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Hearing Date: 11/29/2021

Today's Date: 12/1/2021

Agency: Ohio Department of Natural Resources, Division of Oil and Gas Resources Management

Rule Number(s): 1501:9-3-01 through 1501:9-3-10 and 1501:9-4-01 through 1501:9-4-07

If no comments at the hearing, please check the box. ☐

List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

1. Leatra Harper, FreshWater Accountability Project, Chapters 1501:9-3 and 1501:9-4
2. Roxanne Groff, Chapters 1501:9-3 and 1501:9-4
3. Pam Unger, Chapters 1501:9-3 and 1501:9-4
4. Patrick O'Connor, Chapters 1501:9-3 and 1501:9-4
5. Juli Douglass-Gillespie, Chapters 1501:9-3 and 1501:9-4
6. Tom and Ann Rattine, Chapters 1501:9-3 and 1501:9-4
7. Teresa Mills, Buckeye Environmental Network, Chapters 1501:9-3 and 1501:9-4
8. Julie Weatherington-Rice, Chapters 1501:9-3 and 1501:9-4
9. Andrew Casper, Ohio Oil and Gas Association, Chapters 1501:9-3 and 1501:9-4
10. James Yskamp, Earth Justice and other organizations, Chapter 1501:9-3
11. Megan Hunter, Earth Justice and other organizations, Chapter 1501:9-4
12. Richard Jordan, Chapters 1501:9-3 and 1501:9-4
13. Beverly Reed, Concerned Ohio River Residents, Chapter 1501:9-4
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Consolidated Summary of Comments Received

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

Comments are made on both draft rules, Chapters 1501:9-3 and 1501:9-4, unless otherwise noted.

Tom and Ann Rattine, Edward Wolner, Pam Unger, Patrick O'Connor and Juli Douglass-Gillespie submitted similar comments generally stating that: the draft rules do not adequately protect Ohioans; comments made by other groups were not considered; and the rules should be removed from the JCARR agenda.

Andrew Casper, on behalf of the Ohio Oil and Gas Association stated the proposed regulations are stringent but represent a balanced approach that reflects current industry standards and ensures wastes are disposed of in a responsible manner. The comments state that the draft rules will strengthen the Division's effective oversight and build upon Ohio's regulatory program, which has received positive peer-reviews and audits.

Roxanne Groff and Teresa Mills shared similar written comments. Ms. Groff spoke at the public hearing, summarizing points made in her written comments. Generally the comments state: the draft rules do not address the regulation of radioactive materials pursuant to Chapter 3748 of the Revised Code; the rules contain waiver provisions that would allow the Division to waive various portions of both draft rules, in conflict with the Revised Code; the waiver provisions would place public water supplies at risk; other waiver provisions are defined in Revised Code and may only be exercised upon certain conditions; the waiver provisions override local floodplain regulations in violation of federal law; and the Division should have appointed an advisory committee to help develop the draft rules and incorporate more public input.

Julie Weatherington Rice submitted written testimony and commented during the hearing. Generally her comments state: her education, knowledge, and history working to develop rules and regulations; her previous comments were not incorporated into the rule; importance of identifying geologic hazards and lack of requirement to do so in the draft rules; failure of the Division to recognize the earth is not flat; setback distances; and the rules will fail.

Leatra Harper, Freshwater Accountability Project submitted written testimony. Generally, her comments state: the oil and gas industry is dangerous; the rulemaking already completed is lax; the Division is politically compromised; the public notice and comment process is a "sham" and the draft rules do not improve the process; lack of testing requirement to characterize waste as hazardous; lack of oil and gas waste facility inspections, violations, and reporting; lack of environmental justice considerations; inadequacy of financial assurance requirements in the rules; inadequacy of rules regarding radioactivity; and the Division has no intention to regulate the oil and gas industry.

Beverly Reed, Concerned Ohio River Residents submitted written testimony and commented during the hearing. She commented about Chapter 1501:9-4 and generally, her comments state: oil and gas waste facilities currently operating should have to comply with all requirements outlined in the draft rule, including public notice for an already-operating facility; facilities currently in operation and within the five-year time of travel of public water supplies should have to comply with additional standards and her

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comments includes some proposed standards; requirement to review existing EPA environmental and legal documents during permitting; emergency planning requirements; requirement to inspect all portions of a building housing a facility; setbacks should be increased; agreement with permitting a facility within a floodplain; requirement for facilities to comply with municipal ordinances; waiver provisions related to facility modifications; and lack of financial assurance in case of bankruptcy.

