

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

Agency Name

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

Division

Ben Pendery

Contact

2045 Morse Road Columbus OH 43229-6693

Agency Mailing Address (Plus Zip)

614-265-6891

Phone

Fax

ben.pendery@dnr.state.oh.us

Email

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? **No**

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

Bill Number: **SB165**General Assembly: **128**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: **1509.03, 1509.17, 1509.23**

5. Statute(s) the rule, as filed, amplifies or implements: **1509.01, 1509.02, 1509.03, 1509.05, 1509.06, 1509.10, 1509.12, 1509.17, 1509.18, 1509.23**

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

To update the rule consistent with the well construction-related provisions of SB 165 of the 128th General Assembly, which are in section 1509.17 of the Revised Code.

Please note: the amendments in this rule are limited in scope to those related to the well construction provisions of SB 165. The Division of Oil and Gas Resources Management intends to file this rule again later in 2012 with amendments related to the other portions of SB 165; at that time, it will also complete the necessary five-year-review of this rule.

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 rule contains general oil and gas provisions that apply to all of Division 1501:9 of the Administrative Code including definitions, public notices for rule-making, and forms.

The Division of Oil and Gas Management has fully reviewed this rule consistent with ORC section 1509.17, a new section of law added by SB 165 of the 128th General Assembly, and has determined that the following revisions are needed:

Typos, incorrect websites and references, and other small errors are corrected throughout the rule.

(A). Phrase added to clarify that the definitions in this rule apply to Chapters 1501:9-1 to 1501:9-12 of the Administrative Code.

New definitions are added for the following terms: Active underground mine; API; Annulus; ASTM; Casing shoe test; Conductor casing; Drive pipe; Intermediate casing; Lead cement; Liner; Mine string; Minimum internal yield pressure; Potable water supply; Potential flow zone; Production casing; Rathole or mousehole; Rules adopted or promulgated by the chief; Storage protective boundary; Surface casing; Sustained annular pressure; Tail cement; Underground source of drinking water and USDW; Well integrity.

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:

This rule is being revised to change the location of the public hearing. The ODNR Division of Oil and Gas Resources Management will hold this hearing in Hearing Room No. 1 of the Ohio Department of Commerce, East Building, 6606 Tussing Road, Reynoldsburg, OH 43068. The date and time of the hearing has not changed -- it will be on Tuesday, April 17, at 9 a.m.

This rule is also being revised to add a single space to paragraphs (A)(8) and (A)(9), between the overstruck former website address and the new website address. This addition of a space will allow the reader to link directly from the rule to the website address.

12. 119.032 Rule Review Date: **8/11/2010**

(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 have no impact on revenues or expenditures.

\$0

The amendments proposed in this rule consist of new definitions, as well as minor changes and corrections, and will have no fiscal impact on the agency during the current biennium.

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

Not Applicable.

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 amendments proposed in this rule filing consist of new definitions, as well as minor changes and corrections, and will impose no cost of compliance upon any directly affected persons.

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**

State law and the oil and gas rules do require a permit for oil and gas drilling, but this requirement is not in this rule. This rule contains oil and gas definitions, as well

as general provisions regarding giving notice for rules hearings and forms prescribed and provided by the Division of Oil and Gas Resources Management.

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? **No**

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **No**

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.

ODNR, Division of Geological Survey

ODNR, Division of Soil and Water Conservation

Ohio Environmental Protection Agency, Division of Drinking and Groundwater

Ohio Oil and Gas Association

Southeastern Ohio Oil and Gas Association

The Ohio Environmental Council

Devon Energy Production Co.

Northeast Ohio Gas Accountability Project

Environmentally Friendly Drilling

and the National Resource Defense Council, on behalf of:

Sierra Club,

Earthjustice,

Buckeye Forest Council,

Concerned Citizens of Portage County,

Center for Health, Environment, and Justice,

Green Environmental Coalition,

Guernsey County Citizens Support on Drilling Issues,

Progress Ohio,

Fracking Interest Group,

Carroll Concerned Citizens, Inc.,

Concerned Citizens Ohio,

Environment Ohio, and

Network for Oil and Gas Accountability and Protection.

- (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.)

See attached listing and discussion.

- (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? **Yes**

Please explain why?

This rule is more stringent than the rule that it is proposing to amend because, pursuant to the requirements of ORC section 1509.17, which was added to the law by SB 165 of the 128th General Assembly, new definitions need to be added to the oil and gas rules to further the implementation of the new requirements of this section of law.

