalid* a municipal prohibition on drilling in residential districts, explaining that the prohibition was not authorized by the Oil and Gas Law’s then-existing authorization of local health and safety regulations because the blanket prohibition—which applied even to agricultural land that is typically considered “most appropriate for such activity”—did not reflect a legitimate attempt to “protect the public health and safety.” *Lomak*, 62 Ohio St.3d at 391. The Court never held, or even implied, that agricultural land was the *only* land suited to such activity. In any event, the current version of the statute makes clear that the General Assembly has granted ODNR authority to permit drilling in high-population “urbanized areas” and established specialized requirements for those areas. *See, e.g.*, R.C. 1509.01(Y); R.C. 1509.06(A)(8)(b), (A)(9), (C)(2), (H), (I).

Munroe Falls is also incorrect in asking this Court to look to other states to support its interpretation of Ohio’s Oil and Gas Law. *See* Munroe Falls Br. 21-26; *see also* Health Professionals’ Br. 23-30. This Court does not need to look outside Ohio’s borders to understand the effects of allowing municipalities to use their zoning powers to regulate oil and gas drilling; local authorities did precisely that prior to 2004, and the General Assembly determined that the results were problematic enough that it substantially revised the statute to make ODNR’s authority exclusive. Moreover, the conclusions that courts in other states have drawn regarding what their respective state legislatures intended have no relevance to an inquiry regarding what *Ohio’s* General Assembly intended when it enacted the different statutory text at issue here,

particularly in light of the presumption that the General Assembly understood the preemptive effect of its enactment under *Ohio's* Constitution. *Cf., e.g., Clark v. Scarpelli*, 91 Ohio St.3d 271, 278, 744 N.E.2d 719 (2001) (“It is presumed that the General Assembly is fully aware of any prior judicial interpretation of an existing statute when enacting an amendment.”).

Munroe Falls’ suggestion that this Court should follow “the recent experience of New York and Pennsylvania,” Merit Br. 23, is particularly ill-founded. In Pennsylvania, the General Assembly recently enacted a statute that expressly prohibits the use of zoning ordinances to prohibit state-authorized oil and gas drilling. *See* 58 Pa.C.S. § 3302-04. The Pennsylvania Supreme Court is currently considering a case challenging the validity of the statute under the due process clause of Pennsylvania’s constitution, *Robinson Twp. v. Pennsylvania*, Pa. S. Ct. Dkt. No. 73 MAP 2012, but that case is irrelevant here not only because it turns on Pennsylvania constitutional law, but because Munroe Falls has not even raised a comparable challenge under Ohio law. And, in New York, the proper interpretation of that state’s oil and gas law is hardly settled; although the statute has been interpreted narrowly by an intermediate court of appeals, *see Norse Energy Corp. U.S.A. v. Town of Dryden*, 964 N.Y.S.2d 714 (N.Y. App. Div. 2013), this interpretation was sufficiently controversial that New York’s highest court recently exercised its discretionary authority to grant review of the case, *see* N.Y. Ct. of Appeals Dkt. No. APL-2013-00245. In all events, the meaning of a New York statute sheds no light on the intent of the Ohio General Assembly in enacting the Oil and Gas Law.

D. Allowing Municipalities To Enforce Local Zoning And Permitting Schemes Would Threaten The Safety And Effectiveness Of Oil And Gas Operations.

Allowing Munroe Falls (and other municipalities) to regulate oil and natural gas production would have significant consequences that could undermine the safety and

effectiveness of oil and gas operations throughout the State. First, interpreting the Oil and Gas Law to grant municipalities concurrent authority to regulate where drilling occurs would significantly impinge on ODNR's "sole and exclusive authority" to regulate the location of wells, R.C. 1509.02, by eroding its ability to ensure that wells are located safely and in a manner that ensures efficient production and prevents avoidable waste.

Second, and more fundamentally, such an interpretation would limit the effectiveness of the State's expert agency in a technical area squarely within its expertise, and would do great damage to the State's effort to develop and implement uniform technical standards for oil and gas drilling and hydraulic fracturing. As noted above, determining where to drill requires significant technical expertise and has important implications for the safety and effectiveness of the well. *See supra* p.15 & n.6 (describing API guidance regarding the need to properly locate leases, wells, and system lines to ensure effective operations). Local governments simply do not have the resources or expertise necessary to undertake the required analysis. ODNR does. If local governments could impose concurrent zoning and permitting obligations, it would open the door to ordinances enacted under the guise of this authority that, in effect, impose technical operational requirements or even preclude oil and gas operations—as often happened before the Oil and Gas Law was amended to eliminate concurrent local regulation. Indeed, the ordinances at issue here provide a clear illustration of how this could happen: Munroe Falls Ordinance § 1329.03(b) purports to impose a restriction under which no person may drill more than two wells at any given time, *see* M.F. App. 103, regardless of technical operational considerations. If local governments throughout the State were enabled to impose similarly restrictive requirements, the oil and gas industry quickly would face the same sort of patchwork regulatory regime that the modern Oil and Gas Law as amended in 2004 was designed to eliminate.

Third, the unilateral decision by one municipality to restrict oil and gas recovery within its borders has the real potential to affect recovery outside its jurisdiction. Because gas formations do not conform to local jurisdictional borders, one municipality's restrictions will reduce the recovery from a single gas formation or field that is shared by multiple jurisdictions. Superimposing a patchwork of restrictions on a single formation will result in sub-optimal and wasteful recovery, with the potential to affect the feasibility of development in neighboring municipalities that *do* wish to permit it. If this Court were to accept Munroe Falls' position, it would enable municipalities to control development of a shared resource outside their territorial and jurisdictional boundaries. In contrast, when decisions are made by a single statewide authority, as the General Assembly intended, such conflicts can be addressed by a statewide authority with both the expertise and the jurisdiction to balance competing interests.

Fourth, allowing municipal governments to impose zoning and permitting restrictions based on their assessment of supposed safety concerns relating to hydraulic fracturing—as *amici* municipalities claim the right to do, *see* Br. of Municipal *Amici* 5-15—would enable local officials with no background in the subject matter to undermine the technical decisions of expert regulators in their area of expertise. ODNR has promulgated detailed and comprehensive safety rules, *see* Ohio Adm.Code 1501:9-9, including rules to ensure that hydraulic fracturing is conducted in a safe manner, *see* Ohio Adm.Code 1501:9-7, and it is prohibited from issuing a permit if it determines that there is “a substantial risk that the operation will result in violations of” those rules, R.C. 1509.06(F). Local governmental officials have neither the authority nor the expertise to make these determinations or to second-guess ODNR's decisions. ODNR has promulgated rules to ensure hydraulic fracturing is conducted in an environmentally responsible manner, including rules to minimize the potential for hydraulic fracturing to affect surface water

or groundwater,⁷ and regulatory authorities have not found that the technique poses a threat to drinking water. *See supra* pp.5-6 & n.3 Although Municipal *Amici* assert that groundwater contamination is “routine,” Municipal *Amici* Br. 8-9, multiple federal and state official investigations into claims of contamination have not borne out such claims. For example, a recent study by the Ground Water Protection Council, found that for “over 16,000 horizontal shale gas wells, with multi-staged hydraulic fracturing stimulations,” not “a single groundwater contamination incident resulting from site preparation, drilling, well construction, completion, hydraulic fracturing stimulation, or production operations at any ... horizontal shale gas well[]” from 1983-2007 in Ohio and from 1993-2008 in Texas.”⁸ Indeed, since 1990, more than 15,000 Ohio wells have used hydraulic fracturing, and ODNR has conducted numerous water well investigation complaints. None of the investigations revealed problems due to hydraulic fracturing. *ODNR Hydraulic Fracturing Fact Sheet*.

Finally, if local governments are able to close large portions of Ohio’s lands to hydraulic fracturing or other oil and gas activities, the adverse effects on Ohio’s energy production and economic activity will be significant, especially as new development of the Marcellus and Utica Shale formations is expected to continue in Ohio under the regulatory authority of ODNR. The use of hydraulic fracturing and directional drilling enables the recovery of oil and natural gas that

⁷ *See, e.g.*, Ohio Adm.Code 1501:9-7-04 (prohibiting contamination of underground sources of drinking water and authorizing case-specific requirements and emergency measures); Ohio Adm.Code 1501:9-7-07 (authorizing permit conditions regarding the protection of water sources); Ohio Adm.Code 1501:9-7-08 (imposing additional construction requirements near water sources); R.C. 1509.06(A)(8) (requiring permit applicant to provide substantial information regarding nearby water).

⁸ Ground Water Protection Council, *State Oil and Gas Agency Groundwater Investigations and their Role in Advancing Regulatory Reforms, a Two-State Review: Ohio and Texas* (August 2011), available at <http://www.gwpc.org/sites/default/files/State%20Oil%20%26%20Gas%20Agency%20Groundwater%20Investigations.pdf>.

otherwise could not be commercially developed and thereby spurs both energy production and economic growth in many different sectors. To put the importance of these technologies in perspective, it is estimated that, without them, the nation would lose 45 percent of domestic natural gas production within 5 years.⁹ Shale gas development alone supported 1.7 million jobs throughout the nation in 2012, *Shale Answers* at 4, and one study indicates that that a 25 percent increase in the supply of ethane (a liquid derived from shale gas) could add even more jobs, provide billions in federal, state, and local tax revenue, and spur billions in capital investment.¹⁰ Indeed, the oil and gas industry contributes significantly to Ohio's economy, employing over 4 million people and contributing approximately \$28.4 billion to the Ohio economy—about 5.7% Ohio's GDP.¹¹ Local prohibitions that place large portions of Ohio's gas resources out of reach of development would lead to precisely the sort of "waste" that the Oil and Gas Law was designed to prevent through comprehensive statewide regulation.

Proposition of Law No. 2:

**R.C. CHAPTER 1509 IS A GENERAL LAW THAT PROPERLY
PREEMPTS CONFLICTING MUNICIPAL REGULATIONS.**

As noted above, the Oil and Gas Law easily meets the remaining prerequisites for preemption in this case—*i.e.* the preempted ordinances involve an exercise of police power and the statute is a general law, *see Tablack*, 86 Ohio St.3d at 295. Munroe Falls does not dispute that its zoning and permitting restrictions involved an exercise of police power. It does,

⁹ See API, *Shale Answers* at 3 (2013), available at http://www.api.org/~media/Files/Policy/Hydraulic_Fracturing/Shale-Answers-Brochure.pdf.

¹⁰ See Am. Chem. Council, *Shale Gas and New Petrochemicals Investment: Benefits for the Economy, Jobs, and U.S. Manufacturing* at 1 (March 2011), available at <http://www.americanchemistry.com/ACC-Shale-Report>.

¹¹ See API, *Energy Works: The people of Ohio are part of the oil and natural gas industry* (2013), available at http://www.api.org/~media/Files/Policy/Jobs/EnergyWorks/EnergyWorks_Ohio-API.pdf.

however, now contend that the Oil and Gas law is not a general law because “it only applies to half the state.” Merit Br. 19. If this Court reaches this argument,¹² it should summarily reject it.

To constitute a general law for purposes of home-rule analysis, a statute must:

(1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.

Canton v. State, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E. 963, ¶ 21. According to Munroe Falls, the Oil and Gas Law fails that test because “oil and gas is not found in economically viable quantities in the Western half of Ohio, at all.” Merit Br. 20. But that assertion is incorrect both as a matter of fact and as a matter of law. It is factually wrong because drilling does occur in the Western half of Ohio. Munroe Falls bases its contrary assertion on a diagram prepared by ODNR that shows the location, by county, of the permits issued and wells completed in 2011, and does not reflect any activity in any counties in the western side of Ohio. Merit Br. 20 The year 2011, however, was anomalous; the same diagram from other recent years reflects the reality that the oil and gas industry is active throughout the State, and shows oil and gas activity in western counties in which Munroe Falls contends no such activity occurs. *See, e.g., ODNR, 2010 Summary of Ohio Oil and Gas Activities 3, available at* <http://oilandgas.ohiodnr.gov/portals/oilgas/pdf/oilgas10.pdf>; *ODNR, 2005 Summary of Ohio Oil and Gas Activities 3, available at* <http://oilandgas.ohiodnr.gov/portals/oilgas/pdf/oilgas05.pdf>.

¹² The court of appeals determined that Munroe Falls conceded this argument below, M.F. App. 19-20, but Munroe challenges this ruling as error, Merit Br. 18 n.7. *Amici* have no position on the procedural history of this case, but note that a party who fails to raise an argument in the court of appeals waives its ability to raise it in this Court. *See, e.g., McGhan v. Vettel*, 122 Ohio St.3d 227, 2009-Ohio-2884, 909 N.E.2d 1279, ¶ 26; *State ex rel. Ohio Civil Serv. Emps. Assn., Local 11 v. State Empl. Rels. Bd.*, 104 Ohio St.3d 122, 2004-Ohio-6363, 818 N.E.2d 688, ¶ 10.

Munroe Falls' assertion is also wrong as a matter of law. As this Court has repeatedly recognized:

[T]he General Assembly may limit the application of a statute to a given class of people or objects, even if the result of the classification is that the statute does not operate in all geographic areas within the state, so long as the classification is a reasonable one and the statute operates equally upon every person and locality within such classification.

Clermont Envtl. Reclamation Co. v. Wiederhold, 2 Ohio St.3d 44, 49, 442 N.E.2d 1278 (1982) (citing *Beachwood v. Bd. of Elections*, 167 Ohio St. 369, 148 N.E.2d 921 (1958); *Porter v. Hopkins*, 91 Ohio St. 74, 109 N.E. 629 (1914); *State ex rel. Yapple, v. Creamer*, 85 Ohio St. 349, 97 N.E. 602 (1912); *Miller v. Korns*, 107 Ohio St. 287, 140 NE. 773 (1923)). In *Clermont*, for example, this Court concluded that R.C. 3734.05(D)(3), which prohibits local governments from imposing additional zoning restrictions on hazardous waste facilities approved by the State, was a general law, even though its effects were not felt uniformly throughout the State. *Id.* at 49-50. It explained that because the law “operate[d] uniformly throughout the state” by allowing *no political subdivision* to impose additional requirements, it qualified as a general law, regardless of whether the *impact* of hazardous waste facility siting would necessarily affect some communities more than others. *Id.*

The same reasoning applies to the Oil and Gas Law, which furthers the statewide interest of establishing a comprehensive statewide regulatory regime that applies in any location where oil or gas drilling might occur. Munroe Falls argues that *Clermont* is distinguishable because R.C. 3734.05(D)(3) uses express language to address local zoning authority, Merit Br. 20, but that distinction has no bearing on whether a law is general. Nor is there any merit to Munroe Falls' suggestion that the Oil and Gas Law does not apply uniformly because it applies only where oil and gas are found in “economically viable quantities,” whereas a hazardous waste facility can be located wherever there is land. *Id.* As this Court explained in *Clermont*, a state

regulatory regime is general “if the regulation of the subject matter affects the general public of the state as a whole more than it does the local inhabitants,” regardless of whether “there is a matter of local concern involved.” 2 Ohio St.3d at 49. This understanding makes particular sense in the oil and gas context, where new technologies are making it possible to extract resources that previously could not be reached in an “economically viable” manner.

This Court’s decision in *Canton* is not to the contrary. In that case, this Court held that a law restricting the zoning of mobile homes did not apply uniformly, and thus was not a general law, because it was “not part of a statewide and comprehensive zoning plan” and carved out exceptions for restrictive covenants that arbitrarily caused the statute to apply only in parts of the state with older residential developments that no longer had effective deed restrictions or active homeowner associations. In so holding, the Court expressly recognized that “[t]he requirement of uniform operation throughout the state of laws of a general nature does not forbid different treatment of various classes or types of citizens,” but instead prohibits only “nonuniform classification if such be arbitrary, unreasonable or capricious.” *Id.* (internal quotation marks omitted). The fact that a law regulating natural resources applies to those areas where the resource is found is entirely reasonable and in no way arbitrary. In contrast, the rule that *Munroe Falls* asks this court to adopt would completely thwart ODNR’s regulatory efforts by precluding it from adopting *any* uniform statewide standards with preemptive force, even regarding environmental protection or technical or safety-related matters. Nothing in the Home Rule Amendment requires this radical and dangerous result.

For the same reasons, there is no merit to the Health Professionals’ arguments that interpreting the Oil and Gas Law to preempt local zoning authority would violate due process as an “arbitrary and unreasonable exercise of the state’s police powers,” Health Professionals’ Br.

31, or would amount to “unconstitutional spot zoning.” *Id.* at 33. These arguments are foreclosed by *Clermont*, which upheld as constitutional a state law the prohibited local governments from using their zoning laws to impose restrictions on state-authorized hazardous waste facilities. In any event, this Court need not—and should not—reach these arguments because they were not raised or considered below. *See, e.g., Ohio Civil Serv. Employees Assn.*, 104 Ohio St.3d at 125.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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APPENDIX

R.C. 1.49 Determining legislative intent.

If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:

- (A) The object sought to be attained;
- (B) The circumstances under which the statute was enacted;
- (C) The legislative history;
- (D) The common law or former statutory provisions, including laws upon the same or similar subjects;
- (E) The consequences of a particular construction;
- (F) The administrative construction of the statute.

Effective Date: 01-03-1972

R.C. 723.01 Legislative authority to have care, supervision, and control of public roads, grounds and bridges.

Municipal corporations shall have special power to regulate the use of the streets. Except as provided in section 5501.49 of the Revised Code, the legislative authority of a municipal corporation shall have the care, supervision, and control of the public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipal corporation. The liability or immunity from liability of a municipal corporation for injury, death, or loss to person or property allegedly caused by a failure to perform the responsibilities imposed by this section shall be determined pursuant to divisions (A) and (B)(3) of section 2744.02 of the Revised Code.

Effective Date: 04-09-2003

R.C. 1509.021 Surface locations of new wells.

On and after June 30, 2010, all of the following apply:

(A) The surface location of a new well or a tank battery of a well shall not be within one hundred fifty feet of an occupied dwelling that is located in an urbanized area unless the owner of the land on which the occupied dwelling is located consents in writing to the surface location of the well or tank battery of a well less than one hundred fifty feet from the occupied dwelling and the chief of the division of oil and gas resources management approves the written consent of that owner. However, the chief shall not 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 one hundred feet of an occupied dwelling that is located in an urbanized area.

(B) The surface location of a new well shall not be within one hundred fifty feet from the property line of a parcel of land that is not in the drilling unit of the well if the parcel of land is located in an urbanized area and directional drilling will be used to drill the new well unless the owner of the parcel of land consents in writing to the surface location of the well less than one hundred fifty feet from the property line of the parcel of land and the chief approves the written consent of that owner. However, the chief shall not approve the written consent of such an owner when the surface location of a new well will be less than one hundred feet from the property line of the owner's parcel of land that is not in the drilling unit of the well if the parcel of land is located in an urbanized area and directional drilling will be used.

(C) The surface location of a new well shall not be within two hundred 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 issued under section 1509.27 of the Revised Code 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 two hundred 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 shall not be within one hundred 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 two hundred feet. If the chief receives such an affidavit and written request, the chief shall reduce the distance of the location of the well from the occupied dwelling to a distance of not less than one hundred feet.

(D) Except as otherwise provided in division (L) of this section, the surface location of a new well shall not be within one hundred fifty 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 issued under section 1509.27 of the Revised Code unless the owner of the land consents in writing to the surface location of the well at a distance that is less than one hundred fifty feet from the owner's property line. However, if the owner of the land provides such written consent, the surface location of the well shall not be within seventy-five 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 one hundred fifty feet. If the chief receives such an affidavit and written request, the chief shall reduce the distance of the location of the well from the property line to a distance of not less than seventy-five feet.

(E) The surface location of a new tank battery of a well shall not be within one hundred fifty 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 issued under section 1509.27 of the Revised Code 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 one hundred fifty 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 shall not be within one hundred 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 one hundred fifty feet. If the chief receives such an affidavit and written request, the chief shall reduce the distance of the location of the tank battery from the occupied dwelling to a distance of not less than one hundred feet.

(F) Except as otherwise provided in division (L) of this section, the location of a new tank battery of a well shall not be within seventy-five 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 issued under section 1509.27 of the Revised Code unless the owner of the land consents in writing to the location of the tank battery at a distance that is less than seventy-five feet from the owner's property line. However, if the owner of the land provides such written consent, the location of the tank battery shall not 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 seventy-five feet. If the chief receives such an affidavit and written request, the chief shall reduce the distance of the location of the tank battery from the property line, provided that the tank battery shall not be within the property line of the owner's parcel of land.

