



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Mark Bruce and Brian Becker, Ohio Department of Natural Resources

FROM: Joseph Baker, Business Advocate

DATE: October 27, 2021

RE: **CSI Review – Class II Disposal Wells and Surface Facilities (OAC 1501:9-3-01 (rescind and new), 1501:9-3-02 (rescind and new), 1501:9-3-03 (rescind and new), 1501:9-3-04 (rescind and new), 1501:9-3-05 (rescind and new), 1501:9-3-06 (rescind and new), 1501:9-3-07 (rescind and new), 1501:9-3-08 (rescind and new), 1501:9-3-09 (rescind and new), 1501:9-3-10 (rescind and new), 1501:9-3-11 (rescind), 1501:9-3-12 (rescind), and 1501:9-3-13 (rescind))**

On behalf of Lt. Governor Jon Husted, 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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of 13 rescinded rule and 10 new rules proposed by the Division of Oil and Gas (Division) at the Ohio Department of Natural Resources (Department). This rule package was submitted to the CSI Office on August 30, 2021, and the public comment period was held open through September 13, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on August 30, 2021.

The rules in this package regulate the siting, permitting, construction, operation and reclamation of class II disposal wells and surface facilities associated with oil and natural gas production. The Division states that the rules include provisions that ensure compliance with Ohio's agreement with the United States Environmental Protection Agency, the protection of Ohio drinking water, and the prevention of contamination and pollution. Unless otherwise indicated below, the Division proposes to replace existing rules in their entirety due to the extent of changes being made.

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

CSIPublicComments@governor.ohio.gov

New OAC 1501:9-3-01 updates and establishes new definitions relating to the regulation of surface facilities and class II disposal wells.

New OAC 1509:2-3-02 clarifies that the rules in the chapter do not apply to wells that inject gas or air, enhanced recovery wells, natural or artificial wells, wells drilled into gas storage reservoirs, or gas or oil exploration-related wells.

New OAC 1501:9-3-03 establishes general regulations for the storage, transport, and disposal of brine and other waste substances at class II disposal wells and surface facilities. These regulations include prohibitions on allowing brine or waste substances to migrate into underground sources of drinking water or other unapproved underground formations, prohibitions on injecting brine or other waste substances without a permit issued by the Division, and permit requirements for surface facilities with a total nominal storage capacity of 10,001 barrels or greater.

New OAC 1501:9-3-04 outline location and siting requirements for class II disposal wells and surface facilities. For example, under the rule no portion of a class II disposal well or surface facility may be located within the boundary of a flood hazard area (unless the applicant meets applicable floodplain standards), no portion may be located within five hundred feet of the subject tract or within one thousand feet of a public drinking water supply. The rule also establishes siting limitations with respect to the proximity of public water system intakes, public buildings, wetland and surface waters, ponds, springs, and water wells and prohibits pipelines from being established within a certain range of public water supplies, wetlands or surface waters, or ponds, springs and water wells, without implementing an approval plan promulgated by the Division to appropriately secure the pipeline.

New OAC 1501:9-3-05 requires entities seeking to construct a class II disposal well or surface facility (or to convert an existing well to a class II disposal well) to obtain a permit from the Division, outlines the information that must be provided in the application, and describes the procedures for reviewing such applications. Additionally, the rule authorizes the Division to require the permit-seeker to complete corrective action based on deficiencies or concerns identified in the area and site evaluation. The Division is also authorized under the rule to prohibit injection into certain formations based on health, safety, or environmental reasons, and to require permit-seekers to engage in a variety of other management and testing procedures to ensure the safe disposal of brine and waste substance based on the evaluation of the site's specific characteristics. The rule also defines the public notice responsibilities of the applicant at various steps of the approval process and allows any person to file objections to the permit application by submitting written comments to the Division for consideration by the Chief.

New OAC 1501:9-3-06 states that no construction may commence with respect to surface facility or class II disposal well permit applications prior to the issuing of the permit. The rule establishes technical specifications for the construction of such facilities but authorizes the Division to waive certain requirements if the applicant demonstrates the well will still meet standards necessary to protect the health and safety of the public as well as the environment. The rule additionally requires the permit-holder to conduct water well sampling after the permit is issued but prior to commencing construction and to provide the results to the Division. Also, the rule requires that a representative of the Division be on site for certain facility construction processes, requires any material modifications or amendments to the facility to be approved by the Division, requires surface facilities and class II disposal well operators to conduct facility or well integrity tests prior to commencing operations, allows the Division to waive or require additional testing, specifies processes related to the expiration of permits, and requires the operator of a class II disposal well or surface facility to submit an additional application prior to beginning initial injection operations documenting various factors related to the safety of the facility to the Division.

