Rule Summary and Fiscal Analysis (Part A)

Department of Natural Resources
Agency Name

Brock Miskimen
Contact

Division Contact

2045 Morse Road Bldg. D-3 Columbus OH
43229-6693
Agency Mailing Address (Plus Zip)

Brock.Miskimen@dnr.state.oh.us
Email

1501:9-8-01
Rule Number

NEW
TYPE of rule filing

Rule Title/Tag Line

Definitions.

RULE SUMMARY

1. Is the rule being filed for five year review (FYR)? No

2. Are you proposing this rule as a result of recent legislation? No

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: 119.03

4. Statute(s) authorizing agency to adopt the rule: ORC Section 1509.3

5. Statute(s) the rule, as filed, amplifies or implements: ORC Section 1509.23, 1509.22, 1509.222.

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

The Ohio Department of Natural Resources (ODNR), Division of Oil and Gas Resources Management (DOGRM), has developed new rules pertaining to oilfield incident notification. As the primary regulatory authority over the oil and natural gas industry, DOGRM strives to regulate the industry in a way that protects Ohio's citizens, the environment, and natural resources. This rule supports those goals by ensuring that the DOGRM is properly notified of certain incidents, including those releases or occurrences that may result in potential or actual emergency situations.
This rule and rule 1501:9-8-02 requires owners and persons, who have been authorized to conduct activities regulated under the oil and gas law or rules by permit, order, registration certificate, or other means of authorization granted by the chief, to report releases of oil, condensate, brine, chemical substances and oilfield waste materials that occur above specified thresholds and outside of appropriate containment into the environment. Furthermore, these persons also must report releases of natural gas, hydrogen sulfide gas, fires, and explosions that occur under specified criteria. These incidents vary in range of scale and potential threat to public safety or the environment. Prompt notification of an incident allows the DOGRM to work with owners or authorized persons and emergency responders to swiftly respond to and document occurrences in order to mitigate further risks, oversee site reclamation, advise other responders regarding potential safety issues, and initiate enforcement actions when necessary. These definitions are necessary to support compliance with the accompanying rule standards in OAC 1501:9-8-02.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This new rule and rule 1501:9-8-02 requires persons who have been authorized to conduct activities regulated under Ohio Oil and Gas law by permit, order, registration certificate or other means of authorization granted by the Chief to report releases of oil, condensate brine, chemical substances, or gases if those releases occur in excess of reportable quantities and to report fires and explosions under specified circumstances. These definitions are necessary to support compliance with the accompanying rule standards in OAC 1501:9-8-02.

NOTE: a few non-substantive corrections were made between the emergency rule and this final permanent rule.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is generally available to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

9. If the rule incorporates a text or other material by reference, and it was infeasible for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was
infeasible:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

10. If the rule is being rescinded and incorporates a text or other material by reference, and it was infeasible for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If revising or refiling this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

We removed the definition of storm water. We added a definition for production operation. We listed the publication date for the Code of Federal Regulation reference.

12. Five Year Review (FYR) Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which this proposed rule would increase/decrease either revenues/expenditures for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will increase expenditures.

$ 583,812.

The DOGRM has created an Emergency Response Program to respond to, investigate, and oversee remediation and resolution of oilfield incidents and to coordinate interagency responses to such incidents. The DOGRM will spend an estimated $583,812 during the FY16/17 biennium to implement the rule that is
supported by these definitions.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

    Bill FF Line Item 725643 House Bill 64

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

    The rules will increase the cost of compliance by requiring affected persons responsible for specified releases to prepare and submit a thirty day follow-up report. The time and costs associated with preparing the report will vary based on the complexity and impact of the reported incident.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **Yes**

    You must complete the Environmental rule Adoption/Amendment Form in order to comply with Am. Sub. 106 of the 121st General Assembly.

**S.B. 2 (129th General Assembly) Questions**

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

    A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

        Not Applicable

    B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **Yes**

        Failure to comply with its terms creates a cause of action under RC 1509.33 and RC 1509.99.
C.) Does this rule require specific expenditures or the report of information as a condition of compliance? Yes

Affected parties who are responsible for specified releases, such as those that exceed reporting standards OAC Section 1501:9-8-02(A)(4), (6), (7) or (10) must submit a thirty-day follow-up report in order to document the cause of the release and its final resolution.
Environmental Rule Adoption/Amendment Form

Pursuant to Am. Sub. H.B. 106 of the 121st General Assembly, prior to adopting a rule or an amendment to a rule dealing with environmental protection, or containing a component dealing with environmental protection, a state agency shall:

1. Consult with organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment.

2. Consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or rule amendment.

3. Specifically identify whether the proposed rule or rule amendment is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program, whether the proposed rule or rule amendment is more stringent than its federal counterpart, and, if the proposed rule or rule amendment is more stringent, the rationale for not incorporating its federal counterpart.

4. Include with the proposed rule or rule amendment and rule summary and fiscal analysis required to be filed with the Joint Committee on Agency Rule Review information relevant to the previously listed requirements.

(A) Were organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment consulted? Yes

Please list each contact.

The basis of these draft regulations originated from months of discussions with the Ohio Oil and Gas Association (OOGA) and American Petroleum Institute (API)-Ohio regarding incident notifications. The DOGRM participated in meetings or conference calls with OOGA and API-Ohio on February 19, 2015; March 4, 2015; April 13 and 16, 2015; May 8, 2015 and June 2, 2015. Additional meetings occurred with OOGA, API-Ohio, and the Southeastern Ohio Oil and Gas Association (SOOGA) on August 13, 2015, November 3, 2015, and January 13, 2016. The DOGRM also had discussions with the Environmental Defense Fund (EDF) on the broad list of topics, including incident notification.

(B) Was documentation that is relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or amendment considered? Yes

Please list the information provided and attach a copy of each piece of
documentation to this form. (A SUMMARY OR INDEX MAY BE ATTACHED IN LIEU OF THE ACTUAL DOCUMENTATION.)

SOURCE OF DOCUMENTATION CITATION

ALASKA, 18 ACC 75.300.

ARKANSAS, ACA, TITLE 15 Chap. 72-Rule B-34

CALIFORNIA, CCR Section 1773, 1750, 1779 subsections and field rules

COLORADO, CWQCA 25-8-601(2) C.R.S. and Rule 906

ILLINOIS, Admin. Code; Chapter 1, Part 240 Section 240.880

LOUISIANA, LAC 33: Part 1; Subpart 2. Chapter 39

MICHIGAN, 1994 PA 451, R. 324.1001

NORTH DAKOTA, ND Admin Code 43-02-03-30

PENNSYLVANIA, 25 Pa Code 78.55 and 91.34

TEXAS, TAC, Title 16, Part 1, Chapter 3, Rule 3.20

WEST VIRGINIA, WV Code: Chapter 22, Article 22:35-1-3.3

STATE REVIEW OF OIL & NATURAL GAS ENVIRONMENTAL REGULATIONS GUIDELINES (STRONGER,)

Retrieved from; www.strongerinc.org/stronger-guidelines

(C) Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program? **No**

Is the proposed rule or rule amendment more stringent than its federal counterpart? **Not Applicable**

(D) If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend? **No**