(G) For purposes of divisions (C) to (F) of this section, 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;
- (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. For purposes of division (G)(3) of this section, an applicant shall submit a copy of a written statement to the chief.
- (H) For areas that are not urbanized areas, the surface location of a new well shall not be within one hundred 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. This division 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.
- (I) The surface location of a new well shall not be within one hundred 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 one hundred feet from another well. If the chief receives such a written statement, the chief may authorize a new well to be located within one hundred 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 one hundred 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.
- (J) For areas that are not urbanized areas, the location of a new tank battery of a well shall not be within one hundred feet of an existing inhabited structure.
- (K) The location of a new tank battery of a well shall not be within fifty feet of any other well.
- (L) The location of a new well or a new tank battery of a well shall not be within fifty feet of a stream, river, watercourse, water well, pond, lake, or other body of water. However, the chief may authorize a new well or a new tank battery of a well to be located at a distance that is less than fifty feet from a stream, river, watercourse, water well, pond, lake, or other body of water if the chief determines that the reduction in the distance is necessary to reduce impacts to the owner of the land on which the well or tank battery of a well is to be located or to protect public safety or the environment.
- (M) The surface location of a new well or a new tank battery of a well shall not be within fifty feet of a railroad track or of the traveled portion of a public street, road, or highway. This division 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 issued under section 1509.27 of the Revised Code.
- (N) A new oil tank shall not be within three feet of another oil tank.

(O) The surface location of a mechanical separator shall not be within any of the following:

- (1) Fifty feet of a well;
- (2) Ten feet of an oil tank;
- (3) One hundred feet of an existing inhabited structure.

(P) A vessel that is equipped in such a manner that the contents of the vessel may be heated shall not be within any of the following:

- (1) Fifty feet of an oil production tank;
- (2) Fifty feet of a well;
- (3) One hundred feet of an existing inhabited structure;
- (4) If the contents of the vessel are heated by a direct fire heater, fifty feet of a mechanical separator.

Amended by 129th General Assembly File No. 28, HB 153, §101.01, eff. 9/29/2011.

Added by 128th General Assembly File No. 27, SB 165, §1, eff. 6/30/2010.

R.C. 1509.23 Health and safety rules for drilling of wells and production of oil and gas.

(A) Rules of the chief of the division of oil and gas resources management may specify practices to be followed in the drilling and treatment of wells, production of oil and gas, and plugging of wells for protection of public health or safety or to prevent damage to natural resources, including specification of the following:

- (1) Appropriate devices;
- (2) Minimum distances that wells and other excavations, structures, and equipment shall be located from water wells, streets, roads, highways, rivers, lakes, streams, ponds, other bodies of water, railroad tracks, public or private recreational areas, zoning districts, and buildings or other structures. Rules adopted under division (A)(2) of this section shall not conflict with section 1509.021 of the Revised Code.
- (3) Other methods of operation;
- (4) Procedures, methods, and equipment and other requirements for equipment to prevent and contain discharges of oil and brine from oil production facilities and oil drilling and workover facilities consistent with and equivalent in scope, content, and coverage to section 311(j)(1)(c) of the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 886, 33 U.S.C.A. 1251, as amended, and regulations adopted under it. In addition, 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;
- (6) Requirements governing the location and construction of fresh water impoundments that are part of a production operation.

(B) The chief, in consultation with the emergency response commission created in section 3750.02 of the Revised Code, shall adopt rules in accordance with Chapter 119. of the Revised Code that specify the information that shall be included in an electronic database that the chief shall create and host. The information shall be that which the chief considers to be appropriate for the purpose of responding to emergency situations that pose a threat to public health or safety or the environment. At the minimum, the information shall include that which a person who is regulated under this chapter is required to submit under the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1728, 42 U.S.C.A. 11001, and regulations adopted under it.

In addition, the rules shall specify whether and to what extent the database and the information that it contains will be made accessible to the public. The rules shall ensure that the database will be made available via the internet or a system of computer disks to the emergency response commission and to every local emergency planning committee and fire department in this state.

Amended by 129th General Assembly File No.125, SB 315, §101.01, eff. 9/10/2012.

Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No.27, SB 165, §1, eff. 6/30/2010.

Effective Date: 08-28-2002; 09-16-2004

R.C. 4513.34 [Effective 9/29/2013] Written permits for oversized vehicles.

(A)

(1) The director of transportation with respect to all highways that are a part of the state highway system and local authorities with respect to highways under their jurisdiction, upon application in writing, shall issue a special regional heavy hauling permit authorizing the applicant to operate or move a vehicle or combination of vehicles as follows:

(a) At a size or weight of vehicle or load exceeding the maximum specified in sections 5577.01 to 5577.09 of the Revised Code, or otherwise not in conformity with sections 4513.01 to 4513.37 of the Revised Code;

(b) Upon any highway under the jurisdiction of the authority granting the permit except those highways with a condition insufficient to bear the weight of the vehicle or combination of vehicles as stated in the application;

(c) For regional trips at distances of one hundred fifty miles or less from a facility stated on the application as the applicant's point of origin.

Issuance of a special regional heavy hauling permit is subject to the payment of a fee established by the director or local authority in accordance with this section.

(2) In circumstances where a person is not eligible to receive a permit under division (A)(1) of this section, the director of transportation with respect to all highways that are a part of the state highway system and local authorities with respect to highways under their jurisdiction, upon application in writing and for good cause shown, may issue a special permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or

weight of vehicle or load exceeding the maximum specified in sections 5577.01 to 5577.09 of the Revised Code, or otherwise not in conformity with sections 4513.01 to 4513.37 of the Revised Code, upon any highway under the jurisdiction of the authority granting the permit.

(3) For purposes of this section, the director may designate certain state highways or portions of state highways as special economic development highways. If an application submitted to the director under this section involves travel of a nonconforming vehicle or combination of vehicles upon a special economic development highway, the director, in determining whether good cause has been shown that issuance of a permit is justified, shall consider the effect the travel of the vehicle or combination of vehicles will have on the economic development in the area in which the designated highway or portion of highway is located.

(B) Notwithstanding sections 715.22 and 723.01 of the Revised Code, the holder of a permit issued by the director under this section may move the vehicle or combination of vehicles described in the permit on any highway that is a part of the state highway system when the movement is partly within and partly without the corporate limits of a municipal corporation. No local authority shall require any other permit or license or charge any license fee or other charge against the holder of a permit for the movement of a vehicle or combination of vehicles on any highway that is a part of the state highway system. The director shall not require the holder of a permit issued by a local authority to obtain a special permit for the movement of vehicles or combination of vehicles on highways within the jurisdiction of the local authority. Permits may be issued for any period of time not to exceed one year, as the director in the director's discretion or a local authority in its discretion determines advisable, or for the duration of any public construction project.

(C)

(1) The application for a permit issued under this section shall be in the form that the director or local authority prescribes. The director or local authority may prescribe a permit fee to be imposed and collected when any permit described in this section is issued. The permit fee may be in an amount sufficient to reimburse the director or local authority for the administrative costs incurred in issuing the permit, and also to cover the cost of the normal and expected damage caused to the roadway or a street or highway structure as the result of the operation of the nonconforming vehicle or combination of vehicles. The director, in accordance with Chapter 119. of the Revised Code, shall establish a schedule of fees for permits issued by the director under this section; however, the fee to operate a triple trailer unit, at locations authorized under federal law, shall be one hundred dollars.

(2) For the purposes of this section and of rules adopted by the director under this section, milk transported in bulk by vehicle is deemed a nondivisible load.

(3) For purposes of this section and of rules adopted by the director under this section, three or fewer aluminum coils, transported by a vehicle, are deemed a nondivisible load. The director shall adopt rules establishing requirements for an aluminum coil permit that are substantially similar to the requirements for a steel coil permit under Chapter 5501:2-1 of the Administrative Code.

(D) The director or a local authority shall issue a special regional heavy hauling permit under division (A)(1) of this section upon application and payment of the applicable fee. However, the director or local authority may issue or withhold a special permit specified in division

(A)(2) of this section. If a permit is to be issued, the director or local authority may limit or prescribe conditions of operation for the vehicle and may require the posting of a bond or other security conditioned upon the sufficiency of the permit fee to compensate for damage caused to the roadway or a street or highway structure. In addition, a local authority, as a condition of issuance of an overweight permit, may require the applicant to develop and enter into a mutual agreement with the local authority to compensate for or to repair excess damage caused to the roadway by travel under the permit.

For a permit that will allow travel of a nonconforming vehicle or combination of vehicles on a special economic development highway, the director, as a condition of issuance, may require the applicant to agree to make periodic payments to the department to compensate for damage caused to the roadway by travel under the permit.

(E) Every permit issued under this section shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of any authority granting the permit. No person shall violate any of the terms of a permit.

(F) The director may debar an applicant from applying for a permit under this section upon a finding based on a reasonable belief that the applicant has done any of the following:

- (1) Abused the process by repeatedly submitting false information or false travel plans or by using another company or individual's name, insurance, or escrow account without proper authorization;
- (2) Failed to comply with or substantially perform under a previously issued permit according to its terms, conditions, and specifications within specified time limits;
- (3) Failed to cooperate in the application process for the permit or in any other procedures that are related to the issuance of the permit by refusing to provide information or documents required in a permit or by failing to respond to and correct matters related to the permit;
- (4) Accumulated repeated justified complaints regarding performance under a permit that was previously issued to the applicant or previously failed to obtain a permit when such a permit was required;
- (5) Attempted to influence a public employee to breach ethical conduct standards;
- (6) Been convicted of a criminal offense related to the application for, or performance under, a permit, including, but not limited to, bribery, falsification, fraud or destruction of records, receiving stolen property, and any other offense that directly reflects on the applicant's integrity or commercial driver's license;
- (7) Accumulated repeated convictions under a state or federal safety law governing commercial motor vehicles or a rule or regulation adopted under such a law;
- (8) Accumulated repeated convictions under a law, rule, or regulation governing the movement of traffic over the public streets and highways;
- (9) Failed to pay any fees associated with any permitted operation or move;
- (10) Deliberately or willfully submitted false or misleading information in connection with the application for, or performance under, a permit issued under this section.

If the applicant is a partnership, association, or corporation, the director also may debar from consideration for permits any partner of the partnership, or the officers, directors, or employees of the association or corporation being debarred.

The director may adopt rules in accordance with Chapter 119. of the Revised Code governing the debarment of an applicant.

(G) When the director reasonably believes that grounds for debarment exist, the director shall send the person that is subject to debarment a notice of the proposed debarment. A notice of proposed debarment shall indicate the grounds for the debarment of the person and the procedure for requesting a hearing. The notice and hearing shall be in accordance with Chapter 119. of the Revised Code. If the person does not respond with a request for a hearing in the manner specified in that chapter, the director shall issue the debarment decision without a hearing and shall notify the person of the decision by certified mail, return receipt requested. The debarment period may be of any length determined by the director, and the director may modify or rescind the debarment at any time. During the period of debarment, the director shall not issue, or consider issuing, a permit under this section to any partnership, association, or corporation that is affiliated with a debarred person. After the debarment period expires, the person, and any partnership, association, or corporation affiliated with the person, may reapply for a permit.

(H)

(1) No person shall violate the terms of a permit issued under this section that relate to gross load limits.

(2) No person shall violate the terms of a permit issued under this section that relate to axle load by more than two thousand pounds per axle or group of axles.

(3) No person shall violate the terms of a permit issued under this section that relate to an approved route except upon order of a law enforcement officer or authorized agent of the issuing authority.

(I) Whoever violates division (H) of this section shall be punished as provided in section 4513.99 of the Revised Code.

(J) A permit issued by the department of transportation or a local authority under this section for the operation of a vehicle or combination of vehicles is valid for the purposes of the vehicle operation in accordance with the conditions and limitations specified on the permit. Such a permit is voidable by law enforcement only for operation of a vehicle or combination of vehicles in violation of the weight, dimension, or route provisions of the permit. However, a permit is not voidable for operation in violation of a route provision of a permit if the operation is upon the order of a law enforcement officer.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 130th General Assembly File No. 7, HB 51, §101.01, eff. 7/1/2013.

Amended by 128th General Assemblych.9,HB 2, §101.01, eff. 7/1/2009.

Effective Date: 01-01-2004; 03-29-2005

This section is set out twice. See also § 4513.34, effective until 9/29/2013.

Ohio Adm.Code 1501:9-1-05 Safety.

No well shall be drilled nearer than one hundred feet to any inhabited private dwelling house; nearer than one hundred feet from any public building which may be used as a place of resort, assembly, education, entertainment, lodging, trade, manufacture, repair, storage, traffic, or occupancy by the public; nearer than fifty feet to the traveled part of any public street, road, or highway; nearer than fifty feet to a railroad track; nor nearer than one hundred feet to any other well.

Rule 1501:9-1-05 of the Administrative Code does not apply to a building or structure which is incident to agricultural use of the land on which it is located, unless such building is used as a private dwelling house or in the business of retail trade. The chief may grant an exception reducing the requirement in this rule that no wellhead shall be placed nearer than one hundred feet to any other wellhead where an applicant demonstrates that the requested reduction in spacing between wellheads is necessary to reduce impact to the land surface or the owners of the affected land.

R.C. 119.032 review dates: 12/29/2003 and 12/29/2008

Promulgated Under: 119.03

Statutory Authority: 1509.23

Rule Amplifies: 1509.23

Prior Effective Dates: 11/1/67, 8/3/96

Ohio Adm.Code 1501:9-7-04 Prevention of contamination and pollution.

(A) No person shall cause or allow injection of fluid containing any contaminant into an underground source of drinking water. No authorization by permit or rule shall allow the movement of fluid containing any contaminant into an underground source of drinking water. The applicant for a permit or operator of an existing solution mining project shall have the burden of showing that the requirements of this rule are met.

(B) When water quality monitoring of an underground source of drinking water indicates the movement of any contaminant into the underground source of drinking water, the chief shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit in accordance with paragraph (R) of rule 1501:9-7-07 of the Administrative Code, or the permit may be terminated in accordance with paragraph (R)(2) of rule 1501:9-7-07 of the Administrative Code if cause exists, or appropriate enforcement action may be taken if the permit has been violated.

(C) Notwithstanding any other provision of Chapter 1501:9-7 of the Administrative Code, the chief may take emergency action upon receipt of information that a contaminant, which is present in or is likely to enter a public water system, may present an imminent and substantial endangerment to the health of persons.

R.C. 119.032 review dates: 12/29/2003 and 12/29/2008
Promulgated Under: 119.03
Statutory Authority: 1509.221 Rule Amplifies: 1509.221
Prior Effective Dates: 11/26/82, 4/18/84 (Emer.), 7/2/84

Ohio Adm.Code 1501:9-7-07 Permit.

- (A) Permit required. Unless an appropriate application has been received by the chief and a permit issued by the division, no person shall drill, reopen, deepen, plug, rework, or use a well for the solution mining of minerals unless the well is authorized by rule in accordance with rule 1501:9-7-05 of the Administrative Code.
- (B) Establishing permit conditions.
- (1) In addition to conditions required for all permits, the chief shall establish conditions, as required on a case-by-base basis, for all permits under the following: paragraph (Q) of this rule (duration of permits), paragraph (C) of this rule (schedules of compliance), and paragraph (B) of rule 1501:9-7-09 of the Administrative Code (monitoring).
- (2) Permit conditions established on a case-by-case basis shall be designed to ensure compliance with Chapter 1509. of the Revised Code.
- (C) Schedules of compliance. The permit may, when appropriate, specify a schedule of compliance leading to compliance with Chapter 1509. of the Revised Code and Chapter 1501:9-7 of the Administrative Code.
- (1) Time for compliance. Any schedules of compliance under this rule shall require compliance within a reasonable period of time as determined by the chief. The schedules of compliance shall require compliance not later than two years after the date of issuance of the permit.
- (2) Alternative schedules of compliance. A solution mining permit applicant or permittee may cease conducting regulated activities by plugging and abandonment of solution mining wells rather than continue to operate and meet permit requirements as follows:
- (a) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit that has already been issued:
- (i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or
- (ii) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.
- (b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination that will ensure timely compliance with applicable rules.
- (c) If the permittee is undecided whether to cease conducting regulated activities, the chief may issue or modify a permit to contain two schedules as follows:
- (i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date that ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities; or
- (ii) One schedule shall lead to timely compliance with applicable rules; and the second schedule shall lead to cessation of regulated activities by a date that will ensure timely compliance with applicable rules;

(iii) Each permit containing two schedules shall include a requirement that, after the permittee has made a final decision under paragraph (C)(2)(c)(i) of this rule, he shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(d) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced in writing to the chief and signed as stated in paragraph (D)(3) of this rule.

(3) A permit shall be written to require that, if paragraph (C)(1) or (C)(2) of this rule are applicable, progress reports shall be submitted no later than thirty days following the date of compliance.

(D) Application for a permit. New applicants, permittees with expiring permits, and any person required to have a permit shall complete, sign, and submit an application to the chief as described in this rule.

(1) An application for a permit for any existing solution mining project must be submitted no later than November 27, 1984.

(2) It is the duty of the owner of a solution mining project to submit an application for a permit; however, when a project is owned by one person and operated by another, it is the operator's duty to obtain a permit.

(3) All permit applications shall be signed as follows:

(a) For a corporation, by a principal executive officer of at least the level of vice-president or a duly authorized representative of that person;

(b) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official.

(4) When a person signs as a representative, a certified copy of his/her appointment shall accompany the application or be on file with the division. If an authorization under paragraph (D)(3) of this rule is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the signature requirements must be submitted to the chief prior to or together with any reports, information, or applications to be signed by an authorized representative.

(5) Certification. Any person signing a document under paragraph (D)(3) of this rule shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(E) Area of review.

(1) For individual solution mining projects consisting of one well, the area of review shall be a fixed radius around the well of not less than one-quarter mile.

(2) For solution mining projects consisting of more than one well, the area of review shall be the project area plus a circumscribing area the width of which is not less than one-quarter mile.

(3) In determining the fixed radius, the following factors shall be taken into consideration: chemistry of injected and formation fluids, hydrogeology, population and groundwater use and dependence, and historical practices in the area.

(F) Corrective action.

(1) Coverage. Applicants for solution mining project permits shall identify the location of all known wells penetrating the injection zone within the project's area of review. For wells that are improperly sealed, completed, or abandoned, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluid into underground sources of drinking water. Where the plan is adequate, the chief shall incorporate it into the permit as a condition. Where the chief's review of an application indicates that the applicant's plan is inadequate based on the factors in paragraph (F)(2) of this rule, the chief shall require the applicant to revise the plan, prescribe a plan for corrective action as a condition of the permit, or deny the application.

(2) Requirements.

(a) Existing solution mining projects. Any permit issued for an existing solution mining project requiring corrective action shall include a compliance schedule requiring any corrective action accepted or prescribed under paragraph (F)(1) of this rule to be completed within a time frame specified in the compliance schedule.

(b) New solution mining projects. No permit for a new solution mining project may authorize injection until all required corrective action has been taken.

(c) Injection pressure limitation. The chief may require as a permit condition that injection pressure be so limited that pressure in the injection zone does not cause the movement of fluids into an underground source of drinking water through any improperly completed or abandoned well within the area of review. This pressure limitation may satisfy the corrective action requirement. Alternatively, such injection pressure limitation may be part of a compliance schedule and last until all other required corrective action has been taken.

(d) When setting corrective action requirements for solution mining projects, the chief shall consider the overall effect of the project on the hydraulic gradient in potentially affected underground sources of drinking water, and the corresponding changes in potentiometric surface(s) and flow direction(s) rather than the discrete effect of each well. If a decision is made that corrective action is not necessary based on the determinations above, the monitoring program required in rule 1501:9-7-09 of the Administrative Code shall be designed to verify the validity of such determinations.

(e) In determining the adequacy of corrective action proposed by the applicant under paragraph (F)(1) of this rule and the additional steps needed to prevent fluid movement into underground sources of drinking water, the following criteria and factors shall be considered by the chief:

- (i) Nature and volume of injected fluid;
- (ii) Nature of native fluids or by-products of injection;
- (iii) Potentially affected population;
- (iv) Geology;
- (v) Hydrology;
- (vi) History of the injection operation;
- (vii) Completion and plugging records;
- (viii) Abandonment procedures in effect at the time the well was abandoned; and
- (ix) Hydraulic connections with underground sources of drinking water.

(G) Application content.

(1) The application for a permit shall contain the following administrative information:

- (a) The name, mailing address, and location of the facility for which the application is submitted;
- (b) Ownership status as federal, state, private, public, or other entity;
- (c) The operator's name, address, and telephone number;
- (d) A brief description of the nature of the business associated with the project;
- (e) The activity or activities conducted by the applicant that require the applicant to obtain a permit under Chapter 1501:9-7 of the Administrative Code; and
- (f) A listing of all permits or construction approvals received or applied for under any of the following programs:
 - (i) Hazardous waste management program under the Resource Conservation and Recovery Act,
 - (ii) Underground injection control program under the Safe Drinking Water Act,
 - (iii) National pollutant discharge elimination system program under the Clean Water Act,
 - (iv) Prevention of significant deterioration program under the Clean Air Act,
 - (v) Nonattainment program under the Clean Air Act,
 - (vi) National emission standards for hazardous pollutants, preconstruction approval under the Clean Air Act,
 - (vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act,
 - (viii) Dredge or fill permits under section 404 of the Clean Water Act, or
 - (ix) Other relevant environmental permits including state permits.

(2) Any information submitted to the division pursuant to this rule may be claimed as confidential by the applicant. Any such claim must be asserted at the time of submission by the applicant in writing or by stamping the words "CONFIDENTIAL BUSINESS INFORMATION" on each page containing such information. If no claim is made at the time of submission, the division may make the information available to the public without further notice.

(3) Claims of confidentiality for the following information will be denied:

- (a) The name and address of any permit applicant or permittee, or
- (b) Information that deals with existence, absence, or level of contamination in drinking water.

