

Rule Summary and Fiscal Analysis (Part A)**Department of Natural Resources**

Agency Name

Division of Mineral Resources**Management-Oil and Gas**

Division

Mindy Bankey

Contact

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1501:9-1-01

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

General provisions.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **Yes**

2. Are you proposing this rule as a result of recent legislation? **Yes**

Bill Number: **HB278/299**General Assembly: **125**Sponsor: **Niehaus**

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: **1509.01, 1509.03, 1509.23**

5. Statute(s) the rule, as filed, amplifies or implements: **1509.01, 1509.02, 1509.03, 1509.05, 1509.06, 1509.23**

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

1509.02: The 125th General Assembly passed HB 278 and HB 299 giving the Division of Mineral Resources Management sole and exclusive authority to regulate the permitting, location and spacing of oil and gas wells in the state and to draft rules pursuant to the six subjects identified under 1509.03 relating to safety, water supplies, surface facilities, fencing, containment and disposal of wastes and construction of access roads in urbanized areas.

1509.23: In light of the changes adopted by the legislature in HB 278 and HB 299, it was necessary to clarify existing standards to address the public health and safety situations where oil and gas wells are developed in urban areas. This will provide protection of public health or safety and prevent damage to natural resources in a manner consistent with ORC 1509.23, which has been in effect since 1965 and states:

"(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."

Devices, distances, methods of operation, procedures, methods, equipment and other requirements specified in the proposed changes to 1501:9-9-05 are derived from statutory authority that has been in effect since 1965. This rulemaking authority has been implemented for all Ohio wells regardless of location in several rules that have been in effect for all wells in Ohio since January 3, 1969. For example, since 1969 OAC 1501:9-9-02 or a predecessor rule has required all wells "drilled, reworked, reconditioned, deepened, plugged back, produced, shut-in or plugged shall use all reasonable means to safeguard against hazards to life, limb and property and are subject to and shall comply with safety rules herein specified." An additional example of the Division's historic regulation of oil and gas wells is found at OAC 1501:9-1-07 which requires, " All persons engaged in any phase of operation of any well or wells shall conduct such operation or operations in a manner which will not contaminate or pollute the surface of the land, or water on the surface or subsurface." Other regulations are applicable to all wells regardless of location that address safe operation and maintenance of wells specifically during well drilling and deepening operations, workover, reconditioning, plugging back, completion, plugging and producing operations. Another regulation that has historically applied to all wells regardless of location are OAC 1501:9-9-06 to

assure the public is protected from operating practices that are "hazardous or dangerous." Finally, regulatory language at OAC 1501:9-9-05 (A) (9) and (D) specify the Chief shall "protect life, health and property" from the affects of substances produced at well sites by construction and maintenance of containment dikes and site security by requiring locks, bull plugs or similar devices to prevent tampering with facilities.

Therefore, the chief has protected the public from the potential impacts of any well regardless of location that was developed or modified after January 3, 1969. This protection includes elements such as fencing, gate locks, maintenance of facilities, painting tanks, establishing needed emergency access, installing blow out protection devices, flame arrestors, warning and identification signs, set backs, tank limitations and other devices, methods of operation, procedures, methods, equipment or any other actions deemed necessary to protect the public and the environment. The proposed rules clarify this historic existing regulatory authority.

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:

The text that has been referenced in this rule (Best Management Practice (BMP) for Oil and Gas Well Construction Manual and Best Management Practice Pre-drilling Water Sampling Manual) has been uploaded to support sections 121.71 to 121.74 of the Revised Code, and has been made accessible to the general public by posting this information on the Ohio Department of Natural Resources Website at <http://www.dnr.state.oh.us/mineral/oil/index.html>, as well as referencing that the BMPs can be obtained by contacting the Division of Mineral Resources Management.

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:

The text that has been referenced in this rule (Best Management Practice (BMP) for Oil and Gas Well Construction Manual and Best Management Practice Pre-drilling Water Sampling Manual) has been uploaded to support sections 121.71 to 121.74 of the Revised Code, and has been made accessible to the general public by posting this information on the Ohio Department of Natural Resources Website at <http://www.dnr.state.oh.us/mineral/oil/index.html>, as well as referencing that the BMPs can be obtained by contacting the Division of Mineral Resources

Management.

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:

Not applicable the material has been incorporated.

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:

A rule listed on the public hearing was listed as 1501:9-9-06 and this was in error the rule under review is 1501:9-9-05. Therefore a revised public hearing notice has been uploaded and changes have been made as noted, and a refiling of this rule package is being done.

An expanded rule summary and fiscal analysis has been included in the refiling as well as including the web address where the two best management practices (BMP) referenced in the definitions can be located. A date was also added the the BMPs.

12. 119.032 Rule Review Date: **5/5/2005**

(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.

\$ 150,000-\$ 200,000

Administrative costs for the Division of Mineral Resources Management are expected to increase somewhere between \$150,000 - \$200,000. The increase in expenditures are primarily based on additional time involved in the application review for applications in urbanized areas and in the field review/inspection of wells in urbanized areas. The biennial budget for FY 06-07 approved additional fees for wells drilled in urban areas that will offset some increased administrative costs.

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

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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 legislatively mandated safety measures and public protections in these rules will not increase cost for wells drilled in communities that previously required similar protections required by the statute or when the oil and gas industry already were applying these protections. Insignificant increases will occur at the remaining well locations where few or no local rules existed prior to HB 278. Based upon a sampling of recently drilled urban wells, the increase in costs for public protections resulting from the rules as compared to prior to the passage of HB 278 will be less than 3% of the cost to drill an urban well.

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? **No**