New OAC 1501:9-3-07 establishes technical design and operational requirements for class II disposal or surface facilities, such as maximum allowable injection pressure limits, types of substances that may be injected into class II disposal wells, monitoring requirements, integrity testing specifications, shut-off device testing responsibilities, installation procedures for various components, reporting responsibilities, lawful disposal methods, emergency release notification procedures, containment standards, conveyance system standards, pipeline standards, site security controls, rule enforcement, permit suspensions, and plugging of wells.

New OAC 1501:9-3-08 prohibits the disposal of brine after the effective date of the rule in any annular space, except in cases where the Division has approved annular disposal prior to the rule's effective date, in which case disposal operations may continue unless various procedures and processes outlined by the rule are followed.

New OAC 1501:9-3-09 states that any authorization or denial of an application to operate a class II disposal well or annular disposal well should not be interpreted as to alter or amend any common property rights.

New OAC 1501:9-3-10 requires individuals or entities operating class II disposal wells and surface facilities to comply with separately promulgated rules relating to the plugging, abandonment, and reclamation of such facilities and to submit a decommissioning plan to the Division prior to plugging a class II disposal well.

Lastly, the Division proposes to rescind existing OAC 1501:9-3-11, 1501:9-3-12, and 1501:9-3-13 as these rules are no longer necessary due to the consolidation and restructuring of the chapter.

During early stakeholder outreach, the Division held in-person and virtual Affected Party Meetings with members of the regulated community over the course of several months. The rule was also posted on the Division's website for additional comments. Based on input from the business community and feedback from the U.S. EPA, the Division made changes to the rules prior to submitting the rule to CSI for review. Four comments were received during the CSI public comment period. Encino Energy shared its support for the rules as drafted. The Ohio Farm Bureau commented to raise several recommendations and share concerns over the Division's power to combine applications from numerous counties into the same public notice process. The Bureau also recommended that long-term tenants should receive notification regarding proposed class II disposal wells (not only landowners), that public meetings should be held in the relevant community if the applicant assumes the necessary expenses, that meeting information should be posted in the newspaper of record and sent by letter to relevant landowners (rather than posted online), and that developers be required to submit a decommissioning plan and performance bond in case of owner default as part of the permit process, rather than at the end of the well's useful life. In response to the comment, the Division determined add clarifying language that multiple applications may only be combined if concerning the same subject tract and corrected an incorrect paragraph reference. The Division also responded to the comment noting that the Division's intent is to hold meetings in the community where the well is proposed to be located but is designed to allow for flexibility in extenuating circumstances. The Division also stated that posting the information online will improve notice opportunity in certain regions that are no longer adequately served by newspapers of record. Lastly, the Division replied that the decommissioning plan and performance bond requirements are being currently addressed separately in another rule package.

The Department received a variety of recommendations to enhance regulatory standards from the Sierra Club, Buckeye Environmental Network and Earth Justice, including suggestions to reduce the length of time that a permit is valid for if construction on the well has not begun, to ensure that Ohio disposal wells are not used for out-of-state waste disposal, to require the area of review process to include a survey of abandoned wells, that waste disposed at the facility be characterized, to increase setback distances for wells, to provide greater opportunity for the public to participate in permitting and regulatory decisions, to establish clear pass/fail criteria for continuous pressure testing and enhance enforcement authority to ensure compliance, to prohibit waste disposal when the area of review contains a producing or abandoned well, to increase reporting frequency and documentation, to enhance testing procedures, to provide for periodic review and expiration of permits, and to otherwise enhance regulatory standards to agree with federal regulations. The Division responded to the comments but did not make any changes to the rules.

Finally, the Division also received two verbal comments from the Ohio Oil and Gas Association. The first comment suggested that the definition of surface facility recognize that the storage design used by operators provides for increases in increments of 3,000 barrels. In response to the comment, the Division modified the definition of surface facility to reflect entities that process 12,000 barrels or less (rather than 10,000 barrels or less). The second comment recommended that a specific minimum allowable injection pressure threshold be established in rule. In response, the Division determined not to specify an exact threshold in rule but instead to allow for injection pressure levels to be addressed in individual plan agreements with operators and amended the rule accordingly.

According to the BIA, the business community impacted by the rules include operators of class II disposal wells and surface facilities in Ohio. The adverse impacts created by the rule include the administrative expenses associated with complying with the rules for such facilities. The Division identified adverse impacts associated with increased setback distances for facilities, complying with siting criteria and volume limitations, administrative costs connected to preparing and submitting information as part of a permit application, potential corrective actions associated with area review evaluations, costs of providing evidence of notice to affected property owners in the area of review as well as certain public officials, sampling expenses for water wells within 1,500 feet of a disposal well (costing up to \$1200), costs of complying with enhanced well construction and conversion standards, and costs connected to the testing of class II disposal wells and surface facilities. The Division states in the BIA that the adverse impacts to business are necessary to protect the public health and safety, as well as the environment and to comply with Ohio's primacy agreement with the U.S. EPA to protect underground sources of drinking water.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Division of Oil and Gas at the Ohio Department of Natural Resources should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.