



## MEMORANDUM

**TO:** Brock Miskimen, Deputy Legal Counsel, Ohio Department of Natural Resources

**FROM:** Tess Eckstein, Regulatory Policy Advocate

**DATE:** September 7, 2016

**RE:** **CSI Review – Incident Notification Rules (OAC 1501:9-8-01, 1501:9-8-02)**

---

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

### Analysis

This rule package consists of two new rules being proposed by the Ohio Department of Natural Resources (ODNR). On August 10, 2016, ODNR filed emergency rules with the Joint Committee on Agency Rule Review (JCARR) to establish requirements for notification to ODNR's Division of Oil and Gas Resources Management (DOGRM) when certain dangerous incidents occur. This rule package represents the non-emergency, permanent version of these rules. It was submitted to the CSI Office on August 10, 2016, and the comment period remained open until August 26, 2016.

The rules require owners and persons who have been authorized to conduct activities regulated under the oil and gas law or rules to report, within 30 minutes of incident discovery, releases that occur above specified thresholds and outside of appropriate containment. Types of incidents that trigger mandatory notifications include: natural gas or hydrogen sulfide gas release; fire or explosion; and release of crude oil and/or condensate, refined oil, brine, drilling waste, or a hazardous or extremely hazardous substance outside of secondary containment. Incidents must be reported using a toll-free number or through submittal of an electronic document, both of which are available on the DOGRM website. While some of these incidents already require incident notification under the State Emergency Response Commission (SERC) reporting standards, others may require emergency response but are not presently addressed by SERC regulations. Additionally, notification of DOGRM is not currently a requirement for any of these incidents.

The proposed rules apply to all owners and persons regulated under ORC Chapter 1509. Potential adverse impacts from the amended rules include making the required phone call and writing and sending follow-up reports. In addition, an owner or person, including a contractor, who fails to notify DOGRM is subject to penalty provisions under ORC Chapter 1509.

The BIA states that, in the past, there have been incidents about which a regulated oil and gas business did not notify DOGRM in a timely manner. As the agency with primary regulatory authority over the industry, DOGRM has unique knowledge, experience, and perspective that is crucial for proper response to incidents. Therefore, the benefits of the proposed rules outweigh the costs, as prompt notification of an incident would allow DOGRM to work with authorized persons and 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. The rules also help streamline the process for notifying various state agencies through the utilization of a one-call system. Finally, the rules provide protection of public health and safety, the environment, and natural resources for all of Ohio.

DOGRM engaged the Ohio Oil and Gas Association (OOGA), the American Petroleum Institute-Ohio (API-Ohio), the Environmental Defense Fund (EDF), and the Southeastern Ohio Oil and Gas Association (SOOGA) in discussions regarding the rules. During these discussions, DOGRM received positive feedback pertaining to the one-call system, notification of DOGRM when specified incidents occur, contractor notification requirements, and more stringent standards for releases in environmentally sensitive areas. It also received pushback on two topics: the 30-minute notification standard and the 210-gallon notification standard for crude oil releases. In response, DOGRM addressed the first concern by revising the rule to include language that allows notification beyond 30 minutes if earlier notification is impracticable. DOGRM also noted that this standard is identical to that which has been enforced under SERC for decades. Regarding the 210-gallon standard, DOGRM addressed concern from EDF that the standard volume was too great by developing a lower volume standard (25 gallons) for releases that occur in sensitive areas.

Three comments were received during the CSI public comment period. EDF submitted the first, calling for the rules to be more stringent. Its concerns included: a “reporting person” is defined too narrowly; reporting thresholds should be lowered and simplified; incident notification should be required for contained releases; DOGRM should require and make publically available follow-up incident notifications that contain important information; and enforcement expectations should be established for failure to comply with any part of the rule. The second comment, submitted by Gulfport Energy, asked clarifying questions regarding what constitutes secondary containment, and whether “emergency responder” language in 1501:9-8-02 applies to ambulances called for injury events. Gulfport Energy also offered a suggestion—modify language in (A)(3)(a) to clarify that a call is not required when a small fire can be controlled by a fire extinguisher on site—and questioned the practicality of a 30-minute window in which to call the designated hotline, considering how long it could take to fully understand the details of a release.

Finally, the third comment highlighted what OOGA felt were two major oversights in the rules.

First, it argued that reporting persons cannot be expected to know whether their plants fall within one of four areas where thresholds for release reporting are significantly lowered. OOGA recommended that DOGRM develop maps providing reporting persons a mechanism to determine whether regulated sites fall within one of the four specified areas. Next, OOGA expressed concern that, while the one-call system acts to streamline the incident response process, it also runs the risk of triggering excessive notifications to agencies whose presence onsite could be unnecessary, duplicative, or could even impede coordination efforts. This issue could also lead to other issues, such as drawing emergency resources away from other communities, as well as costing operators when they are assessed by agencies for costs associated with unwarranted incident responses.

In response to these comments, DOGRM did not make any changes to the rules. It did, however, provide detailed responses to comments to relevant stakeholders, explaining its rationale for keeping the rules as-is. For example, DOGRM explained to EDF that it determined reporting thresholds by considering the nature of the material released, where it is released, and from what it is released, rather than implementing a simple volume triggering notifications that would apply to a wide variety of fluid types and release circumstances. If these thresholds become an issue, DOGRM can evaluate their effectiveness and amend as necessary to improve compliance. It also assured Gulfport Energy that it is aware that some notifications will be submitted within 30 minutes by reporting persons erring on the side of caution. It is understood that this information could be subject to revision, so release statistics and summaries will be based upon final rather than preliminary information.

Finally, in response to OOGA's comments, DOGRM noted that it is working with the ODNR Office of Information Technology to build geographic information system (GIS)-based maps that will display the location of wells relative to the boundaries of the four specified areas. In addition, the one-call system was developed as a response to an industry recommendation; its purpose is to simplify reporting obligations and improve coordination by responders who are already required to be notified by statute. DOGRM also noted that the Ohio Environmental Protection Agency is the only state agency with authority to charge reporting persons for costs associated with a response. If this rule causes issues that may be interpreted as over-responses, the State is committed to resolving those concerns. The CSI Office felt that all concerns were satisfactorily addressed, and no further comments were submitted indicating that the rules are overly burdensome. Therefore, the CSI Office has determined the purpose of the rules to be justified.

### **Recommendations**

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

### **Conclusion**

Based on the above comments, the CSI Office concludes that ODNR should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office