(4) The application for a permit shall contain the following technical information.

- (a) A tabulation of data reasonably available from public records or otherwise known to the applicant on all wells within the area of review that penetrate the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging, completion, and any additional relevant information the chief may require. In cases where the information would be repetitive and the wells are of similar age, type, and construction, the chief may elect to require data only on a representative number of wells;
- (b) Proposed operating data:
 - (i) Average and maximum daily rate and volume of fluid to be injected per well or per project when a manifold system is used;
 - (ii) Average and maximum injection pressure; and
 - (iii) Qualitative analysis and ranges in concentrations of all constituents of injected fluids. The applicant may request confidentiality if the information is proprietary. An applicant may, in

lieu of the ranges in concentrations, choose to submit maximum concentrations which shall not be exceeded. In such a case, the applicant shall retain records of the undisclosed concentrations and provide them upon request to the chief as part of any enforcement investigation.

- (c) Method used to obtain the information required by paragraphs (A)(9) and (A)(10) of rule 1501:9-7-08 of the Administrative Code;
- (d) Proposed stimulation program;
- (e) Proposed injection procedure;
- (f) Schematic or other appropriate drawings of the surface and subsurface details of the system;
- (g) Plans for meeting the monitoring requirements of paragraph (B) of rule 1501:9-7-09 of the Administrative Code;
- (h) Expected changes in pressure, native fluid displacement, and direction of movement of injection fluid;
- (i) Contingency plans to cope with all well failures or shut-ins so as to prevent the migration of the contaminating fluids into underground sources of drinking water;
- (j) A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug, or abandon any well as required by paragraph (I) of this rule; and
- (k) For wells within the area of review that penetrate the injection zone but are not properly completed or plugged, the corrective action proposed to be taken under rule 1501:9-7-11 of the Administrative Code.
- (l) A brief description of existing or proposed monument grids and surveying method to be used in obtaining yearly measurements of second order accuracy for the detection of ground surface movement. Describe monument types, construction, and emplacement.
- (5) Map. Each application for a permit shall be accompanied by a map or maps showing and containing the following information:
 - (a) The subject tract of land upon which the proposed solution mining project is to be located;
 - (b) The location and designation of all injection, withdrawal, and monitoring wells (if applicable) on the tract or tracts to be utilized in the solution mining project;
 - (c) All tracts or parts thereof situated within the area of review labeled with the names of:
 - (i) All owners of mineral rights if notice is given in accordance with paragraph (H)(1)(a) of this rule, or
 - (ii) All owners or operators of record utilizing the proposed formation or zone for solution mining of minerals, storage, or any other purpose if notice is given in accordance with paragraph (H)(1)(b) of this rule.
 - (d) The geographic location of all wells within the area of review that penetrate the zone proposed as the injection zone.
- (H) Notice of application, hearings, and order.
- (I) The applicant shall give notice of application for a permit for a solution mining project by the following method:

After the submittal of an application for a solution mining project to the chief, a determination will be made as to the completeness of the application. The applicant will be notified of this completeness. Notification of the application shall be published by the division in the weekly circular in accordance with section 1509.06 of the Revised Code. In addition, a legal notice shall be published by the applicant in a newspaper of general circulation in the area of review in which the proposed project is situated. A copy of the legal notice shall also be delivered to

all owners or operators of projects utilizing the same zone or formation. Proof of publication, publication date, and an oath as to the delivery to those entitled to personal notice shall be filed with the division within forty days after the complete application was received by the division. The legal notice shall contain at least the following:

- (a) The name and address of the applicant;
- (b) The location of the proposed project;
- (c) The geologic name and depth of the zone or formation to be utilized;
- (d) The maximum proposed injection pressure;
- (e) The proposed average daily volume of fluid to be injected and withdrawn;
- (f) The fact that further information can be obtained by contacting either the applicant or the division;
- (g) The address and phone number of the division; and
- (h) The fact that for full consideration all comments or objections must be received by the division, in writing, within thirty calendar days of the date of the published legal notice.

(2) Draft permits. Once an application is complete, the chief shall tentatively decide whether to prepare a draft permit, or to deny the application.

(a) If the chief tentatively decides to deny the permit application, he shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under paragraph (H)(2)(b) of this rule. If the chief's final decision is that the tentative decision to deny the permit application was incorrect, he shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (H)(2)(b) of this rule.

(b) If the chief decides to prepare a draft permit, he shall prepare a draft permit that contains all relevant information pertaining to permitting, operation, and monitoring of the proposed project.

(c) All draft permits prepared under this paragraph shall be based on the administrative record, publicly noticed, and made available for public comment.

(3) Fact sheet.

(a) A fact sheet shall be prepared for every draft permit that the chief finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The chief shall send this fact sheet to the applicant and to any other person upon request.

(b) The fact sheet shall include, when applicable:

- (i) A brief description of the type of facility or activity that is the subject of the draft permit;
- (ii) The type and quantity of fluids that are proposed to be injected and withdrawn;
- (iii) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;

(iv) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(v) A description of the procedures for reaching a final decision on the draft permit including:

(a) The beginning and ending dates of the comment period and the address where comments will be received;

(b) Procedures for requesting a hearing and the nature of that hearing; and

(c) Any other procedures by which the public may participate in the final decision; and

- (vi) Name and telephone number of a person to contact for additional information.
- (4) Comments and objections.
 - (a) Any person desiring to comment or to make an objection with reference to an application for a permit for a solution mining project shall file such comments or objections, in writing, with the "Underground Injection Control Section, Division of Mineral Resources Management, Fountain Square, Columbus, Ohio 43224." Such comments or objections shall be filed with the division no later than thirty calendar days after the delivery of notice or after the publication date in a newspaper of general circulation in the area of review.
 - (b) If no objections are received within the thirty-day period, the chief shall consider that no objection exists and shall issue a permit unless he finds that the application does not comply with the requirements of Chapter 1501:9-7 of the Administrative Code, or is in violation of law, or jeopardizes public health or safety.
 - (c) If an objection is received, the chief shall rule upon the validity of the objection. If in the opinion of the chief, such objection is not relevant to the issues of public health or safety, or is without substance, a permit shall be issued. If the chief considers any objection to be relevant to the issues of public health or safety, or to have substance, a hearing may be called within thirty days of receipt of the objection. Such hearing shall be held at the central office of the division or other location designated by the chief. Notice of the hearing shall be sent by the chief to the applicant and to the person who has filed the objection.
 - (d) If the chief finds, after hearing or upon consideration of the evidence and the application, that the following conditions have been met, the application shall be approved and a permit issued; otherwise, the chief shall reject the application:
 - (i) The application complies with the requirements of this rule,
 - (ii) The proposed solution mining project will not be in violation of law, and
 - (iii) The proposed solution mining project will not jeopardize public health or safety.
 - (e) Response to comments. At the time that any final permit decision is issued, the chief shall respond to comments. This response shall:
 - (i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
 - (ii) The response to comments shall be available to the public.
- (I) Bonding and transfer.
 - (1) Authorization, by rule or permit, to construct or operate a solution mining project shall not be granted unless and until proof of financial responsibility for the project has been received and approved by the division in accordance with section 1509.07 of the Revised Code.
 - (2) No assignment or transfer of a solution mining permit by the project owner shall relieve the owner of his obligations and liabilities under Chapter 1509. of the Revised Code and Chapter 1501:9-7 of the Administrative Code, unless the assignee or transferee has filed, and the division has approved proof of financial responsibility for said project.
- (J) Display of permit. No well for the purpose of solution mining shall be constructed until the owner has been granted a permit and unless the original permit, or a true copy thereof, is posted or displayed in a conspicuous and easily accessible place at the well site during construction.
- (K) Project identification. Prior to commencing solution mining operations authorized by the permit the following information shall be posted in a conspicuous place on the project site: owner's name, lease name, county, township, and emergency telephone number. In addition, the permit number shall be displayed in a conspicuous place on or near each wellhead.

(L) Expiration of permit. Drilling operations authorized by a permit issued pursuant to Chapter 1501:9-7 of the Administrative Code shall begin within twelve months after the date of issuance of such permit. If such operations have not started within twelve months, the permit shall expire. If drilling or conversion operations have started but are not completed within the twelve month period, operations shall continue with due diligence or the permit shall expire.

(M) Change of location procedure. The location of a solution mining well shall not be changed after the issuance of a permit unless the well owner first obtains approval from the division. If a solution mining well owner requests a change of location, he shall return the original permit and file an amended application and map for the proposed new location. Drilling operations shall not commence at a new location until a proper permit has been received and posted.

(N) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of the permit.

(O) Permit actions. The permit may be modified, revoked and reissued, or terminated for cause. Neither the filing of a request by the permittee for a permit modification, revocation and reissuance, or termination; nor a notification of planned changes or anticipated noncompliance, waive any permit condition.

(P) Inspection and entry. The permittee shall allow the chief or an authorized representative to:

(1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(3) Inspect, at any time, the facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under the permit; and

(4) Sample or monitor, at any time, for the purposes of assuring permit compliance or as otherwise authorized by Chapter 1501:9-7 of the Administrative Code, any substances or parameters at any location.

(Q) Duration of permits. Permits for solution mining projects shall be issued for a period up to the operating life of the facility. The chief shall review each permit at least once every five years to determine whether it should be modified, revoked and reissued, or terminated. The chief may issue any permit for a duration that is less than the full allowable term under this rule.

(R) Modification, revocation and reissuance, or termination of permits.

(1) When the chief receives any information, for example, inspects the facility, receives information submitted by the permittee as required by the permit, receives a request for modification or revocation and reissuance, or conducts a review of the permit file, he may determine whether or not one or more of the causes listed in paragraph (R)(1)(a) or (R)(1)(b) of this rule for modification or revocation and reissuance or both exist. If cause exists, the chief may modify or revoke and reissue the permit accordingly subject to the limitations of paragraph (R)(1)(c) of this rule and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision, and the permit is reissued for a new term. If cause does not exist, the chief shall not modify or revoke and

reissue the permit. If a permit modification satisfies the criteria for minor modifications contained in paragraph (R)(1)(c) of this rule, the permit may be modified without a draft permit or public review. Otherwise a draft permit must be prepared.

(a) Causes for modification. The following may be causes for revocation and reissuance as well as modification.

(i) Alterations. There are material and substantial alterations or additions to the permitted facility or activity that occurred after permit issuance that justify the application of permit conditions that are different or absent in the existing permit.

(ii) Information. The chief has received information indicating that cumulative effects on the environment are unacceptable.

(iii) New rules. The standards or rules on which the permit was based have been changed by promulgation of amended standards or rules or by judicial decision after the permit was issued.

(iv) Compliance schedules. The chief determines that good cause exists for modification of a compliance schedule such as natural disaster, strike, materials shortage, or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

(b) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, to revoke and reissue a permit:

(i) Cause exists for termination, and the chief determines that modification or revocation and reissuance is appropriate.

(ii) The chief has received notification, as required in the permit, of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the date of an automatic transfer but will not be revoked and reissued after the date of the transfer except upon the request of the new permittee.

(c) Facility siting. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists that was unknown at the time of permit issuance.

(2) Minor modifications of permits. Upon the consent of the permittee, the chief may modify a permit to make the following corrections or allowances for changes in the permitted activity without following the procedures in paragraph (R)(1) of this rule. Minor modifications may only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance provided the new date is not more than one hundred twenty days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(d) Allow for a change in the ownership or operational control of a facility provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the chief;

(e) Change quantities or types of fluids injected if, in the judgment of the chief, such change would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classifications;

(f) Change construction requirements approved by the chief provided that any such alteration complies with the requirements of Chapter 1501:9-7 of the Administrative Code;

- (g) Amend a plugging and abandonment plan;
 - (h) Change the location of a proposed solution mining well provided the area of review is not affected; or
 - (i) Authorize a change from injection to withdrawal or withdrawal to injection.
- (3) Termination of permits. The chief may terminate a permit during its term or deny a permit renewal application for the following causes:
- (a) Noncompliance by the permittee with any condition of the permit;
 - (b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or
 - (c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.
- (4) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the chief's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in paragraph (R) of this rule. All requests shall be in writing and shall contain facts or reasons supporting the request.
- (5) If the chief decides the request is not justified, he shall send the requesting party a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.
- (6) If the chief tentatively decides to modify or revoke and reissue a permit under paragraph (R) of this rule, he shall prepare a draft permit incorporating the proposed changes. The chief may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the chief shall require the submission of a new application. In a permit modification under paragraph (R) of this rule only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under paragraph (R) of this rule the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued. Minor modifications contained in paragraph (R)(2) of this rule are not subject to the requirements of paragraph (R)(6) of this rule. If the chief tentatively decides to terminate a permit under paragraph (R)(3) of this rule, he shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit and follows the same procedures as any draft permit.
- (S) Additional duties of permittee.
- (1) Duty to comply. The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the appropriate rule and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit application or renewal application.
 - (2) Duty to reapply. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit.
 - (3) Duty to halt or reduce activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(4) Duty to mitigate. The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit.

(5) Duty to provide information. The permittee shall furnish, within a reasonable time specified by the chief, any information that the chief may request to determine whether cause exists for modifying, revoking and reissuing, terminating the permit or to determine compliance with the permit. The permittee shall also furnish to the chief, upon request, copies of required records.

Eff 11-26-82; 4-18-84 (Emer.); 7-2-84; 4-15-04

Rule promulgated under: RC 119.03

Rule authorized by: RC 1509.221

Rule amplifies: RC 1509.221

RC 119.032 review dates: 9/16/03, 1/27/04, 4/15/09

Ohio Adm.Code 1501:9-7-08 Construction of solution mining projects.

(A) The following construction, testing, and monitoring requirements shall apply to any well permitted and drilled after the effective date:

(1) Surface casing shall be free of apparent defects, set at least fifty feet below the deepest underground source of drinking water, and sealed by circulating cement to the surface under the supervision of the division. In the event cement fails to circulate to the surface, the division may approve a remedial course of action.

(2) Intermediate casing or casings, if required, shall be set and sealed as approved by the chief. Centralizers may be required.

(3) The production or long string of casing shall be set and cemented as approved by the chief. Centralizers may be required.

(4) Tubing may be required for use in injection and withdrawal operations. The operator shall furnish to the chief evidence that the casing will not be exposed to undue corrosion.

Installation of a packer on the tubing may be required.

(5) Hole diameters, casing weights and diameters, and cementing procedures shall be subject to approval by the chief.

(6) To verify the quantity of cement used and quality of the cement bond, a cement bond log and/or other logs required by the chief, shall be run in addition to the cementing records.

(7) Each solution mining project owner or his agent shall give the appropriate division inspector reasonable notice in advance of cementing, placing and removing of casing, installation of tubing and packer, and initial operation. A division office shall be notified when the appropriate inspector cannot be contacted. Said work shall be done pursuant to the instructions of a representative of the division in accordance with Chapter 1509. of the Revised Code and Chapter 1501:9-7 of the Administrative Code.

(8) Appropriate logs and other tests shall be conducted for new solution mining wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the chief. The logs and tests appropriate to each type of solution mining well shall be determined based on the intended function, depth, construction, and other characteristics of the well; availability of similar data in the area of the drilling site; and the need for additional information that may arise as the construction of the well progresses.

- (9) For new solution mining projects, the following information concerning the injection zone shall be determined or calculated when the injection zone is a water bearing formation:
- (a) Fluid pressure;
 - (b) Fracture pressure; and
 - (c) Physical and chemical characteristics of the formation fluids.
- (10) When the injection formation is not a water bearing formation, the information in paragraph (A)(9)(b) of this rule must be submitted.
- (11) When the injection wells penetrate an underground source of drinking water in an area subject to subsidence or catastrophic collapse, an adequate number of monitoring wells shall be completed into the underground source of drinking water to detect any movement of injected fluids, process by-products, or formation fluids into the underground source of drinking water. The monitoring wells shall be located outside the physical influence of the subsidence or catastrophic collapse.
- (12) In determining the number, location, construction, and frequency of monitoring of the monitoring wells, the following criteria shall be considered:
- (a) Population relying on the underground source of drinking water affected or potentially affected by the injection operations;
 - (b) Proximity of the injection operation to points of withdrawal of drinking water;
 - (c) Local geology and hydrology;
 - (d) Operating pressures and whether a negative pressure gradient is being maintained;
 - (e) Nature and volume of the injected fluid, the formation water, and the process by-products; and
 - (f) Injection well density.
- (B) The following requirements shall apply to solution mining wells permitted or drilled prior to the effective date of these rules:
- (1) Casing shall be set below the deepest underground source of drinking water and cemented so as to protect the deepest underground source of drinking water.
 - (2) The production or longstring of casing shall be set and cemented as approved by the chief so as to prevent upward migration of fluids.
 - (3) To verify the quantity of cement used and quality of the cement bond, a cement bond log and/or other logs required by the chief, shall be run in addition to the cementing records.
 - (4) Each solution mining project owner or his agent shall give the appropriate division inspector reasonable notice in advance of cementing, placing and removing of casing, installation of tubing and packer, and initial operation. A division office shall be notified when the appropriate inspector cannot be contacted. Said work shall be done pursuant to the instructions of a representative of the division in accordance with Chapter 1509. of the Revised Code and Chapter 1501:9-7 of the Administrative Code.
 - (5) The chief may require other logs or tests to be conducted in order to verify construction of a solution mining well.
 - (6) When the injection wells penetrate an underground source of drinking water in an area subject to subsidence or catastrophic collapse, an adequate number of monitoring wells shall be completed into the underground source of drinking water to detect any movement of injected fluids, process by-products, or formation fluids into the underground source of drinking water. The monitoring wells shall be located outside the physical influence of the subsidence or catastrophic collapse.

- (7) In determining the number, location, construction, and frequency of monitoring of the monitoring wells, the following criteria shall be considered:
- (a) Population relying on the underground source of drinking water affected or potentially affected by the injection operations;
 - (b) Proximity of the injection operation to points of withdrawal of drinking water;
 - (c) Local geology and hydrology;
 - (d) Operating pressures and whether a negative pressure gradient is being maintained;
 - (e) Nature and volume of the injected fluid, the formation water, and the process by-products; and
 - (f) Injection well density.

Eff 11-26-82; 4-15-04

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Rule amplifies: RC 1509.221

RC 119.032 review dates: 9/16/03, 1/27/04, 4/15/09

Ohio Adm.Code 1501:9-9-05 Producing operations.

1501:9-9-05 with the exception of 1501:9-9-05 (A)(10) and (D) applies to all wells completed after the effective date of 1501:9-9-05. 1501:9-9-05 (E) applies to all urbanized area wells where the permit was issued after the effective date of 1501:9-9-05 (E) with the exception where the chief finds it necessary for protection of public health or safety or to prevent damage to natural resources, as provided by ORC 1509.23, the chief may apply any portion of 1501:9-9-05 (E) to any well in an urbanized area. If additional tanks are added to a tank battery established prior to the effective date of 1501:9-9-05 (E), the placement of the new tank (s) must comply with 1501:9-9-05 (E).

(A) Surface Equipment:

- (1) All wells must be equipped so that no oil, gas or condensate is allowed to escape with the exception of gas flares as per 1501:9-9-05 (B).
- (2) Oil production tanks shall be set a minimum of fifty (50) feet from the traveled portion of a public road and a minimum of one hundred (100) feet from existing inhabited structures and a minimum of three (3) feet between tanks and a minimum of fifty (50) feet from any well.
- (3) Indirect fire heaters shall be set a minimum of fifty (50) feet from the well and a minimum of fifty (50) feet from oil production tanks and a minimum of one hundred (100) feet from existing inhabited structures. Direct fire heaters, excluding under tank and internal tank heating, shall be a minimum of fifty (50) feet from the well and a minimum of fifty (50) feet from oil production tanks and a minimum of one hundred (100) feet from existing inhabited structures and a minimum of fifty (50) feet from mechanical separators.
- (4) Portable heaters may be closer than fifty (50) feet to the oil production tanks providing an attendant is on hand and a chemical fire extinguisher in good working condition is provided.
- (5) Mechanical separators shall be set a minimum of fifty (50) feet from the well, a minimum of ten (10) feet from oil production tanks and a minimum of one hundred (100) feet from existing inhabited structures.

(6) Under tank oil and internal tank heating are prohibited while oil is being produced into the same tank.

(7) All oil production tanks must be located in a position so that any escaping oil cannot drain onto public roads or towards existing inhabited structures or other areas which could cause a safety hazard.

(8) All surface equipment must be pressure rated to withstand operating pressures to which it is subjected.

(9) In order to protect life, health, and property the Chief may require where a clear and present hazard exists that any producing equipment at the well-head and related storage tanks be protected by an earthen dike or earthen pit which shall have a capacity sufficient to contain any substances resulting, obtained, or produced in connection with the operation of the related oil or gas well. The dike or pit shall be maintained for the purpose for which it was constructed, and the reservoir within shall be kept reasonably free of water and oil.

(10) All producing leases shall be legibly identified in a conspicuous place on or near the well-head or the storage tank(s) as to owner, lease name, well number, permit number where available, county, and an emergency telephone number. If multiple wells are being produced into the common tank(s) each well-head shall be identified as to owner, permit number where available, well number and lease name. Any change of ownership shall be shown at the well-head or storage tank(s) not later than sixty days after the date of the assignment or transfer.

