



Common Sense Initiative

Mike DeWine, *Governor*
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Natural Resources, Division of Oil and Gas Resources Management

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Regulation/Package Title (a general description of the rules' substantive content):

Spacing of Oil and Gas Wells – Consistent with ORC 1509.23 and 1509.24, the rule establishes minimum setback distances and other spacing requirements to conserve oil and gas resources and protect correlative rights and public safety.

Rule Number(s): 1501:9-1-04

Date of Submission for CSI Review: May 22, 2024

Public Comment Period End Date: June 5, 2024

Rule Type/Number of Rules:

New/___ rules

No Change/ 1 rules (FYR? Y)

Amended/___ rules (FYR? ___)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- Requires specific expenditures or the report of information as a condition of compliance.**
- Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

- 2. Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

Consistent with ORC 1509.23 and 1509.24, Ohio's well spacing rule sets forth minimum acreage requirements for drilling units and sets minimum distances that a new well may be drilled from boundaries of tracts, drilling units and other wells – both to conserve oil and gas reserves and to protect correlative rights (i.e., the right to a fair share of an oil and gas mineral interest from an underground pool). And, per ORC 1509.24, a drilling unit must be compact and contiguous.

The Division is not proposing any changes to the current rule.

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

Authority: 1509.03, 1509.23, 1509.24

Amplifies: 1509.02, 1509.03, 1509.23, 1509.24

- 4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

If yes, please briefly explain the source and substance of the federal requirement.

No.

5. **If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable.

6. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The rule implements requirements established in ORC 1509.23 and 1509.24. The rule sets minimum acreages for drilling unit boundaries, which act to conserve oil and gas reserves and protect correlative rights. The rule also seeks to ensure that drilling units are compact and composed of contiguous land in accordance with statutory requirements.

7. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

- Consistent horizontal and vertical well spacing requirements throughout the state and compliance with those requirements
- More efficient recovery of oil and gas resources
- Protection of correlative rights
- Contiguous and compact drilling sites
- Reduction in exception requests from the spacing rule for horizontal shale wells
- Reduction in mandatory pooling requests for vertical (conventional) wells

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

9. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Well Spacing rule has been developed and updated with extensive participation and input from the subject matter experts at the Division, the regulated community, interested parties, and the Technical Advisory Council on Oil and Gas.

For the most recent amendments made to the rule, industry participation included input and comments from the American Petroleum Institute, the Ohio, Ohio Oil & Gas Association, and other industry stakeholders. Other interested parties also participated and provided comments.

At this time, the Division is not proposing any changes to the existing Well Spacing rule, but affected industry stakeholders and other interested parties were contacted and offered the opportunity to comment and/or meet with the Division on the Division's proposed "no change" to the rule. No comments were received. The list of affected and industry stakeholders that were contacted is attached.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

There were no comments or other input received from affected or interested parties.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The Division relied on data and information provided by geologists, engineers, and experts from the government, the regulated community, and the public, in the initial and subsequent modification of the rule's provisions, including input from Ohio's Technical Advisory Council on Oil and Gas. In fact, the Division used data from micro seismic monitoring of new and horizontal wells and related information from industry presentations to the Technical Advisory Council on Oil and Gas to establish setback distances for horizontal wells.

The current rule is being proposed as "no change."

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

The standards and specifications established in the rule were developed with careful consideration and extensive input from government experts, experts from the regulated community, and the Ohio's Technical Advisory Council on Oil and Gas. The rules have proven effective and are consistent with industry practices for operating wells. For these reasons, no other regulatory alternatives were considered.

13. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Agency has sole and exclusive authority to regulate oil and gas activity (ORC 1509.02), so those activities are not and cannot be regulated by any other agency. This is the Division's only well spacing rule.

14. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

ORC 1509.06 requires each application for a well permit to be accompanied by a map prepared by an Ohio registered surveyor. The applicant must demonstrate by map that the proposed well location conforms to all spacing requirements established in the rule. In addition, the Agency routinely communicates with the regulated community regarding implementation of rules. Also, Division staff is prepared to answer questions and Division staff and field inspectors are trained in the requirements established under the rule.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

- a. Identify the scope of the impacted business community, and**
- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a representative business. Please include the source for your information/estimated impact.

The impacted business community are well owner/operators engaged in drilling a new well, reopening an existing well, and/or deepening or plugging back and existing well owners/operators and mineral rights holders of adjacent sites, nearby sites and common resource pools. The adverse impact can be quantified in increased costs and time to comply with the rule's setback and spacing requirements, such as obtaining the proper surface and underground rights to cover a specific amount of acreage. However, the rule also benefits businesses through protection of correlative rights, providing predictability in spacing, and protecting resources for further development, including by requiring that sites be compact and contiguous.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

No. No changes to the rule are being proposed.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The spacing requirements established in the rule are consistent with industry standards and statutory requirements for conservation of oil and gas reserves, protection of correlative rights, and that drilling units be compact and composed of contiguous land. The regulation of oil and gas activity in Ohio is in the public interest while also providing reasonable standards for the regulated industry to operate within.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

The rule provides opportunities for the Chief to make modifications based on well-specific conditions and situations. For example, the rule provides that where an applicant for a drilling permit shows that an exception to the rule will protect correlative rights and/or promote conservation by permitting the oil and gas to be produced, which could not otherwise be produced, the chief shall grant an exception to the rule. Overall, however, the policy goal of the rule is designed to implement statutory policy and requirements for the conservation of oil and gas reserves, protection of correlative rights, and the requirement that drilling units be compact and contiguous.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

ORC 1509.04 contains a process that ensures the Division makes reasonable attempts to contact a person for outstanding paperwork violations before issuing a Chief's Order. Through that process, a person has an opportunity to request an extension up to 60 days to submit the documents and has an opportunity to correct paperwork violations.

20. What resources are available to assist small businesses with compliance of the regulation?

Division staff is always available to assist with compliance of the regulation for all businesses. Additionally, there are forms and instructions available on the Division's website that incorporate the requirements in a manner that is easy to understand.