

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Natural Resources

Regulation/Package Title: Well Spacing

Rule Number(s): 1501:9-1-01, 1501:9-1-04

Date: update

Rule Type:

☐ New

☒ Amended

☒ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Section 1509.24 of the Revised Code authorizes the Chief of the Ohio Department of Natural Resources (ODNR), Division of Oil and Gas Resources Management (DOGRM), with the approval of the Technical Advisory Council on Oil and Gas, to adopt, amend or rescind rules relative to the minimum acreage requirements for drilling units and minimum distances from which a new well may be drilled from boundaries of tracts, drilling units and other wells to conserve oil and gas reserves and to protect correlative rights. Enacted in 2010, Sub. Senate Bill 165 modified the language of Revised Code 1509.24 to include the statement that “[t]he rules

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

relative to minimum acreage requirements for drilling shall require a drilling unit to be compact and composed of contiguous land.” The DOGRM proposes to amend the existing well spacing rule by revising the minimum acreage requirements for vertical (conventional) wells and establishing new provisions pertaining to the minimum distance requirement from which a new horizontal shale (unconventional) well may be drilled from boundaries of drilling units and other horizontal wells. The standards will be applied statewide. The intent of the rule is twofold: (1) to comply with the requirements of Sub. Senate Bill 165 to create a drilling unit that is more compact than under the current rule and (2) to revise the minimum acreage requirement to be commensurate with the distance the well must be set back from drilling unit boundaries in order to conserve oil and gas reserves and protect correlative rights.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Section 1509.24 of the Ohio Revised Code.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The purpose of this regulation is to comply with the statutory requirement that land included in a drilling unit must be compact and contiguous and to revise spacing requirements for horizontal shale wells. Examples of micro seismic monitoring of new and existing horizontal wells showed that the effective drainage areas of hydraulically fractured shale wells did not extend as far as the regulatory setback requirement and resulted in hydrocarbon reserves being stranded that otherwise might be recovered at a lesser setback distance.

The Division believes that both the vertical and horizontal rule changes/additions will result in a more efficient conservation of oil and gas reserves and will continue to protect correlative rights.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

- Fulfills Substitute Senate Bill 165 requirement to develop rules relating to compact drilling units.
- Provides consistent standards for horizontal and vertical well spacing throughout the state.
- Promotes more efficient recovery of oil and gas resources.
- Protects correlative rights.
- Significantly reduces the amount of exception requests from the spacing rule for horizontal shale wells.
- Reduces mandatory pooling requests for vertical (conventional) wells.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Division held meetings for affected parties on May 14, 2015 and November 5, 2015. The background, history, and proposed spacing changes were explained and discussed with members of industry and trade organizations.

On January 17, 2017 the Division presented the proposed spacing rule changes to the Technical Advisory Council on Oil and Gas for their consideration and approval. Over forty industry stakeholders were in attendance at the hearing and many offered positive comments on the proposals. Ohio Revised Code 1509.38 created the Technical Advisory Council and states that five members constitute a quorum and that no action of the council is valid unless five members concur. Six members of the TAC were present at the hearing. Following the presentations and discussions during the hearing, two separate motions were made to approve the Division proposals. Each motion was approved by a vote of six in favor and none opposed.

Subsequently, the proposed rules were posted on the DOGRM website for comment.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

<u>Interested Party</u>	<u>Hearing</u>	<u>Meeting</u>	<u>Website</u>
Technical Advisory Council on Oil & Gas	1/17/2017	8/2012; 11/2013	
American Petroleum Institute - Ohio		9/25/18, 2/12/19	3/13/18
Ohio Oil & Gas Association		9/25/18, 2/12/19	3/13/18
Industry Stakeholders		5/14/15; 11/05/15; 2/17/16	3/13/18
Interested Party Review			3/13/18

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Many stakeholders provided written comments on the draft rules and those comments were individually reviewed by the agency. Based on the merit of each individual comment, the rules were modified appropriately to reflect the input. Significant comments include:

- Keep the term “subject tract” and redefine it to address the drilling of multiple wells.
- Decided to have one spacing distance to the drilling unit line for horizontal wells.
- Further defined the term “adverse communication”, provided authority for the chief to modify it by an order which allows for an appeal process.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The current spacing distances were not changed for vertical wells addressed in this rule; the reduced acreage amounts are commensurate with the distance the well must be set back from the drilling unit boundary. For the horizontal well spacing rules, the DOGRM evaluated spacing standards based on presentations made by horizontal shale producing operators to the TAC in August 2012 and in November 2013. Examples of micro seismic monitoring of new and existing horizontal wells showed that the effective drainage areas of hydraulically fractured shale wells did not extend as far as the regulatory setback requirement and resulted in hydrocarbon reserves being stranded that otherwise might be recovered at a lesser setback distance.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn’t the Agency consider regulatory alternatives?

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

For the vertical well spacing rule, the agency considered many variations to make a drilling unit compact before choosing this option as the best. For the horizontal well spacing rule, lesser and greater distances as well as a two-tiered approach were considered before settling on one distance to the drilling unit lines.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

Yes. This regulation is performance based as it establishes minimum distances or acreages but allows the companies to increase either.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The agency reviewed existing rules and statutes to determine if this rule would duplicate an existing regulation. DOGRM has sole and exclusive authority over all aspects of oil and gas production and operations pursuant to Section 1509.02 of the Ohio Revised Code. The review did not identify any duplicative regulation.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Ohio Revised Code 1509.06 requires each application for a permit to be accompanied by a map prepared by an Ohio registered surveyor. The applicant must demonstrate by map that the proposed well location conforms to all spacing rules. The DOGRM will reach out to industry stakeholders and Ohio registered surveyors to inform them of the changes.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

The impacted business community consists of oil and gas operators, owners, and permit applicants who drill and complete vertical and horizontal well(s).

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

These rules standardize the requirements and should strengthen the permitting process by reducing spacing variance requests. The rules do not require any additional fees.

- c. Quantify the expected adverse impact from the regulation.**

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

There are no expected adverse impacts from the regulation.

- 15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

Not applicable.

Regulatory Flexibility

- 16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

Not applicable.

- 17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

The DOGRM has a review process in place when an application for a drilling is submitted. If the application or the legal requirements are incorrect, the operator is immediately contacted so that they may resolve the problem.

- 18. What resources are available to assist small businesses with compliance of the regulation?**

DOGRM staff is available to assist with compliance of the regulation for all businesses. Additionally, there are resources available on DOGRM's website that explain the

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

requirements.