(B) All gas vented to the atmosphere must be flared, with the exception of gas released by a properly functioning relief device and gas released by controlled venting for testing, blowing down and cleaning out wells. Flares must be a minimum of one hundred (100) feet from the well, a minimum of one hundred (100) feet from oil production tanks and all other surface equipment, and one hundred (100) feet from existing inhabited structures and in a position so that any escaping oil or condensate cannot drain onto public roads or towards existing inhabited structures or other areas which could cause a safety hazard.

(C) Pits, pumps and flares must be safely fenced if within one hundred fifty (150) feet of an existing inhabited structure and if in the opinion of the Chief, such fence is necessary to protect life and limb.

(D) In order to protect life, health, and property the Chief may require that valves on storage facilities shall be kept secured by locks, bull plugs, or other similar devices in such a manner as to discourage vandalism. When the Chief determines that valves on storage facilities should be secured, he shall so notify the owner(s) and include the reason why securing said valves will protect life, health, and property.

(E) Urbanized Areas:

(1) Each identification sign, in lieu of the identification required under 1501:9-9-05(A), posted by the owner or their authorized representative shall include, at a minimum, the following information in 2 inch or larger letters:

(a) Well owners name, address, and telephone number.

(b) County, Township, name of Village - City - Town (where applicable).

- (c) Property street address (or nearest address to the access road entrance. If "nearest" is used, it should be reflected on sign).
 - (d) State Permit Number, Lease Name, and Well Number.
 - (e) Local emergency response phone number and company emergency phone number.
 - (f) Where a gate exists on the access road, the identification sign shall be placed on the gate as well as the tank battery.
 - (g) The identification shall be posted securely on the outside of the fence for the wellhead and tank battery fence in a conspicuous location.
 - (h) The identification shall be on a metal or wooden sign with the sign maintained to remain legible at all times. The sign may be placed on a post securely placed in the ground at the gate and/or adjacent to the fence at the wellhead or tank battery in lieu of on the fence/gate.
 - (i) Danger, Keep Out (or similar wording) and no smoking signs shall be securely attached to each side of the fencing used to screen the tank battery and wellhead.
- (2) Prior to placing the well in production, the owner shall install a fence around the wellhead and tank battery/separator and associated production equipment. The fence shall be a chain link fence no less than eight (8) feet in height, nine (9) gauge and topped with three (3) strands of barbed wire, if necessary. In lieu of chain link fence, a cedar board on board (or similar material) fence, eight (8) feet in height may be used. All fence shall be securely anchored in the ground.
- (a) The fence shall be placed no closer than four (4) feet to the wellhead or any portion of the tank battery/separator. The wellhead may be "caged" or vaulted. The cage or vault cover shall provide for easy removal for well servicing and/or emergency access. Clearance between the cage or vault cover or sides and the wellhead should be sufficient to maintain safe operations.
 - (b) The gate to the wellhead and tank battery/separator shall be no less than four (4) feet in width and lockable. Where there are two or more tanks in a tank battery, two gates on opposite sides of the facility shall be placed.
 - (c) Where a lease/access road to the wellhead and/or tank battery extends a significant distance from the ingress access point a locked gate made of tubular steel or material similar in strength shall be placed near the entrance to the access road restricting access to the well site. Keys or the combination to the lock shall be provided to the state inspector or local emergency response officials on request.
 - (d) The well owner may request in writing to the chief, a variance to placing a fence and/or to the specifications for fence placement around the wellhead, tank battery/separator and associated equipment. In the future where a variance has been granted or if site conditions warrant, the chief may require the placement of a fence.
- (3) All gates, electrical boxes and brine/oil pick-up lines shall be locked unless in use, under repair, or company staff or representatives are on-site. Keys or combinations to the locks shall be provided to the state inspector and local emergency response staff on request.
- (4) Tanks:
- (a) Tanks shall not be buried.

- (b) Activated charcoal filters shall be installed on the vent stack and filters replaced as needed.
- (c) Vent stacks shall have a functioning low-pressure relief valve.
- (d) Tank hatch lids shall have a functioning seal and the hatch shall be secured at all times the well owner or his representative is not on-site.
- (e) Each oil storage tank shall have a functioning lightning arrestor.
- (f) Low profile tanks are recommended and the tanks shall not extend more than three (3) feet above the highest portion of the fence.
- (g) Storage tanks shall not be equipped with glass or plastic sitting tubes.
- (h) The tank battery, separator and associated equipment may not be placed closer than seventy-five (75) feet from any property not part of the drilling unit unless the property owner and resident of the property grants approval in writing of any proposed location closer than seventy-five (75) feet, or the chief waives the seventy-five (75) foot set-back requirements.
- (i) Where more than six (6) tanks (total capacity exceeding 700 bbl) are to be located nearer than seventy-five (75) feet to property not included in the drilling unit, the adjacent property owner and resident of the property shall approve the location of the tanks in writing including a reference to the total number of tanks or, the chief may waive the seventy-five (75) foot set-back requirement.

(5) Operations and maintenance:

- (a) Servicing and maintenance of the well shall occur between the hours of 7:00 a.m. and 7:00 p.m. (emergency repairs may occur at any time).
- (b) Equipment not used in the production of the well shall not be stored at the well site. Replacement equipment or replaced equipment shall not be stored on-site for more than thirty (30) days.
- (c) Equipment and vegetation shall be maintained consistent with reasonably prudent operations, including being free of refuse, in order to assure protection of public health or safety or to prevent damage to natural resources.

(6) Landscaping

- (a) All landscaping placed to screen the tank battery or wellhead shall be placed to permit reasonable access for well servicing and emergency access.
- (b) Evergreen or similar stock no less than six (6) feet in height placed no more than ten (10) feet on center shall be placed around the tank battery and wellhead fence.
- (c) The chief, upon request by the well owner, may grant a variance on the placement of screening around the tank battery and/or wellhead.

Effective: 08/11/2005

R.C. 119.032 review dates: 05/05/2005 and 08/11/2010

Promulgated Under: 119.03

Statutory Authority: 1509.02, 1509.03, 1509.23

Rule Amplifies: 1509.02, 1509.03, 1509.23

Prior Effective Dates: 1/3/69, 12/29/03



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AN ACT

To amend sections 303.211, 519.211, 1509.02, 1509.03, 1509.06, 1509.23, 1509.31, and 1510.11 and to repeal section 1509.39 of the Revised Code to declare that the Division of Mineral Resources Management in the Department of Natural Resources has exclusive authority to regulate the permitting, location, and spacing of oil and gas wells in the state, and to revise the laws governing the drilling of oil and gas and the oil and natural gas marketing program.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 303.211, 519.211, 1509.02, 1509.03, 1509.06, 1509.23, 1509.31, and 1510.11 of the Revised Code be amended to read as follows:

Sec. 303.211. (A) Except as otherwise provided in division (B) or (C) of this section, sections 303.01 to 303.25 of the Revised Code do not confer any power on any board of county commissioners or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad for the operation of its business.

(B)(1) As used in this division, "telecommunications tower" means any free-standing structure, or any structure to be attached to a building or other structure, that meets all of the following criteria:

- (a) The free-standing or attached structure is proposed to be constructed on or after October 31, 1996.
- (b) The free-standing or attached structure is proposed to be owned or principally used by a public utility engaged in the provision of telecommunications services.
- (c) The free-standing or attached structure is proposed to be located in an unincorporated area of a township, in an area zoned for residential use.
- (d)(i) The free-standing structure is proposed to top at a height that is greater than either the maximum allowable height of residential structures within the zoned area as set forth in the applicable zoning regulations, or the maximum allowable height of such a free-standing structure as set forth in any applicable zoning regulations in effect immediately prior to October 31, 1996, or as those regulations subsequently are amended.
- (ii) The attached structure is proposed to top at a height that is greater than either the height of the building or other structure to which it is to be attached, or the maximum allowable height of such an attached structure as set forth in any applicable zoning regulations in effect immediately prior to October 31, 1996, or as those regulations subsequently are amended.
- (e) The free-standing or attached structure is proposed to have attached to it radio frequency transmission or reception equipment.

(2) Sections 303.01 to 303.25 of the Revised Code confer power on a board of county commissioners or board of zoning appeals with respect to the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a telecommunications tower, but not with respect to the maintenance or use of such a tower or any change or alteration that would not substantially increase the tower's height. However, the power so conferred shall apply to a particular telecommunications tower only upon the provision of a notice, in accordance with division (B) (4)(a) of this section, to the person proposing to construct the tower.

(3) Any person who plans to construct a telecommunications tower in an area subject to county zoning regulations shall provide both of the following by certified mail:

- (a) Written notice to the board of township trustees of the township in which the tower is proposed to be constructed and to each owner of property, as shown on the county auditor's current tax list, whose land is

contiguous to or directly across a street or roadway from the property on which the tower is proposed to be constructed, stating all of the following in clear and concise language:

(i) The person's intent to construct the tower;

(ii) A description of the property sufficient to identify the proposed location;

(iii) That, no later than fifteen days after the date of mailing of the notice, such board of township trustees or any such property owner may give written notice to the board of county commissioners requesting that sections 303.01 to 303.25 of the Revised Code apply to the proposed location of the tower as provided under division (B)(4)(a) of this section.

If the notice to the board of township trustees or to a property owner is returned unclaimed or refused, the person shall mail the notice by regular mail. The failure of delivery of the notice does not invalidate the notice.

(b) Written notice to the board of county commissioners of the information specified in divisions (B)(3)(a)(i) and (ii) of this section. The notice to the board also shall include verification that the person has complied with division (B)(3)(a) of this section.

(4)(a) If the board of county commissioners receives notice from the board of township trustees or a property owner under division (B)(3)(a)(iii) of this section within the time specified in that division or if a member of the board of county commissioners makes an objection to the proposed location of the telecommunications tower within fifteen days after the date of mailing of the notice sent under division (B)(3)(b) of this section, the board of county commissioners shall send the person proposing to construct the tower written notice that the tower is subject to the power conferred by and in accordance with division (B)(2) of this section. The notice shall be sent no later than five days after the earlier of the date the board first receives such a notice from the board of township trustees or a property owner or the date upon which a member of the board of county commissioners makes an objection. Upon the date of mailing of the notice to the person, sections 303.01 to 303.25 of the Revised Code shall apply to the tower.

(b) If the board of county commissioners receives no notice under division (B)(3)(a)(iii) of this section within the time prescribed by that division or no board member has an objection as provided under division (B)(4)(a) of this section within the time prescribed by that division, division (A) of this section shall apply to the tower without exception.

(C) Sections 303.01 to 303.25 of the Revised Code confer power on a board of county commissioners or board of zoning appeals with respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of a public utility engaged in the business of transporting persons or property, or both, or providing or furnishing such transportation service, over any public street, road, or highway in this state, and with respect to the use of land by any such public utility for the operation of its business, to the extent that any exercise of such power is reasonable and not inconsistent with Chapters 4901., 4903., 4905., 4909., 4921., and 4923. of the Revised Code. However, this division confers no power on a board of county commissioners or board of zoning appeals with respect to a building or structure of, or the use of land by, a person engaged in the transportation of farm supplies to the farm or farm products from farm to market or to food fabricating plants.

(D) Sections 303.01 to 303.25 of the Revised Code confer no power on any county rural zoning commission, board of county commissioners, or board of zoning appeals to prohibit the sale or use of alcoholic beverages in areas where the establishment and operation of any retail business, hotel, lunchroom, or restaurant is permitted.

~~(E) Sections 303.01 to 303.25 of the Revised Code do not confer any power on any county rural zoning commission, board of county commissioners, or board of zoning appeals to prohibit the use of any land owned or leased by an industrial firm for the conduct of oil or natural gas well drilling or production activities or the location of associated facilities or equipment when such oil or natural gas obtained by the industrial firm is used for the operation of its own plants.~~

~~(F)(1) Any person who plans to construct a telecommunications tower within one hundred feet of a residential dwelling shall provide a written notice to the owner of the residential dwelling and to the person occupying the residence, if that person is not the owner of the residence, stating in clear and concise language the person's intent to construct the tower and a description of the property sufficient to identify the proposed location. The notice shall be sent by certified mail. If the notice is returned unclaimed or refused, the person shall mail the notice by regular mail. The failure of delivery does not invalidate the notice.~~

(2) As used in division ~~(F)~~(E) of this section:

(a) "Residential dwelling" means a building used or intended to be used as a personal residence by the owner, part-time owner, or lessee of the building, or any person authorized by such a person to use the building as a personal residence.

(b) "Telecommunications tower" has the same meaning as in division (B)(1) of this section, except that the proposed location of the free-standing or attached structure may be an area other than an unincorporated area of a township, in an area zoned for residential use.

Sec. 519.211. (A) Except as otherwise provided in division (B) or (C) of this section, sections 519.02 to 519.25 of the Revised Code confer no power on any board of township trustees or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad, for the operation of its business.

(B)(1) As used in this division, "telecommunications tower" means any free-standing structure, or any structure to be attached to a building or other structure, that meets all of the following criteria:

- (a) The free-standing or attached structure is proposed to be constructed on or after October 31, 1996.
- (b) The free-standing or attached structure is proposed to be owned or principally used by a public utility engaged in the provision of telecommunications services.
- (c) The free-standing or attached structure is proposed to be located in an unincorporated area of a township, in an area zoned for residential use.
- (d)(i) The free-standing structure is proposed to top at a height that is greater than either the maximum allowable height of residential structures within the zoned area as set forth in the applicable zoning regulations, or the maximum allowable height of such a free-standing structure as set forth in any applicable zoning regulations in effect immediately prior to October 31, 1996, or as those regulations subsequently are amended.
- (ii) The attached structure is proposed to top at a height that is greater than either the height of the building or other structure to which it is to be attached, or the maximum allowable height of such an attached structure as set forth in any applicable zoning regulations in effect immediately prior to October 31, 1996, or as those regulations subsequently are amended.
- (e) The free-standing or attached structure is proposed to have attached to it radio frequency transmission or reception equipment.

(2) Sections 519.02 to 519.25 of the Revised Code confer power on a board of township trustees or board of zoning appeals with respect to the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a telecommunications tower, but not with respect to the maintenance or use of such a tower or any change or alteration that would not substantially increase the tower's height. However, the power so conferred shall apply to a particular telecommunications tower only upon the provision of a notice, in accordance with division (B)(4)(a) of this section, to the person proposing to construct the tower.

(3) Any person who plans to construct a telecommunications tower in an area subject to township zoning regulations shall provide both of the following by certified mail:

(a) Written notice to each owner of property, as shown on the county auditor's current tax list, whose land is contiguous to or directly across a street or roadway from the property on which the tower is proposed to be constructed, stating all of the following in clear and concise language:

- (i) The person's intent to construct the tower;
- (ii) A description of the property sufficient to identify the proposed location;

(iii) That, no later than fifteen days after the date of mailing of the notice, any such property owner may give written notice to the board of township trustees requesting that sections 519.02 to 519.25 of the Revised Code apply to the proposed location of the tower as provided under division (B)(4)(a) of this section.

If the notice to a property owner is returned unclaimed or refused, the person shall mail the notice by regular mail. The failure of delivery of the notice does not invalidate the notice.

(b) Written notice to the board of township trustees of the information specified in divisions (B)(3)(a)(i) and (ii) of this section. The notice to the board also shall include verification that the person has complied with division (B)(3)(a) of this section.

(4)(a) If the board of township trustees receives notice from a property owner under division (B)(3)(a)(iii) of this section within the time specified in that division or if a board member makes an objection to the proposed location of the telecommunications tower within fifteen days after the date of mailing of the notice sent under division (B)(3)(b) of this section, the board shall request that the clerk of the township send the person proposing to construct the tower written notice that the tower is subject to the power conferred by and in accordance with division (B)(2) of this section. The notice shall be sent no later than five days after the earlier of the date the board first receives such a notice from a property owner or the date upon which a board member makes an objection. Upon the date of mailing of the notice to the person, sections 519.02 to 519.25 of the Revised Code shall apply to the tower.

(b) If the board of township trustees receives no notice under division (B)(3)(a)(iii) of this section within the time prescribed by that division or no board member has an objection as provided under division (B)(4)(a) of this section within the time prescribed by that division, division (A) of this section shall apply to the tower without exception.

(C) Sections 519.02 to 519.25 of the Revised Code confer power on a board of township trustees or board of zoning appeals with respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of a public utility engaged in the business of transporting persons or property, or both, or providing or furnishing such transportation service, over any public street, road, or highway in this state, and with respect to the use of land by any such public utility for the operation of its business, to the extent that any exercise of such power is reasonable and not inconsistent with Chapters 4901., 4903., 4905., 4909., 4921., and 4923. of the Revised Code. However, this division confers no power on a board of township trustees or board of zoning appeals with respect to a building or structure of, or the use of land by, a person engaged in the transportation of farm supplies to the farm or farm products from farm to market or to food fabricating plants.

(D) Sections 519.02 to 519.25 of the Revised Code confer no power on any township zoning commission, board of

township trustees, or board of zoning appeals to prohibit the sale or use of alcoholic beverages in areas where the establishment and operation of any retail business, hotel, lunchroom, or restaurant is permitted.

(E) Sections 519.02 to 519.25 of the Revised Code do not confer any power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the use of any land owned or leased by an industrial firm for the conduct of oil or natural gas well drilling or production activities or the location of associated facilities or equipment when such oil or natural gas obtained by the industrial firm is used for the operation of its own plants:

(F)(1) Any person who plans to construct a telecommunications tower within one hundred feet of a residential dwelling shall provide a written notice to the owner of the residential dwelling and to the person occupying the residence, if that person is not the owner of the residence stating in clear and concise language the person's intent to construct the tower and a description of the property sufficient to identify the proposed location. The notice shall be sent by certified mail. If the notice is returned unclaimed or refused, the person shall mail the notice by regular mail. The failure of delivery does not invalidate the notice.

(2) As used in division (F)(E) of this section:

(a) "Residential dwelling" means a building used or intended to be used as a personal residence by the owner, part-time owner, or lessee of the building, or any person authorized by such a person to use the building as a personal residence.

(b) "Telecommunications tower" has the same meaning as in division (B)(1) of this section, except that the proposed location of the free-standing or attached structure may be an area other than an unincorporated area of a township, in an area zoned for residential use.

Sec. 1509.02. There is hereby created in the department of natural resources the division of mineral resources management, which shall be administered by the chief of the division of mineral resources management. The division has sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells within the state. The regulation of oil and gas activities is a matter of general statewide interest that requires uniform statewide regulation, and this chapter and rules adopted under it constitute a comprehensive plan with respect to all aspects of the locating, drilling, and operating of oil and gas wells within this state, including site restoration and disposal of wastes from those wells. Nothing in this section affects the authority granted to the director of transportation and local authorities in section 4513.34 of the Revised Code.

The chief shall not hold any other public office, nor shall the chief be engaged in any occupation or business that might interfere with or be inconsistent with the duties as chief.

All moneys collected by the chief pursuant to sections 1509.06, 1509.061, 1509.071, 1509.13, 1509.22, and 1509.222, ninety per cent of moneys received by the treasurer of state from the tax levied in divisions (A)(5) and (6) of section 5749.02, all civil penalties paid under section 1509.33, and, notwithstanding any section of the Revised Code relating to the distribution or crediting of fines for violations of the Revised Code, all fines imposed under divisions (A) and (B) of section 1509.99 of the Revised Code and fines imposed under divisions (C) and (D) of section 1509.99 of the Revised Code for all violations prosecuted by the attorney general and for violations prosecuted by prosecuting attorneys that do not involve the transportation of brine by vehicle shall be deposited into the state treasury to the credit of the oil and gas well fund, which is hereby created. Fines imposed under divisions (C) and (D) of section 1509.99 of the Revised Code for violations prosecuted by prosecuting attorneys that involve the transportation of brine by vehicle shall be paid to the county treasury of the county where the violation occurred.

The fund shall be used for the purposes enumerated in division (B) of section 1509.071 of the Revised Code, for the expenses of the division associated with the administration of the "Natural Gas Policy Act of 1978," 92 Stat. 3358, 15 U.S.C. 3301, and for the division's other functions. The expenses of the division in excess of the moneys available in the fund shall be paid from general revenue fund appropriations to the department.

Sec. 1509.03. The chief of the division of mineral resources management shall adopt, rescind, and amend, in accordance with Chapter 119. of the Revised Code, rules for the administration, implementation, and enforcement of this chapter. No The rules shall include an identification of the subjects that the chief shall address when attaching terms and conditions to a permit with respect to a well and production facilities of a well that are located within a municipal corporation or within a township that has a population of more than fifteen thousand in the most recent federal decennial census prior to the issuance of the permit. The subjects shall include all of the following:

- (A) Safety concerning the drilling or operation of a well;
- (B) Protection of the public and private water supply;
- (C) Location of surface facilities of a well;
- (D) Fencing and screening of surface facilities of a well;
- (E) Containment and disposal of drilling and production wastes;
- (F) Construction of access roads for purposes of the drilling and operation of a well.

No person shall violate any rule of the chief adopted under this chapter.