Attachment to Environmental Impact document for Oil and Gas Well Construction rules

Question B. The Division of Oil and Gas Resources Management (DOGRM) developed a working draft rule proposal using a thorough, deliberative research process. Prior to drafting the proposed rule that was posted on the website for informal comment on October 28, 2011, the DOGRM considered input from the following sources:

- a. met with all DOGRM inspectors (more than 300 years of collective regulatory experience) to collect input on critical issues that should be addressed through regulatory standards;
- b. met with Ohio EPA Division of Drinking and Groundwater representatives to solicit input on oil and gas well construction practices, particularly for wells drilled near or within Source Water Protection Areas;
- c. reviewed Ohio groundwater investigation files over a 25-year period (1983 – 2007) to identify all cases in which well construction practice failures or deficiencies contributed to documented groundwater contamination. The rulemaking workgroup sought to ensure that all contributing factors were addressed decisively through rule standards;
- d. completed a review of Texas groundwater investigation files over a 16-year period (1993-2008) to identify all cases in which well construction practice failures or deficiencies contributed to groundwater contamination. This review included personal discussions with professional staff of the Texas Railroad Commission who were responsible for overseeing and conducting these groundwater investigations. During this period Texas led the nation in shale gas development with over 16,000 wells completed in the Barnett Shale play. The rulemaking workgroup sought to ensure that all contributing factors were addressed decisively through rule standards;
- e. completed a review of groundwater investigation summaries developed by the Pennsylvania DEP during the past ten years to identify cases in which well construction practice failures or deficiencies contributed to groundwater contamination. This review included personal discussions with professional staff of the Pennsylvania DEP who were responsible for overseeing and conducting these groundwater investigations. This review period spans the period of Marcellus shale gas development activity in Pennsylvania. The rulemaking workgroup sought to ensure that all contributing factors were addressed decisively through rule standards;

- f. a team of over twenty members of the DOGRM regulatory staff traveled to Pennsylvania and spent two days discussing regulatory issues and developments associated with shale gas development in the Marcellus play with their regulatory counterparts at the Pennsylvania DEP;
- g. through active state involvement in state associations including the Interstate Oil and Gas compact Commission (IOGCC) and the Groundwater Protection Council (GWPC), Ohio representatives participated in numerous conferences and roundtable discussions on regulatory developments pertaining to well construction, wellbore integrity, groundwater investigations and state regulatory developments related to shale gas development.
- h. completed a comparative analysis of state and federal well construction regulations for wells that may be stimulated by hydraulic fracturing including: Bureau of Land Management (BLM) rules for onshore oil and gas well construction, USEPA rules for Class I and II injection wells, as well as state rules for oil and gas well construction including: PA, NY, WV, MI, TX, OK, ARK, WY, and ND. This comparative review of state well construction regulatory standards included most states with significant shale gas development activity;
- i. reviewed the following American Petroleum Institute (API) Recommended Practice documents that establish guidelines and material standards for well construction:
 - i. API Specification 5B, *Specification for Threading, Gauging, and Thread Inspection of Casing, Tubing, and Line Pipe Threads*,
 - ii. API Specification 5CT/ISO 11960, *Specification for Casing and Tubing*,
 - iii. API Specification 10A/ISO 10426-1, *Specification for Cements and Materials for Well Cementing*,
 - iv. API Recommended Practice 10B-2/ISO 10426-2, *Recommended Practice for Testing Well Cements*,
 - v. API Recommended Practice 10D-2/ISO 1042702, *Recommended Practice for Centralizer Placement and Stop Collar Testing*,
 - vi. API Technical Report 10TR1, *Cement Sheath Evaluation*,

- vii. API Technical Report 10TR4, *Technical Report on Considerations Regarding Selection of Centralizers for Primary Cementing Operations*,
 - viii. API Recommended Practice 65-2, *Isolating Potential Flow Zones During Well Construction*.
- j. reviewed and addressed all recommendations for well construction practices outlined in the Groundwater Protection Council's publication: State Oil and Gas Regulations Designed to Protect Water Resources (May, 2009).
- k. incorporated an Ohio-customized version of the "Model Regulatory Framework" (MRF) (June 30, 2011 deliberative draft) as the foundation for Ohio regulatory standards. The MRF for hydraulically fractured hydrocarbon wells is the work-product of a joint project initiated in January, 2010 by the Environmental Defense Fund (EDF) and Southwestern Energy. While the MRF remains a draft product, it has been substantially vetted and reviewed by Environmental NGOs, and some operators. The MRF is intended to provide a blueprint for state government to consider as they create new regulatory standards or as they amend and update existing standards relative to oil and gas wells that are stimulated by hydraulic fracturing. The MRF workgroup selected specific regulatory topics including well construction standards, reviewed state regulations, and identified "best-in-class" state standards as well as effective industry practices. These standards were merged to create a concise, working structure that addresses the substantive components of an effective regulatory system. The DOGRM customized the MRF draft to fit Ohio-specific geologic conditions and drilling practices.