Richard Jordan submitted written testimony. His comments generally state: frustration that oil and gas waste from other states is allowed to be disposed of in Ohio; request to require full disclosure of chemical content of brine; requirement that disposal operators divert brine to water treatment facilities and requirement to invest in research of alternate disposal methods; and establishment of a limit on waste disposal.

Ankit Jain, Earthjustice, commented during the hearing representing Earth Justice. His comments generally state: the rules should not include a waiver for the submittal of a radiation protection plan; generally the waiver requirements are too broad through both chapters of rule; the proposed setbacks are insufficient; and the public participation provisions are lax.

James Yskamp, Earthjustice, submitted written testimony regarding Chapter 1501:9-3. His comments generally state: the proposed draft rules should be filed separately with JCARR; a review of federal law requirements regarding underground injection control; hydraulic fracturing did not exist when EPA granted Ohio primacy over Class II disposal wells; the draft rules do not adequately regulate or account for the high volume and toxicity of waste received in Ohio; the draft rules are inadequate to address seismicity; the public participation procedures are inadequate and unlawful; lack of environmental justice review; expansion of area of review, including the addition of a zone of influence and requirement of a field survey; proposal to prohibit disposal when the area of review contains a producing or abandoned well; failure to require the operator to determine the extent of the USDW; lack of requirement of the characterization of waste; inadequacy of setbacks and siting criteria; lack of prohibition of injection into shale formations; inadequacy of mechanical integrity testing and continuous pressure testing; rules should contain stronger enforcement standards; lack of civil penalties; lack of public participation in the enforcement process; more frequent reporting of waste disposal; and lack of periodic review or expiration of the permit term.

Megan Hunter, Earthjustice, submitted written testimony regarding Chapter 1501:9-4. Her comments generally state the proposed draft rules: should be filed separately with JCARR; should do more to monitor and protect workers from radioactivity; strengthen protections for ground water, surface water, and drinking water sources; increase reporting frequency; require regular facility inspections by ODNR; remove waiver provisions; increase setbacks; address the health and environmental risks posed by PFAS; strictly prohibit acceptance of hazardous waste; establish clear standards for suspending operations; contain inadequate financial assurance; and eliminate exceptions for short-term waste facilities.

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Incorporated Comments into Rule(s)

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

Many of the comments received during the hearing process have already been submitted to the Division during the Interested Party and CSI review comment periods. The Division has reviewed these comments, and during the CSI review, posted responses to the comments. No additional changes are proposed to be made to the draft rules.

In response to some of the general topics raised during the hearing process:

Waivers: Ohio rule and law allows the chief to waive certain provisions, when specified, as is written in these draft rules. In the draft rules, waivers are considered at the request of the applicant or the operator and are not required to be granted. Waivers are only intended to be used when a portion of the draft rule is not applicable. Specifically, oil and gas waste facilities vary greatly in operation or design and the draft rule contains the flexibility for an applicant to comply with provisions of the draft rule that might not apply.

Radioactivity: The draft rules require the submission of a radiation protection plan and would only be waived if the facility demonstrated a plan was not necessary because of the characterization of the waste. Ohio law only allows for the regulation of TENORM and rules regarding radiation safety are under development for future promulgation.

Federal Standards/Compliance: The Division worked to ensure the draft rules comply with delegated primacy from U.S. EPA. The rules must demonstrate they are effective in protecting underground sources of drinking water, and are not required to match federal standards provision-for-provision. The Division contends these rules are effective and the federal agency confirmed this compliance and approved these draft rules.

Public Notice: The Division increased public participation by requiring the direct notification of all individuals living within 1,500 feet of a proposed Class II Disposal Well or an Oil and Gas Waste Facility, and local elected officials in the community where a well or facility is proposed. The Division removed any ambiguity regarding hearings by allowing any person who receives notification to ask for a hearing to be held. The requirement of newspaper notifications was requested by individuals living in areas with inadequate internet access.

Timing/Process: Interested parties, including several who commented during the hearing process, have now had three opportunities to review various draft rules and submit comments to the Division. The Division appreciates this input. All parties who have reviewed these draft rules recognize improvement of Ohio's current regulations is timely, needed, and necessary. Many commentators have lambasted the Agency for taking too long to develop these draft rules. While these draft rules might not achieve every goal of every individual, they are reasonable, effective, and will protect human health, safety, and the environment.