Any order issuing, denying, or modifying a permit or notices required to be made by the chief pursuant to this chapter shall be made in compliance with Chapter 119. of the Revised Code, except that personal service may be

used in lieu of service by mail. Every order issuing, denying, or modifying a permit under this chapter and described as such shall be considered an adjudication order for purposes of Chapter 119. of the Revised Code.

Where notice to the owners is required by this chapter, the notice shall be given as prescribed by a rule adopted by the chief to govern the giving of notices. Such rule shall provide for notice by publication except in those cases where other types of notice are necessary in order to meet the requirements of the law.

The chief or the chief's authorized representative may at any time enter upon lands, public or private, for the purpose of administration or enforcement of this chapter, the rules adopted or orders made thereunder, or terms or conditions of permits or registration certificates issued thereunder and may examine and copy records pertaining to the drilling, conversion, or operation of a well for injection of fluids and logs required by division (C) of section 1509.223 of the Revised Code. No person shall prevent or hinder the chief or the chief's authorized representative in the performance of official duties. If entry is prevented or hindered, the chief or the chief's authorized representative may apply for, and the court of common pleas may issue, an appropriate inspection warrant necessary to achieve the purposes of this chapter within the court's territorial jurisdiction.

The chief may issue orders to enforce this chapter, rules adopted thereunder, and terms or conditions of permits issued thereunder. Any such order shall be considered an adjudication order for the purposes of Chapter 119. of the Revised Code. No person shall violate any order of the chief issued under this chapter. No person shall violate a term or condition of a permit or registration certificate issued under this chapter.

Orders of the chief denying, suspending, or revoking a registration certificate; approving or denying approval of an application for revision of a registered transporter's plan for disposal; or to implement, administer, or enforce division (A) of section 1509.224 and sections 1509.22, 1509.222, 1509.223, 1509.225, and 1509.226 of the Revised Code pertaining to the transportation of brine by vehicle and the disposal of brine so transported are not adjudication orders for purposes of Chapter 119. of the Revised Code. The chief shall issue such orders under division (A) or (B) of section 1509.224 of the Revised Code, as appropriate.

Sec. 1509.06. 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 shall be filed with the chief of the division of mineral resources management upon such form as the chief prescribes and shall contain each of the following that is applicable:

- (A) The name and address of the owner and, if a corporation, the name and address of the statutory agent;
- (B) The signature of the owner or the owner's authorized agent. When an authorized agent signs an application, it shall be accompanied by a certified copy of the appointment as such agent.
- (C) The names and addresses of all persons holding the royalty interest in the tract upon which the well is located or is to be drilled or within a proposed drilling unit;
- (D) The location of the tract or drilling unit on which the well is located or is to be drilled identified by section or lot number, city, village, township, and county;
- (E) Designation of the well by name and number;
- (F) The geological formation to be tested or used and the proposed total depth of the well;
- (G) The type of drilling equipment to be used;
- (H) If the well is for the injection of a liquid, identity of the geological formation to be used as the injection zone and the composition of the liquid to be injected;
- (I) A sworn statement that all requirements of any municipal corporation, county, or township having jurisdiction over any activity related to the drilling or operation of an oil or gas well that have been filed with the division of mineral resources management and are in effect at the time the application is filed, including, but not limited to, zoning ordinances and resolutions and the requirements of section 4513.34 of the Revised Code, will be complied with until abandonment of the well; for an application for a permit to drill a new well, a sworn statement that the applicant has provided notice of the application to the owner of each occupied dwelling unit that is located within five hundred feet of the surface location of the well if the surface location will be less than five hundred feet from the boundary of the drilling unit and more than fifteen occupied dwelling units are located less than five hundred 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 notice shall contain a statement that an application has been filed with the division of mineral resources management, identify the name of the applicant and the proposed well location, include the name and address of the division, and contain a statement that comments regarding the application may be sent to the division. The notice may be provided by hand delivery or regular mail. The identity of the owners of occupied dwelling units shall 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.
- (J) A plan for restoration of the land surface disturbed by drilling operations. The plan shall provide for compliance with the restoration requirements of division (A) of section 1509.072 of the Revised Code and any rules adopted by the chief pertaining to that restoration.
- (K) A description by name or number of the county, township, and municipal corporation roads, streets, and highways that the applicant anticipates will be used for access to and egress from the well site;
- (L) Such other relevant information as the chief prescribes by rule.

Each application shall be accompanied by a map, on a scale not smaller than four hundred feet to the inch, prepared by an Ohio registered surveyor, showing the location of the well and containing such other data as may be prescribed by the chief. If the well is or is to be located within the excavations and workings of a mine, the map also shall include the location of the mine, the name of the mine, and the name of the person operating the mine.

The chief shall cause a copy of the weekly circular prepared by the division to be provided to the county engineer of each county that contains active or proposed drilling activity. The weekly circular shall contain, in the manner prescribed by the chief, the names of all applicants for permits, the location of each well or proposed well, the information required by division (K) of this section, and any additional information the chief prescribes. In addition, the chief promptly shall transfer an electronic copy or facsimile, or if those methods are not available to a municipal corporation or township, a copy via regular mail, of a drilling permit application to the clerk of the legislative authority of the municipal corporation or to the clerk of the township in which the well or proposed well is or is to be located if the municipal corporation or township has a population of more than fifteen thousand in the most recent federal decennial census prior to the submission of the application, the legislative authority of the municipal corporation or the board of township trustees has asked to receive copies of such applications, and the appropriate clerk has provided the chief an accurate, current electronic mailing address or facsimile number, as applicable.

The chief shall not issue a permit for at least ten days after the date of filing of the application for the permit unless, upon reasonable cause shown, the chief waives that period or a request for expedited review is filed under this section. However, the chief shall issue a permit within twenty-one days of the filing of the application unless the chief denies the application by order.

An applicant may file a request with the chief for expedited review of a permit application if the well is not or is not to be located in a gas storage reservoir or reservoir protective area, as "reservoir protective area" is defined in section 1571.01 of the Revised Code. If the well is or is to be located in a coal bearing township, the application shall be accompanied by the affidavit of the landowner prescribed in section 1509.08 of the Revised Code.

In addition to a complete application for a permit that meets the requirements of this section and the permit fee prescribed by this section, a request for expedited review shall be accompanied by a separate nonrefundable filing fee of five hundred dollars. Upon the filing of a request for expedited review, the chief shall cause the county engineer of the county in which the well is or is to be located to be notified of the filing of the permit application and the request for expedited review by telephone or other means that in the judgment of the chief will provide timely notice of the application and request. The chief shall issue a permit within seven days of the filing of the request unless the chief denies the application by order. Notwithstanding the provisions of this section governing expedited review of permit applications, the chief may refuse to accept requests for expedited review if, in the chief's judgment, the acceptance of the requests would prevent the issuance, within twenty-one days of their filing, of permits for which applications are pending.

A well shall be drilled and operated in accordance with the plans, sworn statements, and other information submitted in the approved application.

The chief shall issue an order denying a permit if the chief finds that there is a substantial risk that the operation will result in violations of this chapter or rules adopted under it that will present an imminent substantial damage to public health or safety or damage to the environment, provided that where the chief finds that terms or conditions to the permit can reasonably be expected to prevent such violations, the chief shall issue the permit subject to those terms or conditions, including, if applicable, terms and conditions regarding subjects identified in rules adopted under section 1509.03 of the Revised Code.

Each application for a permit required by section 1509.05 of the Revised Code, except an application for a well drilled or reopened for purposes of section 1509.22 of the Revised Code, also shall be accompanied by a nonrefundable fee of two hundred fifty dollars.

The chief may 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 the fee required by this section. The chief may 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 miners' health or safety. Before issuing any such order, the chief shall notify the owner in such manner as in the chief's judgment would provide reasonable notification that the chief intends to issue a suspension order. The chief may issue such an order without prior notification if reasonable attempts to notify the owner have failed, but in such an event notification shall be given as soon thereafter as practical. Within five calendar days after the issuance of the order, the chief shall provide the owner an opportunity to be heard and to present evidence that the condition or activity is not likely to result in immediate substantial damage to natural resources or does not present an imminent danger to public health or safety or to miners' health or safety, if applicable. In the case of activities in a coal bearing township, if the chief, after considering evidence presented by the owner, determines that the activities do not present such a threat, the chief shall revoke the suspension order. Notwithstanding any provision of this chapter, the owner may appeal a suspension order directly to the court of common pleas of the county in which the activity is located or, if in a coal bearing township, to the reclamation commission under section 1513.13 of the Revised Code.

Sec. 1509.23. (A) Rules of the chief of the division of mineral resources management may specify practices to be followed in the drilling of wells and production of oil and gas for protection of public health or safety or to prevent damage to natural resources, including specification of the following:

- (1) Appropriate devices;
- (2) Minimum distances that wells and other excavations, structures, and equipment shall be located from water wells, streets, roads, highways, rivers, lakes, streams, ponds, other bodies of water, railroad tracks, public or private recreational areas, zoning districts, and buildings or other structures;

(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 section 311(j)(1)(c) of the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 886, 33 U.S.C.A. 1251, as amended, and regulations adopted under it.

(B) The chief, in consultation with the emergency response commission created in section 3750.02 of the Revised Code, shall adopt rules in accordance with Chapter 119. of the Revised Code that specify the information that shall be included in an electronic database that the chief shall create and host. The information shall be that which the chief considers to be appropriate for the purpose of responding to emergency situations that pose a threat to public health or safety or the environment. At the minimum, the information shall include that which a person who is regulated under this chapter is required to submit under the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1728, 42 U.S.C.A. 11001, and regulations adopted under it.

In addition, the rules shall specify whether and to what extent the database and the information that it contains will be made accessible to the public. The rules shall ensure that the database will be made available via the internet or a system of computer disks to the emergency response commission and to every local emergency planning committee and fire department in this state.

Sec. 1509.31. Whenever the entire interest of an oil and gas lease is assigned or otherwise transferred, the assignor or transferor shall notify the holders of the royalty interests, and, if a well or wells exist on the lease, the division of mineral resources management, of the name and address of the assignee or transferee by certified mail, return receipt requested, not later than thirty days after the date of the assignment or transfer. When notice of any such assignment or transfer is required to be provided to the division, it shall 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 notice form applicable to assignments or transfers of a well to the owner of the surface estate of the tract on which the well is located shall contain a statement informing the landowner that the well may require periodic servicing to maintain its productivity; that, upon assignment or transfer of the well to the landowner, the landowner becomes responsible for compliance with the requirements of this chapter and rules adopted under it, including, without limitation, the proper disposal of brine obtained from the well, the plugging of the well when it becomes incapable of producing oil or gas, and the restoration of the well site; and that, upon assignment or transfer of the well to the landowner, the landowner becomes responsible for the costs of compliance with the requirements of this chapter and rules adopted under it and the costs for operating and servicing the well.

The owner holding a permit under section 1509.05 of the Revised Code is responsible for all obligations and liabilities imposed by this chapter and any rules, orders, and conditions of a permit adopted or issued under it, and no assignment or transfer by the owner relieves the owner of the obligations and liabilities until and unless the assignee or transferee files with the division the information described in divisions (A), (B), (C), (D), (E), (F), (J), (K), and (L) of section 1509.06 of the Revised Code; obtains liability insurance coverage required by section 1509.07 of the Revised Code, except when none is required by that section; and executes and files a surety bond, negotiable certificates of deposit or irrevocable letters of credit, or cash, as described in that section. Instead of a bond, but only upon acceptance by the chief of the division of mineral resources management, the assignee or transferee may file proof of financial responsibility, described in section 1509.07 of the Revised Code. Section 1509.071 of the Revised Code applies to the surety bond, cash, and negotiable certificates of deposit and irrevocable letters of credit described in this section. Unless the chief approves a modification, each assignee or transferee shall operate in accordance with the plans and information filed by the permit holder pursuant to section 1509.06 of the Revised Code.

Sec. 1510.11. (A) When independent producers favor termination of a marketing program established under this chapter, the operating committee of the program and the technical advisory council shall terminate all operations of the program. ~~Upon~~

~~(B)(1) Except as provided in division (B)(2) of this section, upon termination of the a program, the council shall return any remaining unobligated moneys to the independent producers who paid the assessments levied under section 1510.08 of the Revised Code during the immediately preceding twelve months and shall prorate the moneys accordingly.~~

~~(2) If a program is operated by a nonprofit corporation that is organized under Chapter 1702. of the Revised Code for the purpose of carrying out the purposes identified in division (A) of section 1510.02 of the Revised Code, and if the nonprofit corporation is exempt from federal income taxation pursuant to section 501(a) of the Internal Revenue Code and is described in section 501(c)(3) of the Internal Revenue Code, upon termination of the program, the nonprofit corporation shall distribute any remaining unobligated money to be used for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or to the federal, a state, or a local government to be used for a public purpose. If there remains any unobligated money after the distribution by the nonprofit corporation, the court of common pleas of the county in which the principal office of the nonprofit corporation is located shall distribute the remaining unobligated money to be used for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, to the federal, a state, or a local government to be used for a public purpose, or to one or more organizations that are organized and operated exclusively for one or more of the purposes that are within the meaning of section 501(c)(3) of the Internal Revenue Code, as the court determines is best to accomplish the exempt purposes of the nonprofit corporation.~~

SECTION 2. That existing sections 303.211, 519.211, 1509.02, 1509.03, 1509.06, 1509.23, 1509.31, and 1510.11 and section **Sec. 1509.39.** of the Revised Code are hereby repealed.

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Bill Rowland

Bill Analysis
Legislative Service Commission

H.B. 278

125th General Assembly
(As Introduced)

Reps. Niehaus, Reidelbach, Seitz, Kearns, Carano, Webster, Fessler, Gibbs, Husted, Peterson, Hoops, Carmichael, Blasdel, T. Patton, D. Evans, McGregor, Gilb, DeWine, Setzer, Willamowski, Raga, Schaffer, Book, Widowfield

BILL SUMMARY

- Declares that the Division of Mineral Resources Management in the Department of Natural Resources has exclusive authority to regulate the permitting, location, and spacing of oil and gas wells in the state and that the Oil and Gas Law and rules adopted under it constitute a comprehensive plan with respect to all aspects of the locating, drilling, and operation of oil and gas wells in Ohio, and repeals all statutory authority of local governments to regulate oil and gas exploration and operation as well as limitations on that authority.
- Authorizes the Chief of the Division of Mineral Resources Management to adopt rules specifying minimum distances that oil and gas wells must be located from public or private recreational areas, zoning districts, and certain structures.

CONTENT AND OPERATION

Current law: concurrent state and local regulation of oil and gas exploration and operation

Under current law, the Division of Mineral Resources Management in the Department of Natural Resources has a certain amount of concurrent jurisdiction with municipal corporations, counties, and townships to regulate the exploration and operation of oil and gas wells. An applicant for a state permit to drill a new oil and gas well is required to include in the application to the Division a sworn statement that the applicant will comply with all local requirements related to the drilling or operation of an oil or gas well until the abandonment of the well (sec. 1509.06(I)). Current law states that the Oil and Gas Law and rules adopted under

it cannot be construed to prevent any municipal corporation, county, or township from enacting and enforcing health and safety standards for the drilling and exploration for oil and gas, provided that those standards are not less restrictive than state law. However, current law also precludes a county or township from adopting or enforcing any requirement relative to minimum acreage requirements for drilling units, minimum setback distances for wells or related facilities, or the restoration or plugging of an oil and gas well. Counties and townships also are precluded from requiring any permit or license or financial assurance regarding oil and gas wells other than certain highway-use permits. (Sec. 1509.39.) Finally, current law states that county and township zoning statutes do not confer any power on zoning authorities to prohibit the use of land owned or leased by an industrial firm to conduct oil or gas drilling activities or to locate associated facilities or equipment on the land when the oil or gas that is obtained by the firm is used for the operation of its plants (secs. 303.211 and 519.211).

The bill: exclusive state authority to regulate oil and gas exploration and operation

The bill repeals all provisions of current law that grant or allude to the authority of local governments to adopt concurrent requirements with the state concerning oil and gas exploration and operation as well as all provisions limiting that authority. It states that the Division of Mineral Resources Management has sole and exclusive authority of regulating the permitting, location, and spacing of oil and gas wells within the state. Further, the bill states that the regulation of oil and gas activities is a matter of general statewide interest that requires uniform statewide regulation and that the Oil and Gas Law and rules adopted under it constitute a comprehensive plan with respect to all aspects of the locating, drilling, and operation of oil and gas wells within Ohio, including site restoration and disposal of wastes from those wells. (Sec. 1509.02.)

Location of oil and gas wells

Current law provides that rules of the Chief of the Division of Mineral Resources Management may specify minimum distances that wells and other excavations, structures, and equipment must be located from water wells, streets, roads, highways, rivers, lakes, streams, ponds, other bodies of water, railroad tracks, and buildings. The bill adds authority for the Chief to adopt rules specifying minimum distances that wells and other excavations, structures, and equipment must be located from public or private recreational areas, zoning districts, and structures other than buildings.



Volume #73, Report #80, Article #4--Tuesday, April 27, 2004**SENATE VOTES TO GIVE STATE AUTHORITY TO ISSUE PERMITS FOR OIL, GAS DRILLING**

The Senate voted Tuesday to give state officials authority to issue permits to drill oil and gas wells, effectively preempting the authority of local government officials to decide where drilling takes place within their jurisdictions.

The bill was passed by a 26-5 vote without debate. Senator Larry Mumper (R-Marion), who managed HB 278 in the Senate, asserted that "Ohio's oil and gas industry is hindered by inconsistent, sometimes unreasonable implementation of local zoning regulations intended to prohibit, not regulate, oil and gas exploration." The legislation, he declared, seeks uniform and consistent regulation of the industry when it comes to drilling wells. "It is important to emphasize the oil and gas industry is not trying to evade regulation," he pointed out.

He insisted that the permitting process should be uniform without regard to jurisdictional boundaries. Ohio has considerable oil and gas resources that aren't being exploited due to local regulation, the senator said. "A mismatch between growing demand for natural gas and lower supplies is a potential disaster for Ohio consumers," he said. "This bill recognizes a simple fact - you must drill for oil and gas where it is located." He said the bill contains language requiring state officials to establish standards before permits will be issued, including safety, road maintenance, spill prevention and containment, and other issues related to drilling. He added that state and federal authorities currently regulate all other aspects of the industry.

In other business, senators passed without debate or dissent bills increasing penalties for reckless drivers responsible for deaths and injuries in road construction zones (HB 52) and giving counties the ability to establish children's advocacy centers (SB 66).

Volume #73, Report #53, Article #12--Thursday, March 18, 2004

SENATE COMMITTEE HEARINGS

AGRICULTURE

HB 306 LIQUOR CONTROL LAW (Wolpert) Eliminates the authority of the Division of Liquor Control to order liquor permit holders to stop selling intoxicating liquor to certain persons; authorizes the Division to share social security numbers with other state agencies for specific purposes and seek BCII or FBI criminal records checks; modifies provisions relating to the annual permit fees for A-2, B-2, and B-4 permit holders; changes the name of the out-of-state supplier "consent to import"; changes the registration fee for agents, solicitors, and sales persons of beer or intoxicating liquor manufacturers, suppliers, brokers, or wholesale distributions to a biennial fee; revises the deadline for paying a permit fee when a person applies for a liquor permit; changes provisions that require the disclosure of shareholders of or holders of membership interests in a corporation or limited liability company applying for a liquor permit; corrects references to the "Department of Liquor Control" and "Director of Liquor Control"; changes the manner in which beer, intoxicating liquor, and alcohol seized by a law enforcement agency is disposed of; revises when duplicate permit fees are paid, and; revises other provisions of the Liquor Control Law. [Full Text](#)

REPORTED

Prior to the committee vote, final proponent testimony was voiced by Jason Wetzel on behalf of the Ohio Grocers Association. Mr. Wetzel, OGA's vice president of government relations, said the bill is an example of good government at work and will take the bureaucracy out of bureaucracy. Besides allowing for greater information sharing between state agencies, he added the changes included in the bill will make it easier for retailers to understand and comply with fee payment schedules plus it will make needed changes to update and remove archaic language in the Revised Code relative to liquor permitting, fees and regulation.

HB 278 OIL & GAS DRILLING REGULATION (Niehaus) Declares that the Division of Mineral Resources Management in the Department of Natural Resources has exclusive authority to regulate the permitting, location, and spacing of oil and gas wells in the state and revises the laws governing the drilling of oil and gas. [Full Text](#)

CONTINUED

Following nearly two hours of additional back and forth testimony, committee chairman Senator Mumper said he expected a final committee vote on the measure during the committee's next meeting.

Shirley Sinn, who identified herself as an environmental oil and gas consultant and executive director of the Ashtabula County Animal Protective League, testified in opposition to the bill. She said there is nothing uniform in oil and gas drilling and, as a result, a uniform state law is not proper. She maintained that the state has "fairly good, useful and workable" rules and regulations on the books and local issues can best be addressed by local regulations and handled efficiently by state and local authorities working together.

Jack Shaner of the Ohio Environmental Council, said passage of the bill would "say goodbye to home rule" by effectively preempting virtually any local controls on oil and gas drilling. He said defenders of the industry often call for a balance between environmental protection and environmental degradation but the legislation before the committee would tip that "mythical" balance - if it ever existed - away from local communities in favor of the oil and gas industry."

