

CSI - Ohio

The Common Sense Initiative

MEMORANDUM

TO: Ann Laubach, Ohio Department of Natural Resources

FROM: Jeffrey R. Kasler, Regulatory Policy Advocate

DATE: March 9, 2012

RE: **CSI Review – Well Construction**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis. This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

Regulatory Intent

The five rules included in this package pertain to minimum enforceable standards for the construction and mechanical integrity monitoring of all oil and gas wells drilled in Ohio. By extension, the regulations intend to ensure public safety and protect groundwater resources.

Development of the Regulation

The Department of Natural Resources (ODNR) facilitated development of these rules beginning in late 2010. The Business Impact Analysis filed by the Department provided some information about this process, but the CSI Office followed up to get a more detailed understanding of the process and the role of stakeholders in developing the rule package.

The Department examined regulations already in place at the other 32 gas-producing states and also consulted with the Ohio Environmental Protection Agency, the United States Environmental Protection Agency, and the federal Bureau of Land Management. In addition, multiple state agencies, environmental groups, and oil and gas associations participated on a rule development committee. One component of that committee entailed multiple meetings over the past year to allow for stakeholder and agency suggestions and comments. The rules were also posted on the ODNR web site and open for comment for 45 days.

The Department received extensive comments from environmental groups; some of the comments were well-taken and thus incorporated into the rules, while others were not. On a

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related note, the Department directly responded to the suggestions of those environmental groups with explanations for why comments were or were not incorporated into the rules.

During the CSI public comment period, several comments were received from environmental stakeholders. In a conversation with the Department, our office noted that none of the comments we reviewed came from industry stakeholders and the regulated community. The Department responded that industry participation in the rule development process afforded them an awareness of what the filed regulations would likely entail, and that while industry might not agree with every aspect of those filed regulations, they had agreed in principle with the provisions of the rule package. In addition, our office contacted industry stakeholders, who expressed satisfaction with the rules.

Adverse impact

In quantifying the potential adverse impact to business, the Department notes in its Business Impact Analysis that the “cost of drilling and constructing a traditional oil and gas well in Ohio will increase from 0 – 15%.” Our office followed up with the Department to request more specificity and clarity of what exactly this potential increase might mean to the regulated community. The Department did provide additional detail about the potential adverse impact, and agreed to revise the Business Impact Analysis to include this detail. Ultimately, the Department indicated that these proposed regulations largely codify current drilling procedures and, by extension, current costs associated with drilling. Thus, existing operators should not see increased costs from the requirements of these rules.

Recommendations

After reviewing the Business Impact Analysis and holding a follow up discussion with the Department, our office recommends that ODNR revise the “Adverse Impact” portion of the Business Impact Analysis to reflect the information above as well as other more specific detail demonstrating the potential impact on businesses in Ohio.

Conclusion

After reviewing the Department’s Business Impact Analysis, reviewing the comments from stakeholders, and following up with Department staff and industry stakeholders, we believe this rule package satisfactorily meets the standards espoused by the Common Sense Initiative. Based on the above comments, it is recommended that the Department revise its Business Impact Analysis as described above, and then proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Jim Zehringer, Director, Ohio Department of Natural Resources
Mark Hamlin, Lt. Governor’s Office