Mr. Shaner also expressed concerns about whether there would be adequate resources for the effective enforcement of the legislation. He questioned the ability of the DNR to fulfill the additional duties conferred by the bill in light of some DNR dedicated accounts having been "raided" by past General Assemblies to support other, unrelated government functions. He suggested allowing the department to establish new or additional fees to maintain at least a minimum service standard if additional revenue becomes necessary, thereby, helping to fund a "pay as you drill" principle.

John Keller, attorney with the Vorys Sater law firm, presented the committee with a constitutional review of the legislation at the behest of the Ohio Oil & Gas Association. He said the Ohio Constitution provides that Ohio municipalities have the authority to adopt and enforce local police, sanitary and other regulations not in conflict with general law, which among other things, are part of a statewide and comprehensive legislative enactment. Mr. Keller said a conflict exists between a municipal ordinance and a general law of the state generally whenever the local "ordinance permits or licenses that which the state forbids and prohibits, and vice versa." He said it is his opinion that the bill is indeed constitutional as it constitutes a general law of the state.

Mr. Keller, who is a former chair of the Ohio State Bar Association's Natural Resources Committee, said local governments will not lose control from a legal or practical perspective with the passage of the bill. He did say, however, provisions of the bill would stop obstructionists, not protectionists when it comes to the drilling of oil and gas wells.

Thomas Stewart, the Ohio Oil & Gas Association's executive director, countered some of the opponent testimony. He said Ohio has one of the most advanced oil and gas drilling regulatory systems in the nation. Responding to charges the department would not be able to properly enforce the regulations, Mr. Stewart reported the number of wells being drilled each year has gone from 5,000 in the 1980's to 2,000 in the early 1990's to only 500 today. He seemed to take special umbrage to a charge leveled by Ms. Sinn that the department was not able to follow through on well reclamations. He emphatically declared the department is "out there inspecting each and every well" subject to reclamation. He said without the bill, local governments would continue to establish impediments against drilling in their jurisdictions. "It's like having a hungry nation and destroying food because we don't like where the food is coming from," he concluded.

Michael Sponsler, chief of the DNR's Division of Mineral Resources Management, said the division is comfortable that the inspection and field management staff is uniquely qualified to conduct the oversight necessary to implement the legislation. He noted field staff is stationed within regions and they are already coordinating with many local officials. He assured the committee that staff has region-specific knowledge involving drilling, production and plugging operations and can and will understand and apply the necessary practices to ensure the protection of public health and safety as well as protection of the environment.

Further, Mr. Sponsler said provisions within the bill will require rulemaking to establish standards to address the unique needs of communities, including the evaluation of identified needs of urbanized areas to a level normally reserved only for environmentally sensitive areas where the mineral resources management division currently applies special permitting conditions. He said that as part of the rulemaking process, the division would work with representatives of the industry and local government to develop rules involving safety concerning the drilling and operation of a well, protection of public and private water supplies, location and surface facilities of a well, fencing and screening of surface facilities, containment and disposal of drilling and production wastes, construction and access of roads for purposes of the drilling and operation of a well and setting the stage for the development and application of special permit conditions.

Volume #72, Report #195, Article #11--Wednesday, October 8, 2003 (Excerpted)

HB 278 OIL & GAS DRILLING REGULATION (Niehaus) Declares that the Division of Mineral Resources Management in the Department of Natural Resources has exclusive authority to regulate the permitting, location, and spacing of oil and gas wells in the state and revises the laws governing the drilling of oil and gas. [Full Text](#)

CONTINUED

The committee heard proponent and opponent testimony, but due to time constraints delayed until next week's hearing testimony from three other proponents who were scheduled to be heard.

Thomas E. Stewart, executive director of the Ohio Oil and Gas Association, presented an overview of the industry, including a slide presentation that demonstrated current drilling and pumping techniques that he said are safe and well-regulated by state officials. He said drillers also attempt to answer local concerns about the aesthetics of locating wells in more populated areas. However, Mr. Stewart said a "mishmash" of local regulations, sometimes disguised as being safety regulations but which are aimed at preventing drilling operations, are keeping needed resources from the market where demand is constantly growing.

Reserves in Ohio are plentiful, Mr. Stewart said, but in many cases cannot be accessed due to local zoning regulations that have little, if anything to do, with public health and safety issues. The bill, he said, would produce a consistent regulatory scheme that would help bring product to market in a safe way. He noted that neighboring states have a state-run regulatory program that allows the resources to be exploited in a timely manner. Mr. Stewart said the irony of the matter is that government policy encourages the use of natural gas as a clean-burning, plentiful fuel, but at the same time discourages drilling to retrieve it. He said "land use" competition is making it increasingly difficult to get at reserves in areas being increasingly populated. "Ohio is losing ground," he said in the industry. Drilling in Ohio, he added, has been "shockingly" inactive due to problems encountered at the local level. Mr. Stewart also noted that landowners are being denied their property rights by local regulators who are blocking well creation. He said that public policy should be that since a statewide benefit is derived from natural gas production then oversight of the industry should be on a statewide basis.

Rep. Tim Grendell (R-Chesterland) said he couldn't support a bill that would strip local authorities of all regulatory responsibilities, but suggested that he could support an approach that combined state regulation with local input into the location and "aesthetics" of areas where wells are sited. Mr. Stewart said a compromise along those lines would be accepted so long as a statewide regulatory policy is "firmly established." He said "there's a lot of room for that type of discussion to take place," but added in some areas of the state "aesthetics become a barrier instead of an improvement."

Also appearing as a proponent was M. Howard Petricoff, an attorney with Vorys, Sater, Seymour and Pease in Columbus. Mr. Petricoff, who teaches natural resources law at Capital University Law School, discussed, in abbreviated testimony, the economics of the industry, noting that Ohio wells produce about 10% of the state's total natural gas needs. He said a regulatory body is needed that is aware of industry practices - something often lacking at the local level - that can also help bring natural gas to market to meet a growing demand. Asked by Rep. Tom Niehaus (R-New Richmond) if it were possible to draft a bill to "mesh" state regulation of the industry and local concerns regarding safety and appearance issues, Mr. Petricoff said "I'm sure we can craft legislation that" addresses safety and the aesthetic needs of communities."

The Rev. Hugh Hothem of Wooster appeared as an opponent. He asserted that existing state regulations are not being enforced to the detriment of public safety and health. Recounting a personal story, Rev. Hothem said his family farm's water well was contaminated by brine - produced by a natural gas well - that was being spread on a neighboring property. State officials would only conduct tests of the water, but it took years before the brine disposal was halted by the county's commissioners, he continued. "Thank goodness for local control," Rev. Hothem said.

THE FACTS ABOUT HYDRAULIC FRACTURING

Production of the state's shale gas deposits will help lower Ohio's natural gas costs to consumers and grow our economy?

What is Hydraulic Fracturing?

This process enables energy companies to tap into natural gas-rich shale such as the Marcellus and Utica-Point Pleasant deposits in Ohio.

It allows natural gas trapped deep in the earth to be released and captured for use in our homes, businesses, and as an alternative fuel for some cars.

The Facts about Hydraulic Fracturing

- Hydraulic fracturing has been used safely in more than 1 million U.S. wells.
- The first commercial well was hydraulically fractured more than 60 years ago in Oklahoma.
- Hydraulic fracturing has been used for more than 50 years in Ohio to stimulate oil and gas well production.
- Since 1990, more than 15,000 Ohio wells have used hydraulic fracturing. During that time the Division of Oil and Gas Resources Management has conducted a number of water well investigation complaints – **none of the investigations** revealed problems due to hydraulic fracturing.

How deep is a shale gas well?

5,000 to 8,000 feet down (that's more than 1.5 miles, and thousands of feet below freshwater aquifers).

How and why is shale fractured?

After a well is drilled and secured, a mixture that is approximately 98 percent sand and water, with a small amount of chemical additives, is injected at a very high pressure to fracture the shale. The sand keeps the fractured shale open and serves as a conduit for extracting the natural gas.

Can hydraulic fracturing fluid rise to the surface?

No. Geologically speaking, the bedrock between the fracked site and the surface is so dense that it makes it impossible for frack fluid to travel upward thousands of feet, or between rock formations and into freshwater aquifers.

How much natural gas is currently being produced in Ohio through traditional drilling?

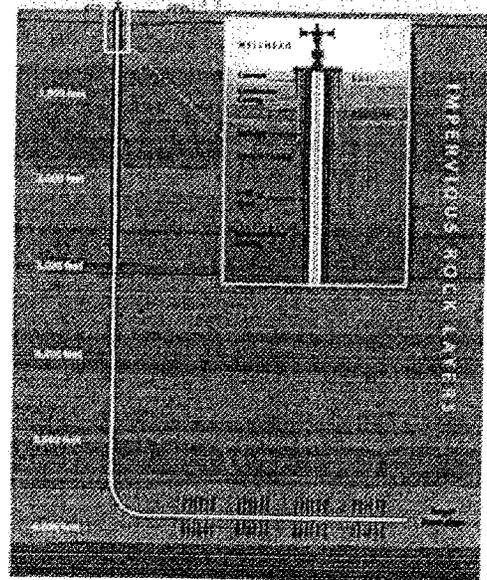
In 2011, more than 73 billion cubic feet of natural gas was produced in Ohio. Nearly 100 percent of the natural gas produced in Ohio is used right here at home.

Independent study commends Ohio regulations

Ohio recently received a positive endorsement of its hydraulic fracturing program by the non-profit, multi-stakeholder organization, the State Review of Oil & Natural Gas Environmental Regulations, Inc. The report, which can be downloaded at ohiodnr.com (use Shale Development link), commended ODNR for its role in revising Ohio's oil and gas laws. Since then, new rules and regulations have been passed to further strengthen groundwater protection.

The U.S. Environmental Protection Agency, the Ground Water Protection Council, and the Interstate Oil and Gas Compact Commission* all have found hydraulic fracturing nonthreatening to the environment or public health. U.S. EPA is conducting another study to evaluate potential impacts of hydraulic fracturing on drinking water and groundwater.

*U.S. EPA, 2004 study; GWPC, 2009 report; IOGCC, 2002 study



Additional Resources

Ohio EPA:
www.epa.ohio.gov

Penn State Marcellus Center:
www.marcellus.psu.edu

Frac Focus:
www.fracfocus.org

Ohio Department of
NATURAL RESOURCES
Division of Oil and Gas Resources Management

SUMMARY OF OHIO OIL AND GAS ACTIVITIES

2005

*Division of
Mineral Resources
Management*

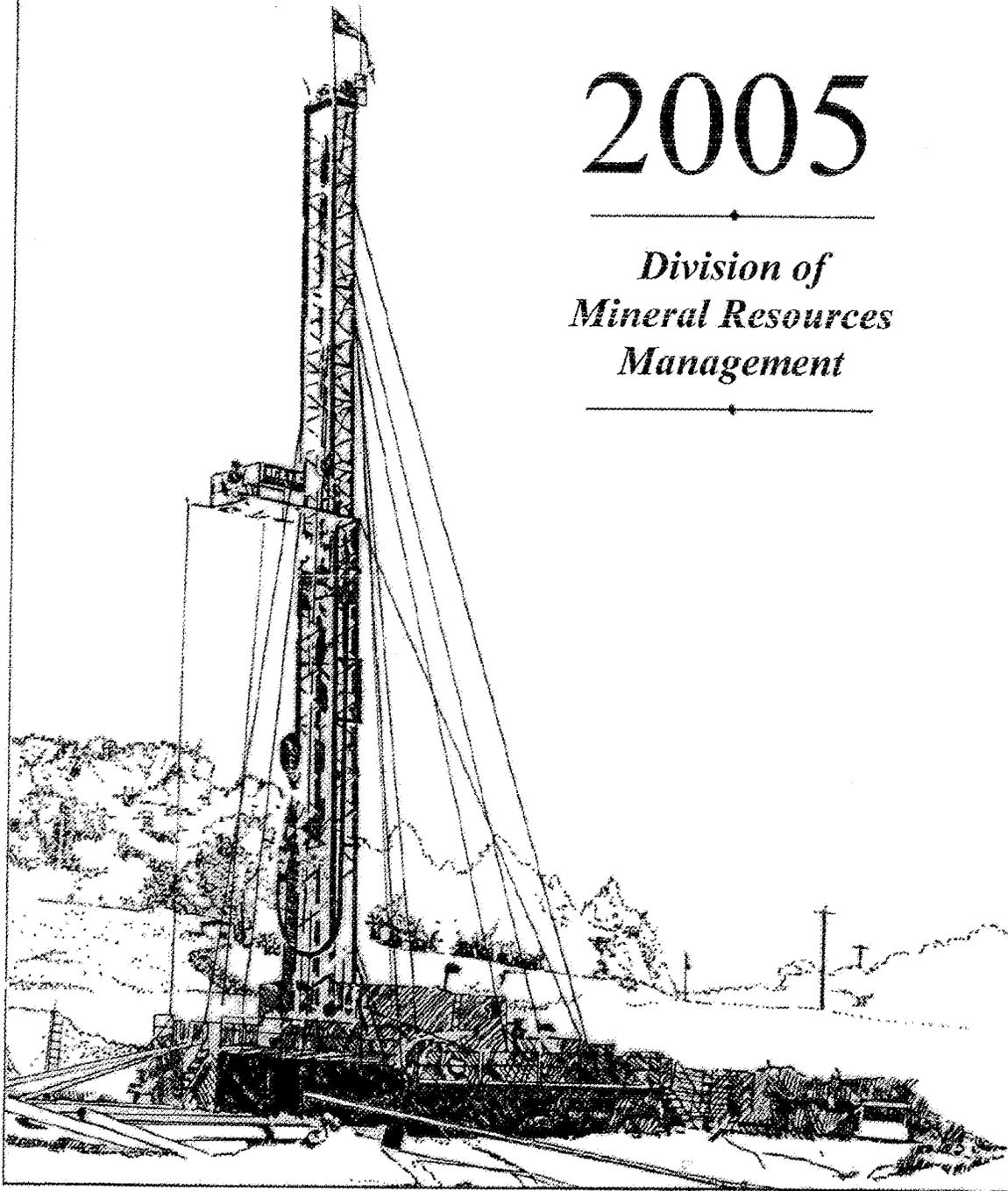
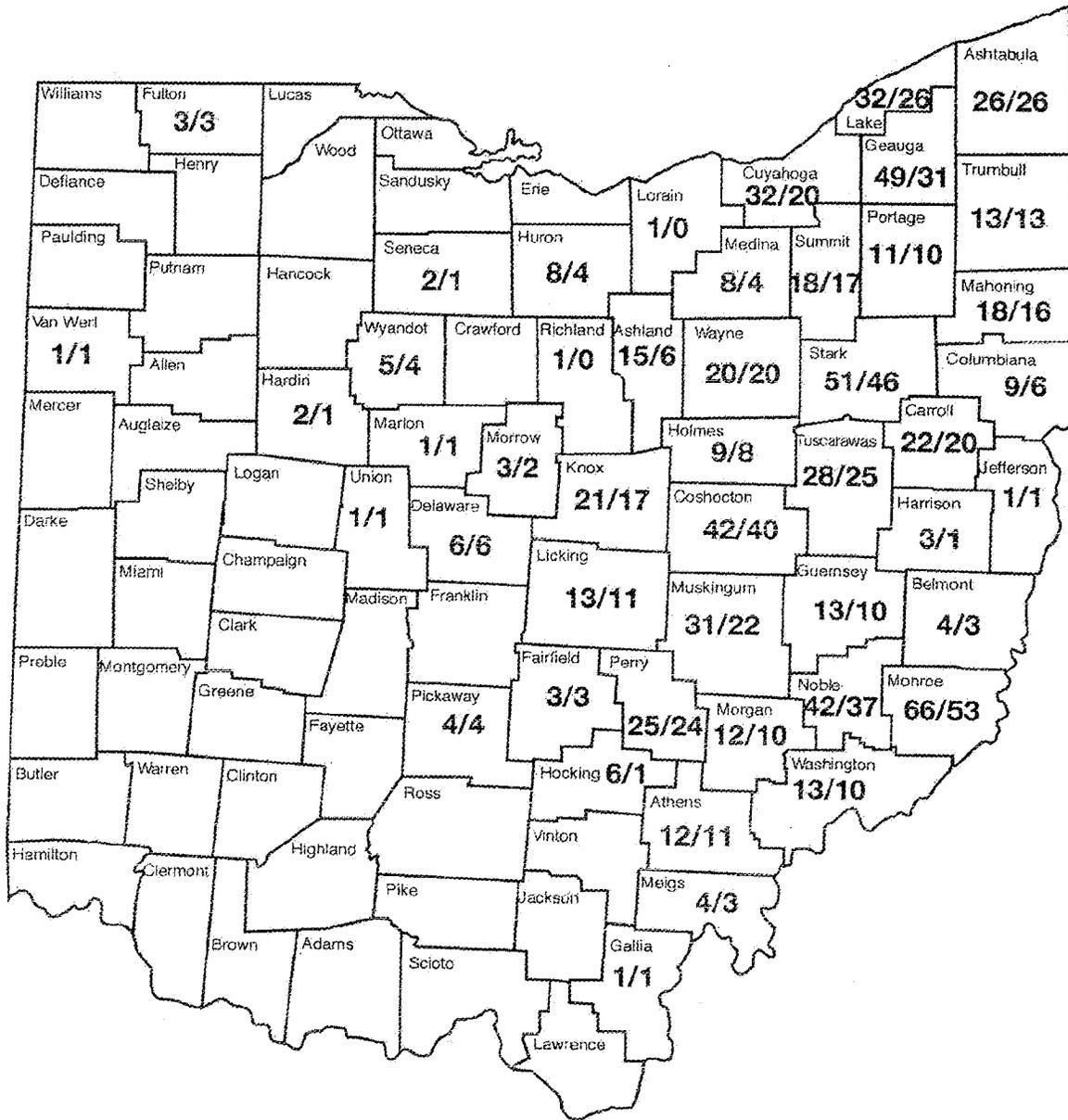


Figure 3 - Wells Drilled and Completions Received by County - 2005



ranged from 320 feet (Athens County) to 2,591 feet (Licking County). The average depth per well drilled by cable tool was 1,486 feet; rotary-drilled wells averaged 4,087 feet, a decrease of 154 feet per well.

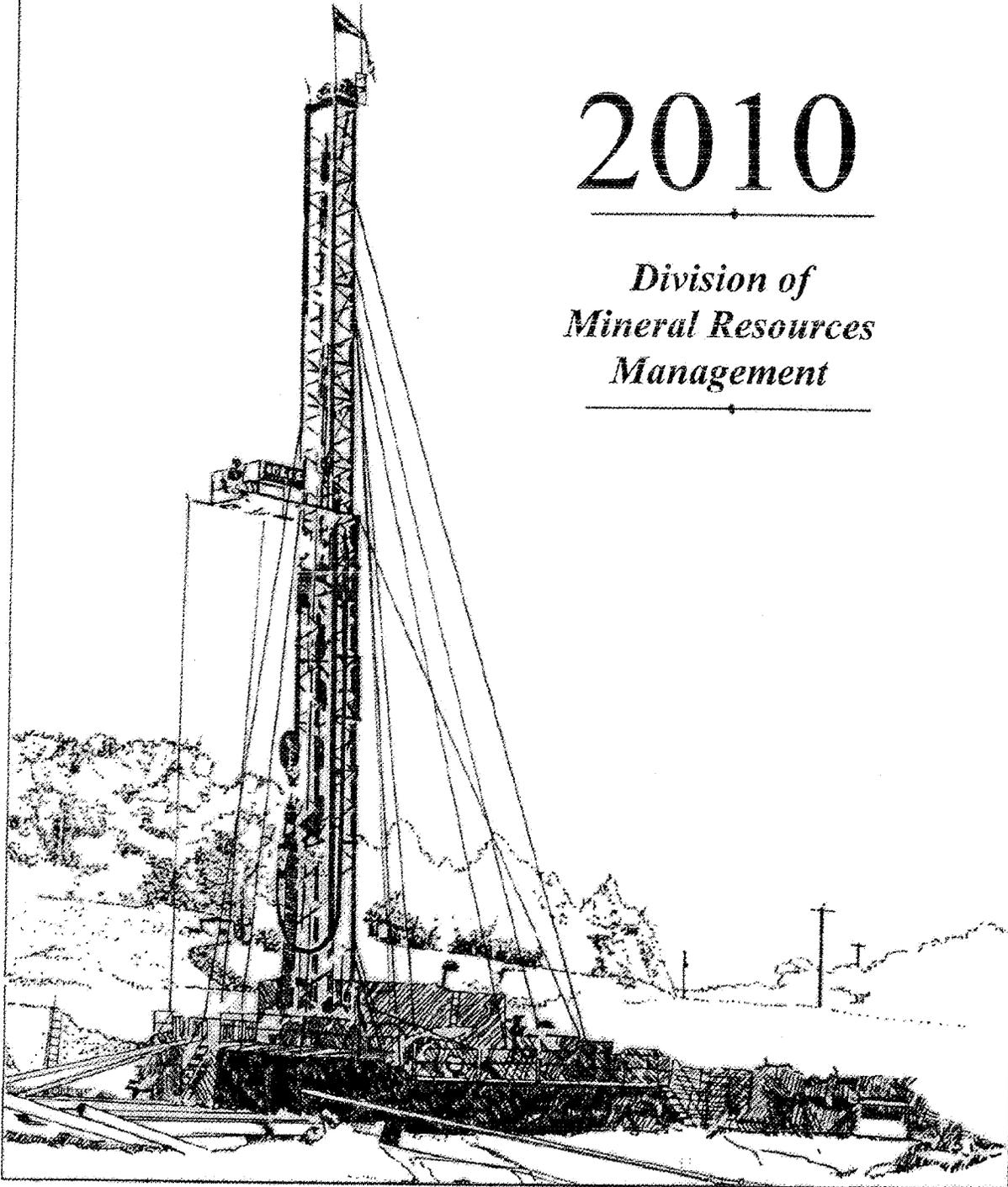
Plug-back and Deepen Operations

Twenty-five wells were dry in their permitted formation but plugged back to produce a shallower zone. Another twenty-five existing wells were plugged back to producing zones, and 2 existing wells were drilled to a deeper producing formation.

SUMMARY OF OHIO OIL AND GAS ACTIVITIES

2010

*Division of
Mineral Resources
Management*



**Figure 3 - Wells Drilled and Completions Received by County
2010**



Plug-back and Deepen Operations

Fourteen wells were dry in their permitted formation but plugged back to produce a shallower zone. Another 22 existing wells were plugged back to producing zones, and one existing well was drilled to a deeper producing formation.

EnergyFromShale

Published on *Energy From Shale* (<http://www.energyfromshale.org>)

[Home](#) > How Hydraulic Fracturing Works

How Hydraulic Fracturing Works

In a hydraulic fracturing job, "fracturing fluids" or "pumping fluids" consisting primarily of water and sand are injected under high pressure into the producing formation, creating fissures that allow resources to move freely from rock pores where it is trapped.

Typically, steel pipe known as surface casing is cemented into place at the uppermost portion of a well for the explicit purpose of protecting the groundwater. The depth of the surface casing is generally determined based on groundwater protection, among other factors. As the well is drilled deeper, additional casing is installed to isolate the formation(s) from which oil or natural gas is to be produced, which further protects groundwater from the producing formations in the well.

Casing and cementing are critical parts of the well construction that not only protect any water zones, but are also important to successful oil or natural gas production from hydrocarbon bearing zones. Industry well design practices protect sources of drinking water from the other geologic zone of an oil and natural gas well with multiple layers of impervious rock.

While 99.5 percent of the fluids used consist of water and sand, some chemicals are added to improve the flow. The composition of the chemical mixes varies from well to well.

The Facts About Hydraulic Fracturing and Seismic Activity

Hydraulic fracturing is an essential well completion technology for the development of unconventional resources, such as natural gas that is trapped in shale rock formations. It is used to create a fracture network through which oil and gas can migrate to the wellbore. Hydraulic fracturing is accomplished by pumping a mixture of more than 99.5 percent water and sand, with some additives, into dense rock formations deep below the earth's surface. As indicated in Figure 1, multiple fracture sections or "stages" are carefully targeted for controlled stimulation. This process forms a network of narrow (a few millimeters wide) and limited extent (a few hundred feet long) fractures in the rock.

Hydraulic fracturing is accompanied by microseisms that can be recorded with sensitive listening devices and analyzed with established scientific methods. Microseismic mapping is used to understand and optimize field development of the resource, well completions, and stage treatments. This monitoring produces extensive data, and thus microseismic activity associated with hydraulic fracturing is thoroughly understood. A review of published research shows no cases of injuries or damage as a result of the very low level of seismicity related to this well-completion technique, in more than one million applications.

In one comprehensive study that monitored several thousand shale fracture treatments in various North American shale basins, the largest microseism recorded had a measured magnitude of about 0.8.¹ This is approximately 2,000 times less energy than a magnitude 3.0 earthquake, which is a magnitude commonly used to delineate deep earthquakes that can be felt at the surface of the earth, and much less than one that could cause surface damage.

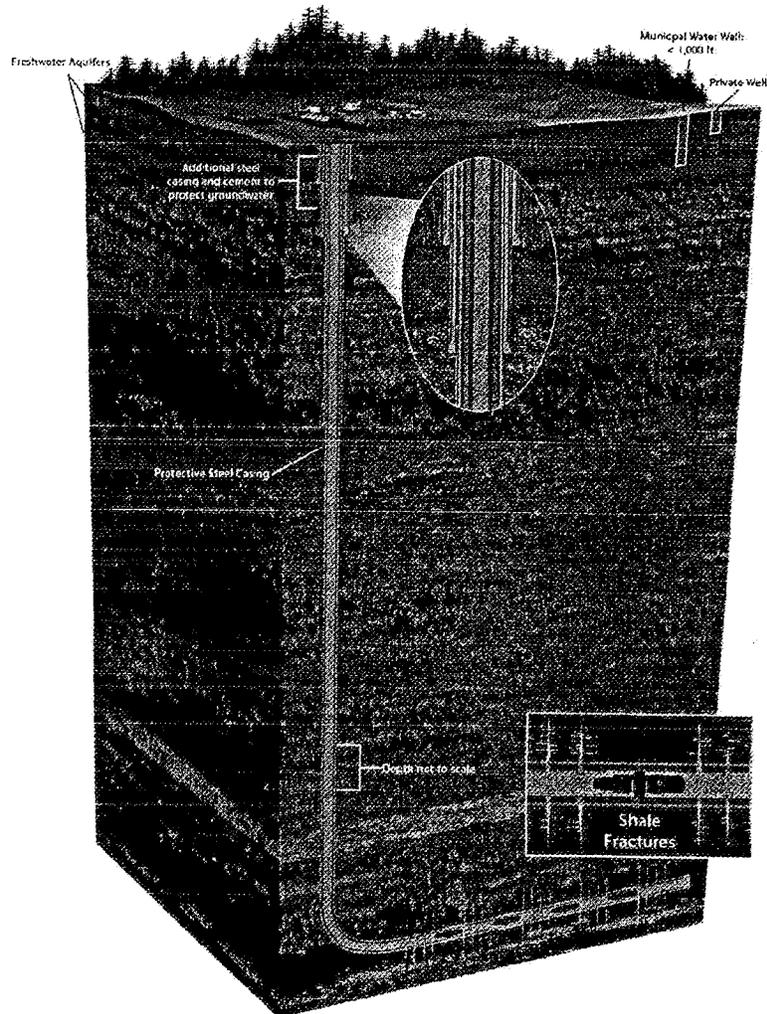


Figure 1. Horizontal well in an underground rock layer with multiple fracture stages created by hydraulic fracturing.

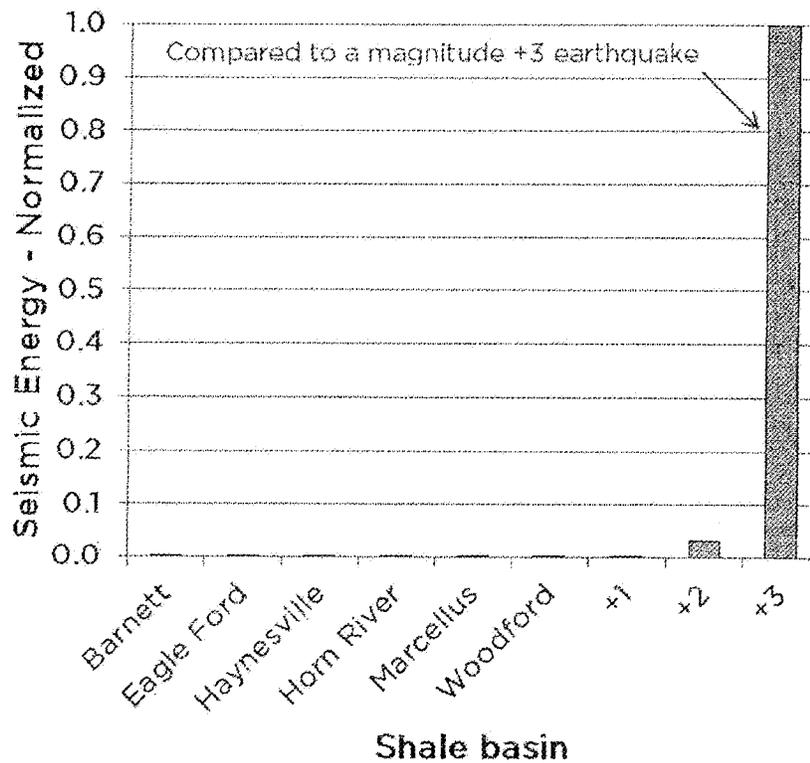


Figure 2. Measurements of the energy of maximum microseismicity induced by hydraulic fracturing in major North American shale basins¹; compared to a magnitude +3 earthquake which feels similar to the passing of a nearby truck.²

Figure 2 shows the maximum energy of the microseisms recorded during this study. In most basins, the microseismic energy induced by fracturing ranges from 10,000 to 1,000,000 times smaller than a 3.0 earthquake. This is so minimal that it can hardly be distinguished on the graph. Given that a 3.0 magnitude has been described as equivalent to the passing of a nearby truck², microseisms resulting from hydraulic fracturing are extremely small and not a hazard for humans, animals, structures or the environment.

Hydraulic fracturing is a technology that has been monitored, researched, and studied for decades to help improve its effectiveness and ensure its safety. Microseismic analysis has been used extensively for monitoring fracture behavior and is well-documented in the geoscience literature. The continued development of monitoring and modeling capabilities to improve the process will provide ongoing assurance of the safety and effectiveness of this critical well-completion procedure.

1. Warpinski, N.R., Du, J. and Zimmer, "U. Measurements of Hydraulic-Fracture Induced Seismicity in Gas Shales." Paper SPE 151597 presented at the SPE Hydraulic Fracture Technology Conference, The Woodlands, Texas. 6-8 February 2012.
2. USGS Earthquake web site, 2012. Link: http://earthquake.usgs.gov/learn/topics/mag_vs_int.php

Practices for Mitigating Surface Impacts Associated with Hydraulic Fracturing

API GUIDANCE DOCUMENT HF3
FIRST EDITION, JANUARY 2011



AMERICAN PETROLEUM INSTITUTE

should be tested for integrity after installation and inspected as appropriate to ensure they are not leaking. Any identified leaks in the pipelines should be repaired before continuing operation. Temporary lines should be flushed with fresh water before being dismantled, with the flush water disposed of according to appropriate state and federal requirements. Operators should not allow any unauthorized fluid to be discharged during the removal of the pipelines.

Additional steps that should be considered to reduce the potential of a release from a pipeline include the following.

- “Dead” piping and temporary connections should be removed when they are no longer required.
- Piping subject to vibration should be braced to reduce movement and avoid fatigue failures.
- Tanks should be checked for uneven settlement of the foundation, corrosion and leaks.
- Installation of pressure relief valves should be considered for liquid lines, which could potentially rupture from liquid expansion.
- Sleeve-type line couplings should not be used when there is a chance of line movement.

12 Minimizing Surface Disturbance

12.1 General

The well location should accommodate all the equipment used to perform the fracturing job. Any off-location equipment staged during the job should be parked so it does not restrict or block local or emergency traffic. If it is necessary to block portions of the road, affected residents and emergency agencies should receive advance notification.

Wellsites should always be planned with safety—both worker safety and community safety—as a first priority. In addition, site determinations are also based on operational issues and regulatory requirements. Public nuisance issues associated with certain locations, including: vehicle traffic, emissions, noise, lighting, erosion control, material use and management of produced hydrocarbons and fracturing wastes, including flowback fluids, are also important factors in a final site determination.

Larger drilling locations (pads) required for multiple wells and horizontal fracture stimulation, ultimately reduce the overall surface disturbance when compared to single well pads. Pads should be sized to accommodate the drilling and fracturing equipment, multiple well pads, and larger production facilities necessary for higher volumes of produced fluids. These larger locations may result in additional localized impacts during construction, drilling, fracturing, well completion and production operations that must be considered and mitigated as appropriate. As soon as practicable, temporary equipment can be removed and excess areas may be reclaimed, restored or returned to other uses, reducing the location size and overall footprint. See API 51R for further information on appropriate reclamation practices [3].

12.2 Mitigating Impacts Associated with Site Selection

Site selection for all E&P activities warrants careful evaluation and planning. To minimize surface impact, additional attention is prudent for hydraulic fracturing operations. For example, the layout of the site for hydraulic fracturing operations should consider the potential for soil and surface water impacts in the event of a spill. As possible, equipment and materials should be positioned and stored to minimize disturbance to the environment. An environmental site assessment can be valuable in site selection. This assessment might include evaluating topographic, population, environmental hazard, zoning and other maps to locate sensitive or high-exposure areas [such as churches, schools, hospitals, residential areas, surface waters, freshwater wells, flood zones, active fault areas, threatened and endangered plants and animals (including habitat), protected bird habitat, wetlands, archeological, recreational, biological or scenic areas]. Where feasible, the site should be located away from these

sensitive areas. Potential impact from upset conditions, such as oil or produced water spills and leaks, should also be considered.

Existing roads and rights-of-way should be utilized to the maximum extent possible. The land owner and/or surface tenant should be consulted to consider present and future uses of affected and adjacent land. A site should be selected that minimizes the amount of surface terrain alteration to reduce environmental and aesthetic damages. Locations requiring construction practices such as cut and fill, which pose possible landslide or slump problems, should be avoided when possible. Consideration should be given to stock piling topsoil, if feasible. Subsurface soil conditions should be considered for adequate foundation support of buildings, pumps, engines, tanks and equipment used during hydraulic fracturing operations.

Detailed guidance for site selection considerations is provided in API 51R [9].

13 Protecting Air Quality

The sources of potential air emissions associated with hydraulic fracturing are temporary in nature. Hydraulic fracturing operations utilize large amounts of horsepower (hp), normally provided almost exclusively by diesel engines. There are federal, state, local and tribal requirements regarding air emissions that apply to oil and gas E&P operations.

Federal regulations that have a direct impact on controlling emissions from fracturing operations include the Standards of Performance for Stationary Compression Ignition and Spark Ignition Internal Combustion Engines (NSPS) and Reciprocating Internal Combustion Engine (RICE) NESHAP rules, which regulate new, reconstructed and existing stationary engines. In general, these rules apply to most internal combustion engines regardless of horsepower rating, location or fuel.

The EPA typically delegates implementation of air regulations to state and tribal agencies. This delegation of authority can include rule implementation, permitting, reporting and compliance. Any state with delegation of authority can pass more restrictive rules, but they are prohibited from passing a rule that is less stringent than the federal rule.

14 Preserving Visual Resources

The visual impacts from hydraulic fracturing operations at any particular site are generally minor and short-term, and vary with topography, vegetation and distance to the viewer. Site-specific impacts will be more pronounced with multi-well pads, but the overall impact of a large-scale operation is reduced. Horizontal drilling can provide flexibility to locate well pads in optimal locations and use of multi-well pads will reduce the number of visual impacts in an area. Operators should work with municipalities to identify and/or map potential areas of high visual sensitivity.

15 Mitigating Noise Impacts

Noise is best mitigated by distance—the further from receptors, the lower the impact. The second level of noise mitigation is direction. Directing noise-generating equipment away from receptors greatly reduces associated impacts. Timing also plays a key role in mitigating noise impacts. Scheduling the more significant noise-generating operations during daylight hours provides for tolerance that may not be achievable during the evening hours.

Hydraulic fracturing operations should be planned with these noise-related considerations in the forefront. When possible, attention to the location of the access road may mitigate noise impact associated with trucking and the hydraulic fracturing operations. When feasible, the wellsite and access road should be located as far as practical from occupied structures and places of assembly. The goal is to protect non-lease holders from noise impacts that conflict with their property use.

Environmental Protection for Onshore Oil and Gas Production Operations and Leases

API RECOMMENDED PRACTICE 51R
FIRST EDITION, JULY 2009

Environmental Protection for Onshore Oil and Gas Production Operations and Leases

1 Scope

This standard provides environmentally sound practices for domestic onshore oil and gas production operations. It is intended to be applicable to contractors as well as operators. Facilities within the scope of this document include all production facilities, including produced water handling facilities. Offshore and arctic areas are beyond the scope of this document. Operational coverage begins with the design and construction of access roads and well locations, and includes reclamation, abandonment, and restoration operations. Gas compression for transmission purposes or production operations, such as gas lift, pressure maintenance, or enhanced oil recovery (EOR) is included; however, gas processing for liquids recovery is not addressed. Annex A provides guidance for a company to consider as a "good neighbor."

2 References

2.1 Normative References

This recommended practice (RP) includes by reference, either in total or in part, the following standards and publications. Users should investigate use of the appropriate portion of the most recent editions of the publications listed below.

API, *API Environmental Guidance Document: Onshore Solid Waste Management in Exploration and Production Operations*

API, *Guidelines for Commercial Exploration and Production Waste Management Facilities*

API Bulletin E2, *Bulletin on Management of Naturally Occurring Radioactive Materials (NORM) in Oil and Gas Production*

API Bulletin E3, *Environmental Guidance Document: Well Abandonment and Inactive Well Practices for U.S. Exploration and Production Operations*

API Specification 7B-11C, *Specification for Internal-Combustion Reciprocating Engines for Oil-Field Service*

API Recommended Practice 7C-11F, *Recommended Practice for Installation, Maintenance, and Operation of Internal-Combustion Engines*

API Recommended Practice 11ER, *Recommended Practice for Guarding of Pumping Units*

API Bulletin 11K, *Data Sheet for the Design of Air Exchange Coolers*

API Specification 11N, *Specification for Lease Automatic Custody Transfer (LACT) Equipment*

5.6.3 Restoration plans should be prepared in detail and should consider methods such as:

- a) priority of stabilization and revegetation of disturbed areas,
- b) use of native plant species,
- c) stockpiling soils where reclamation would be enhanced,
- d) use of agency approved designs and seed mixes.

6 Producing, Injection/Disposal Wells

6.1 Completion, Stimulation, and Workover Operations

6.1.1 Planning

For a new well site, an effective planning process should be carried out and should incorporate the latest guidelines for waste management, pit location and construction, handling of water discharges, and waste disposal. The location and size of new pits and pads for completion and workover equipment should be selected so as to minimize disruption of the surface resources and retain the potential for reclamation of the site. Refer to *API Environmental Guidance Document: Onshore Solid Waste Management in Exploration and Production Operations* for environmental aspects of reserve pit construction, operation and closure.

For an existing well site, the planning process is just as important to provide for safe and environmentally acceptable completion and workover operations. Existing facilities, such as pits and production equipment, should be reviewed and assessed to determine whether the facility is suitable in its present condition for the intended well operations or if modifications are required. For both new and existing well sites, a waste management plan for handling and storing all waste materials generated during completion and workover activities should be developed. Refer to *API Environmental Guidance Document: Onshore Solid Waste Management in Exploration and Production Operations*, for information on how to develop such a plan. The waste management plan should address the specific wastes which are expected to be produced by the particular operations being performed, as well as provide guidelines concerning the actions to be taken in the event that unexpected waste materials, including hazardous materials, are encountered during the operations. In addition to safe handling and storage of waste materials on the well site, provisions should also be made for each type of waste to be disposed of. Refer to API 55 and API 49 for planning and conducting operations involving hydrogen sulfide. Refer to API E2 for information regarding management of naturally occurring radioactive materials (NORM).

Since much of the work on producing and injection wells is performed by contract or service company personnel, the operating company should confirm that the contractor's personnel have appropriate safety training, including hazard communication training, and are aware of requirements of the site-specific waste management plan. Consideration should also be given to requiring performance bonds, if appropriate. The operator should also confirm that the contractor's personnel are aware of all applicable safety and environmental requirements of the operator.

6.1.2 Equipment Selection

Temporary equipment required to carry out well completion and workover operations should be included in the overall operation plan. Equipment should be installed in a manner so as to utilize the smallest practical area for prudent operations. Equipment should be maintained to present an acceptable appearance.

6.1.3 Producing Wells

Producing wells should be completed so production zones and drinking waters zones are isolated and cannot be contaminated by other formations. The well must be cased and cemented properly to provide this protection.

6.1.4 Injection/Disposal Wells

Injection/disposal wells should be completed so the injected fluids enter the desired formations and do not enter other formations or drinking water zones. Typical injections are completed with three levels of protection for drinking water formations:

- 1) surface casing and cement,
- 2) long string casing and cement, and
- 3) tubing and packer.

Also, the area around the injection should be reviewed to see if any wells (active, inactive or abandoned) were drilled through the injection/disposal zone. If wells were drilled close to the injection/disposal well that penetrated the injection/disposal formation and those wells did not isolate those zones, the injected fluids could flow from the injection zone through the improperly plugged or completed well to other oil and gas zones or drinking water zones.

6.1.5 Remedial Cementing

For both new and existing wells, the known and anticipated needs for remedial cementing to protect underground sources of drinking water (USDW) should be considered in the planning stage.

Excess cement, cement returns, and water used to wash cementing equipment should be contained and disposed of in an environmentally sound manner. Refer to *API Environmental Guidance Document: Onshore Solid Waste Management in Exploration and Production Operations* for additional information.

6.1.6 Selection, Use, and Storage of Fuels and Completion Fluids

Completion fluid selection should take into account the safety and logistics of transporting, handling, storing, and disposing of clean and contaminated fluid.

For both new and existing well sites, all fuels, treatment chemicals, completion brines, and other similar liquids should be properly stored in labeled containers intended for that purpose. Containment should be constructed so spilled fuels or chemicals do not reach the ground.

Wherever practical, tanks or existing drilling pits should be used for completion and workover operations. Completion brines and other potential pollutants should be kept in lined pits, steel pits, or storage tanks. If a new earthen pit is necessary, it should be constructed in a manner that prevents contamination of soils, surface water, and groundwater, both during the construction process and during the life of the pit. Consideration should be given to the use of tanks or lined pits to protect soil and groundwater, especially for brines and oil-based fluids.

Normal operations should preclude oil in pits. However, in the event that well completion operations dictate use of pits containing oil for a brief period of time, they should be fenced, screened, netted and/or flagged, as appropriate, to protect livestock, wild game, and fowl. Refer to the Migratory Bird Treaty and Enforcement Improvement Act for additional guidance. Oil accumulated in pits should be promptly removed and recovered, recycled, or disposed.

All liquids and other materials placed in pits should be recovered, recycled, or disposed in an environmentally acceptable manner (determined by the constituents in the material and the environmental sensitivity of the location).

When operations are completed, pits not required for well operation should be closed in accordance with the environmental sensitivity of the location. The surface area should be restored to a condition compatible with the uses of the adjacent land area. Any pit retained should be of minimum size commensurate with well operations. Refer to *API Environmental Guidance Document: Onshore Solid Waste Management in Exploration and Production Operations* for additional information and permitting requirements.

6.1.7 Stormwater Runoff

Natural drainage patterns of the area should be considered in the location of equipment, pads, and pits so that stormwater runoff does not create an environmental hazard by erosion of base material, which could lead to equipment instability, or by flooding of pits, which could cause a discharge of oil or other fluids into the local surface waters.

Discharges of stormwater from inside E&P facilities such as bermed areas around tank batteries (including oil and gas exploration, production, processing, or treatment operations or a transmission facility), which can reach waters of the United States, require a stormwater discharge permit and submittal of a stormwater pollution plan to the EPA. Contamination includes stormwater that comes into contact with any overburden, raw materials, or waste products on the site.

Construction designs should include installation of erosion and sedimentation control systems. Site construction should be inspected routinely and after each significant storm event. Any repairs to the control systems should be completed promptly. During the drilling and completion phases, all raw materials should be stored in a manner to prevent contaminating the natural runoff of precipitation. Temporary containment and liners should be used to minimize the impact of spills and to prevent impacted precipitation from affecting surface or groundwater.

6.1.8 Blowout Prevention Equipment (BOPE)

All BOPE should be selected, installed, and properly maintained in order to prevent uncontrolled releases to the environment. Refer to API 53.

All BOPE should have a working pressure rating that exceeds the maximum expected surface pressure.

Training exercises or drills should be held as necessary to ensure crew familiarity and that the BOPE is in good working order.

6.1.9 Control of Noise and Other Nuisances

Engines and production equipment should be provided with noise abatement measures, if appropriate, to reduce noise levels to the extent practical, considering the local environment. Other nuisances such as odors and dust should be controlled as considered appropriate for the location. Consideration should be given to minimizing traffic in general, particularly in or near urban areas.

6.1.10 Solids Removal or Capture

All produced fluids, drill cuttings, cement, cement returns, NORM scale, and other solids should be captured and classified, then reused, recycled, or disposed. Hazardous waste should be segregated in order to prevent contamination of nonhazardous materials.

6.2 Well Operations

6.2.1 Equipment Operation and Maintenance

All well-producing equipment should be kept neat, clean, painted and in good working order. Equipment should be painted to blend into the surroundings, if required or appropriate, and kept clean to present an acceptable appearance. Selected moving equipment may be painted different colors to enhance visibility.

Safety guards necessary to protect humans, livestock, wildlife, and promote public safety should be maintained around equipment. Refer to API 11ER for information on guarding of pumping units. Equipment lockout/tagout procedures should also be developed and implemented.

Drip pans should be provided under equipment and storage containers potentially subject to minor leaks. These drip pans should be monitored on a routine basis to recover and recycle or dispose of accumulated oil and other liquids.

Bulk storage, recyclable, and reusable containers should be considered in order to reduce the number of containers that must be maintained and disposed. All reusable containers should be well marked to denote contents and the fact that they are to be reused.

The installation or use of double stuffing boxes, leak detectors, and shutdown devices should be considered in areas of particular environmental sensitivity.

Well cellars should be kept clean, dry, and guarded to prevent accidental falls. Well cellars should be filled if they may fill with sour gas and present a safety hazard to people.

6.2.2 Metallurgy and Corrosion

All equipment should be manufactured from materials which are suitable for the environment in which they are to operate. NACE MR 0175 and NACE RP 0475 should be consulted for more information.

Equipment operating in known corrosive conditions should be inspected on a routine basis for signs of corrosion, with corrective action taken, as needed, to assure the equipment continues to operate in an environmentally acceptable manner.

If well production or injection conditions change in terms of hydrogen sulfide or carbon dioxide content, pressure, water cut, or any other parameter, the metallurgy of the well equipment should be reassessed to assure its suitability for the new conditions.

6.2.3 Leak Detection

All equipment should be inspected on a routine basis for signs of leakage, with corrective action taken, as needed, to assure the equipment continues to operate in a safe and environmentally acceptable manner.

All injection and disposal wells equipped with tubing and packed should periodically monitor the tubing casing annulus pressure to test the integrity of the tubing and packer. If a well is not completed with a packer, then other methods should be used, such as tracer logs or temperature logs to ensure the fluids injected are properly controlled and are going into the proper injection/disposal formation. Frequency of testing is dependent on the operating conditions. For example, if an area has a high number of corrosion failures, testing for the mechanical integrity of the well should be frequent.

6.2.4 Inspection and Certification

Equipment should be manufactured, refurbished, inspected, and installed according to manufacturer, API or other industry standards, and legal requirements.

6.3 Well Testing

6.3.1 Venting and Flaring

Venting and flaring should be restricted to a safe location. Where possible, the flare or vent should be located downwind considering the prevailing wind direction at the well location. When possible, all gas resources of value should be captured and used. If not possible, then this gas should be flared.

6.3.2 Flare Pits

Flare pits, sometimes called blowdown or emergency pits, should not be used for storage or disposal. The primary purpose of a flare pit is to catch any incidental fluid that might be associated with the gas stream that does not burn. Fluids in a flare pit should be removed daily, or as quickly as practical.

Siting and construction of flare pits should minimize the risk of surface and groundwater contamination. The size of the flare pit should be proportionate to the volume of liquid effluent that might be expelled from the gas flare. Use of a knockout vessel should be considered.

6.3.3 Control of Noise and Other Nuisances

Flares may need to be provided with noise abatement measures to maintain noise levels compatible with the local environment. The noise intensity, duration, location relative to public areas and natural resources, as well as the flare/vent exit design should be considered, where applicable.

Other nuisances, such as light emittance from a lighted flare, odors, and dust, should be controlled as considered appropriate for the location.

6.4 Plugging and Abandonment

6.4.1 General

Permanent abandonment is done when the wellbore has no further utility and is permanently sealed against fluid migration. Temporary abandonment operations may be performed when a wellbore has future utility, such as for EOR projects, and must be maintained in a condition where routine workover operations can restore a wellbore to service. The same environmental concerns exist in both cases. Refer to API E3.

6.4.2 Subsurface

6.4.2.1 General

Several environmental concerns related to well abandonment should be addressed. The primary environmental concerns are protection of freshwater aquifers and USDW, as well as isolation of downhole formations containing hydrocarbons or used for injection. Additional issues, which should be evaluated, are the protection of surface soils and surface waters, future land use, and permanent documentation of abandoned wellbore locations and conditions.

6.4.2.2 Plugging Purpose

The purpose of plugging wells is to prevent interzonal migration of fluids; the contamination of freshwater aquifers, surface soils, and surface waters, and to conserve hydrocarbon resources either in the production interval or potential production intervals. Generally, contamination by an improperly plugged and abandoned well can occur in two ways:

- a) the abandoned well can act as a conduit for fluid flow between penetrated strata, into USDW, or to the surface;
- b) contaminated water can enter the abandoned wellbore at the surface and migrate into USDW.

Such contamination is prevented when a well is properly plugged. Not only do the plugging operations prevent an abandoned well from becoming a conduit for contamination to occur, but well construction and completion methods also contribute to the prevention of contamination.

Well plugging operations are focused primarily on protecting USDW, isolating downhole formations productive of hydrocarbons or used for injection, and protecting surface soils and surface waters. A surface plug prevents surface water runoff from seeping into the wellbore and migrating into USDW cement plugs isolating hydrocarbon and injection/disposal intervals and a plug at the base of the lowermost USDW accomplish this primary purpose. Surface water entry into an abandoned well is a concern because the water may contain contaminants from agricultural, industrial, or municipal activities. API E3 recommends that operators set a cement plug at the base of the lowermost freshwater aquifer or USDW during plugging and abandonment operations applicable to the well.

NOTE The cement plugs also work to protect surface soils and water from wellbore fluids by confining those fluids in the well.

In addition to the cement plugs described herein, many state and federal regulatory agencies require cement plugs across the base of the surface casing and in, or between, each producing and potential producing zone.

6.4.2.3 Fluid Confinement

It is essential that all formations bearing usable quality water, oil, gas, or geothermal resources be protected and/or isolated. The prevention of gas or fluid migration to other zones or to the surface is of primary importance. Open-hole plugs, casing plugs, or cement squeezed through casing perforations will isolate the target formations in most cases. However, special procedures, such as perforating casing and circulating cement, may be necessary to isolate that potential production or injection formations existing behind uncemented casing. It is important to prevent interzonal flow in an abandoned well so that such cross-flow does not interfere in the commercial exploitation of the zones through nearby wellbores.

6.4.3 Surface

6.4.3.1 General

The cleanup and remediation of the surface may include cutting off the surface casing below ground level, restoring the surface to conditions near those that existed prior to the well being drilled, and marking the surface of the wellbore by installing an upright marker. The operator should restore the well site consistent with the criteria presented in *API Environmental Guidance Document: Onshore Solid Waste Management in Exploration and Production Operations*. However, the landowner should be consulted before beginning well site remediation. Some states require that the landowner be notified that a well is to be plugged. The landowner may have a right to use the well for a freshwater source.

6.4.3.2 Cleanup and Remediation

Assuming the landowner elects not to use the well as a freshwater source, the operator should set the required surface plugs; remove the wellhead; weld a steel plate on the surface casing stub, if required; fill in the well cellar, rat hole and mouse hole; and level the area. Casing strings left in the well should be cut off 3 ft to 6 ft below ground level, or deeper if required by the landowner.

Pits should be emptied and reclaimed to a condition similar to the rest of the reclaimed pad area. Pits should be allowed to dry or be solidified in situ before filling. The pit area may be mounded to allow for settling. Before removing or abandoning pipelines or flowlines, fluid displacement and line purging should be considered and fluid reclaimed, recycled, or properly disposed of according to fluid type.

Open burning can be used in some areas to dispose of nonhazardous, hydrocarbon-containing wastes that are unsuitable for recycling. Burning should be restricted to materials such as oily sorbents and paraffin and should be conducted only with approval of state or local air pollution regulatory agencies. Burning should be conducted during daytime hours and with due regard to wind direction and velocity. The results should not cause a nuisance that could result in black smoke or particulates.

Off-site commercial facilities should be used for other nonhazardous and hazardous waste disposal. The off-site facilities should be permitted and care should be taken with site selection. Refer to *API Environmental Guidance Document: Onshore Solid Waste Management in Exploration and Production Operations*, API 4663 and API's *Guidelines for Commercial Exploration and Production Waste Management Facilities*.

6.4.3.3 Soil Erosion

Disturbed areas, such as roads, pits, and well sites, may need to be further remediated depending on lease agreements.

6.4.3.4 Inspection

Final abandonment is complete only after all surface equipment is removed, all pits are closed, and the surface is restored. A vertical steel monument may be considered that indicates the well location, operator, and well number. Thereafter, the abandoned well site can more easily be located and the former operator determined.

7 Lease Gathering and System Lines

7.1 Introduction

In planning lease gathering and system lines, including electrical distribution systems, it is important to consider the impact that construction operations and maintenance activities will have on people, animals, plants, and the land itself, both surface and shallow subsurface. The impact on current use, as well as possible future uses, should be evaluated along with potential future facilities expansion. Because pipelines can be buried, and the surface reclaimed, long-term surface disturbance associated with pipelines can be avoided. The placement of pipelines should avoid steep hillsides and watercourses where feasible. Also, where feasible, pipeline routes should take advantage of road corridors to minimize surface disturbance. Also, when clearing is necessary, the width disturbed should be kept to a minimum and topsoil material should be stockpiled to the side of the routes where cuts and fills or other disturbances occur during pipeline construction. Retaining topsoil for replacement during reclamation can significantly accelerate successful revegetation.

7.2 Route Selection

7.2.1 The following environmental factors should be considered in planning lease gathering and system lines.

- a) Proximity to lakes, streams (including dry washes and ephemeral streams), wetlands, drainage and irrigation ditches, canals, flood plains, and shallow water wells. These features should be evaluated in terms of disturbances during construction and routine operations, and in the event of accidental releases.
- b) Depth to, and quality of, groundwater. The potential impact to groundwater, particularly from any releases from buried lines should be considered.
- c) Removal of trees, disturbances to dikes, levees, and terraces, and destruction of growing crops. These impacts should be evaluated with a focus on construction and routine maintenance activities.
- d) Impacts to migratory bird habitat or critical habitat of threatened or endangered plant and animal species, including noise and dust.
- e) Proximity to buildings or other facilities occupied or used by the public. Particular consideration should be given to homes, churches, schools, and hospitals.

- f) Impact on cultivated lands.
- g) Areas of special historical, archeological, recreational, biological, or scenic significance.
- h) Land ownership.
- i) Location of recently active shallow faults.

7.2.2 The selection of routing for lease gathering and EOR injection and produced water disposal system lines, consistent with production, EOR and disposal requirements and overall economics, should consider the following:

- a) foreseeable uses of surface areas by either the landowner or tenant;
- b) possible exposure to future construction and excavation work;
- c) topography, when it is an important factor in:
 - 1) line design,
 - 2) right-of-way maintenance,
 - 3) possible land erosion,
 - 4) emergency response and containment of releases;
- d) location of existing rights-of-way;
- e) location of existing roads.

7.3 Design

7.3.1 In design of lease gathering and system lines, appropriate industry codes should be followed.

7.3.2 Lease gathering and system line design should consider the following.

- a) Estimated life of the line.
- b) Line environment (nature of the soil, presence of water-saturated soil, alkaline flats, depth of frost, etc.).
- c) Nature and quantity of product throughput, initially and as production matures, including the potential for EOR processes.
- d) Impacts on existing facilities.
- e) Consequences of possible line failure. Release of oil, water, or gas should be qualitatively evaluated. Consideration should be given to installing block valves to isolate line segments located in or near environmentally sensitive areas (such as wetlands), on either side of stream crossings, and in close proximity to

areas occupied by the public. Consideration should also be given to sleeving lines or using heavier walled pipe in these areas.

The qualitative evaluation should consider the following:

- 1) public impact,
 - 2) environmental impact (including potential natural resource damage assessment liability),
 - 3) damage to crops and domesticated animals,
 - 4) cleanup costs,
 - 5) political or regulatory impacts.
- f) Corrosion inhibition measures (external and internal). All equipment should be manufactured from materials which are suitable for their operating environment. NACE MR 0175 should be consulted for further guidance, as applicable.
- g) Burial to optimum depth to reduce exposure to hazards such as plowing, freezing, and other construction.
- h) Provisions for various crossings (roads, streams, and other lines).
- i) Optimum location for blowdown tanks, valves, etc.
- j) Noise abatement (where appropriate).
- k) Miscellaneous variable factors including operating pressures, temperature changes, line expansion, and desired safety factors.
- l) If electrical distribution lines are to be installed in areas where raptors are likely to use them as perches, consideration should be given to installing wooden perch guards or cross members on the poles above the lines to prevent the birds from coming in contact with the charged lines.

7.4 Construction and Installation

7.4.1 Lease line routes and applicable rights-of-way should utilize the smallest practical surface area, consistent with prudent operations.

7.4.2 Unnecessary damage to trees and other vegetation adjoining lease line routes should be avoided.

7.4.3 If contractors are used to install lines, the operator should verify that the contractor has implemented a safety program that includes a written hazard communication program. The contractor should supply MSDSs for all hazardous materials brought on site.

7.4.4 Appropriate inspections should be performed during construction to ensure design specifications are met.

7.4.5 Upon completion, lines should be inspected and pressure tested for possible leaks in accordance with state and local codes. Pressure test fluids should be collected and disposed. Refer to the *API Environmental Guidance Document: Onshore Solid Waste Management in Exploration and Production Operations* for recommendations for disposal of these test fluids.

7.4.6 After installation of a new line, all lease line routes and rights-of-way should be cleaned up and restored to conditions compatible with existing land use, unless other arrangements have been made with the landowner. Disposal of all waste should be in accordance with the *API Environmental Guidance Document: Onshore Solid Waste Management in Exploration and Production Operations*.

7.4.7 Line routes and burial depth should be adequately documented to aid in preventing ruptures and/or accidental leaks during future excavation activities. Crossings should be marked.

7.5 Operation and Maintenance

7.5.1 All applicable personnel (both company and contractor) should receive training to provide for proper operation and maintenance of the lines. This training should include start-up and shutdown procedures, normal operating procedures, and emergency response procedures, in the event of a leak or spill of a hazardous substance.

7.5.2 Line routes and facilities should be inspected at intervals dictated by evaluation of exposures and/or failures.

7.5.3 Appropriate steps should be taken to prevent surface and environmental damage from the use of hot oil, chemicals, and other treatments that are used to maintain lease gathering and system lines.

7.5.4 Proper maintenance practices should be exercised with respect to crossing markers, blowdown tanks, venting equipment, and corrosion protection equipment. Blowdown fluids should be collected and placed in the production system to recover hydrocarbons. Waste materials should be recycled, reclaimed, or disposed. Refer to *API Environmental Guidance Document: Onshore Solid Waste Management in Exploration and Production Operations*.

7.5.5 Pressure tests, profile surveys, and other means should be considered to meet operating safety requirements.

7.5.6 Operating procedures should provide for early identification of developing corrosion problems, failure-prone equipment, and malfunctions so that corrective action can be taken before environmental or safety consequences occur. Frequency of failure analysis should be considered to aid in scheduling line replacements.

7.5.7 Appropriate industry codes should be followed with respect to maintenance of records, repairs, reporting of leaks, etc.

7.5.8 Whenever modifications are made to existing lines or there are significant changes in physical parameters (temperature, pressure, composition, etc.), the changes should be considered for evaluation pursuant to management of change principles. Where appropriate, facility drawings should be updated to show modifications and the superseded drawings should be destroyed.

7.6 Abandonment of Gathering and System Lines

7.6.1 All surface lines should be removed. Lines should be purged before removal.

7.6.2 Surface and subsurface equipment connected to buried lines should be removed to a depth consistent with subsequent land use or, preferably, to the depth of the buried lines.

7.6.3 Harmful or hazardous materials should be displaced from any lines abandoned in place.

7.6.4 Where appropriate, each outlet of abandoned lines should be permanently sealed.

7.6.5 All crossing markers and other line markers should be removed.

7.6.6 The location of abandoned lines should be identified on facility maps.

7.6.7 Upon completion of abandonment activities, all disturbed surface areas should be cleaned up and restored to conditions similar to the adjacent lands.

7.6.8 Dispose of all waste per *API Environmental Guidance Document: Onshore Solid Waste Management in Exploration and Production Operations*.

8 Production and Water Handling Facilities

8.1 Requirement Determination (Preplanning Considerations)

The overall basis for siting, designing, constructing, and operating oil, gas, and water production, handling, and disposal/injection facilities should be to minimize adverse effects on the environment, consistent with providing an economical means of accumulating well, lease, or unit production from primary, secondary, or tertiary recovery methods and producing the ultimate recoverable reserves. Impacts on local population, land, surface and subsurface waters, air quality, and animal and plant species, including habitat, should be considered.

Water handling facilities are typically located adjacent to, or within, production facilities. Initial planning for these facilities within a field should consider future development potential in order to minimize surface disturbance. When practical and economic, central field locations should be considered to avoid the use of multiple facilities. Facility sizing should consider future throughput increases to minimize the need for additional tankage and treating vessels.

Production and water handling facilities should be planned to utilize the smallest practical surface area consistent with safe, prudent, and economic operations. In addition, produced water may be saline and corrosive. Therefore, special care should be taken to minimize the possibility of environmental damage due to equipment upsets, spills, and leaks.

Baseline conditions and past land-use in the area should be documented. At a minimum, drinking water supplies should be identified and sampled before any development. Water usage should be determined during the planning phase so that water rights can be secured and disposal options evaluated and selected.