



Jeff Grim

Final Analysis

Legislative Service Commission

Sub. H.B. 278

125th General Assembly
(As Passed by the General Assembly)

Reps. Niehaus, Reidelbach, Seitz, Webster, Gibbs, Husted, Peterson, Hoops, Carmichael, Blasdel, T. Patton, D. Evans, McGregor, Gilb, DeWine, Setzer, Willamowski, Raga, Schaffer, Book, Widowfield, Hollister, Callender, Cates, Flowers, Hagan, Walcher, Wolpert

Sens. Mumper, Harris, Nein, White, Amstutz, Wachtmann, Austria, Padgett

Effective date: September 16, 2004

ACT SUMMARY

- Declares that the Division of Mineral Resources Management in the Department of Natural Resources has exclusive authority to regulate the permitting, location, and spacing of oil and gas wells in the state and that the Oil and Gas Law and rules adopted under it constitute a comprehensive plan with respect to all aspects of the locating, drilling, and operation of oil and gas wells in Ohio, and repeals all statutory authority of local governments to regulate oil and gas exploration and operation as well as limitations on that authority.
- Requires the Chief of the Division of Mineral Resources Management to adopt rules that include an identification of subjects that the Chief must address when attaching terms and conditions to a permit when a well and its production facilities are located in specified areas, and requires the subjects to include safety concerning the drilling or operation of a well, protection of the public and private water supply, location of surface facilities of a well, fencing and screening of surface facilities of a well, containment and disposal of drilling and production wastes, and construction of access roads for purposes of the drilling and operation of a well.
- Requires an applicant for a permit to drill a new well to include a sworn statement that the applicant has provided notice of the application to the owner of each occupied dwelling unit that is located within 500 feet of

the surface location of the well if the location will be less than 500 feet from the boundary of the drilling unit and more than 15 occupied dwelling units are located less than 500 feet from the surface location of the well.

- Requires the Chief to transfer an electronic copy or facsimile, or if those methods are not available, a copy via regular mail, of a drilling permit application to the clerk of the legislative authority of the municipal corporation or to the clerk of the township in which the well or proposed well is to be located if the municipal corporation or township has a population of more than 15,000, a request is made to receive copies of such applications, and the appropriate clerk has provided an accurate, current electronic mailing address or facsimile number, as applicable.
- Authorizes the Chief to adopt rules specifying minimum distances that oil and gas wells must be located from public or private recreational areas, zoning districts, and certain structures.
- Establishes an alternative method of distributing unobligated money remaining upon the termination of an independent producer oil and gas marketing program if that program was operated by a specified type of nonprofit corporation.

CONTENT AND OPERATION

Former law: concurrent state and local regulation of oil and gas exploration and operation

Under former law, the Division of Mineral Resources Management in the Department of Natural Resources had a certain amount of concurrent jurisdiction with municipal corporations, counties, and townships to regulate the exploration and operation of oil and gas wells. An applicant for a state permit to drill a new oil and gas well was required to include in the application to the Division a sworn statement that the applicant would comply with all local requirements related to the drilling or operation of an oil or gas well until the abandonment of the well (sec. 1509.06(I)). Prior law stated that the Oil and Gas Law and rules adopted under it could not be construed to prevent any municipal corporation, county, or township from enacting and enforcing health and safety standards for the drilling and exploration for oil and gas, provided that those standards were not less restrictive than state law. However, prior law also precluded a county or township from adopting or enforcing any requirement relative to minimum acreage requirements for drilling units, minimum setback distances for wells or related

facilities, or the restoration or plugging of an oil and gas well. Counties and townships also were precluded from requiring any permit or license or financial assurance regarding oil and gas wells other than certain highway-use permits. (Sec. 1509.39.) Finally, former law stated that county and township zoning statutes did not confer any power on zoning authorities to prohibit the use of land owned or leased by an industrial firm to conduct oil or gas drilling activities or to locate associated facilities or equipment on the land when the oil or gas that was obtained by the firm was used for the operation of its plants (secs. 303.211 and 519.211).

The act: exclusive state authority to regulate oil and gas exploration and operation

The act repeals all provisions of law that granted or alluded to the authority of local governments to adopt concurrent requirements with the state concerning oil and gas exploration and operation as well as all provisions that limited that authority. It states that the Division of Mineral Resources Management has sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells within the state. Further, the act states that the regulation of oil and gas activities is a matter of general statewide interest that requires uniform statewide regulation and that the Oil and Gas Law and rules adopted under it constitute a comprehensive plan with respect to all aspects of the locating, drilling, and operation of oil and gas wells within Ohio, including site restoration and disposal of wastes from those wells. Finally, the act states that nothing in these provisions affects the authority granted to the Director of Transportation and local authorities under the traffic laws pertaining to load weights on roads (sec. 4513.34, not in the act). (Sec. 1509.02.)

Terms and conditions of permits for production in municipal corporations and certain townships

Continuing law requires the Chief of the Division of Mineral Resources Management to adopt rules for the administration, implementation, and enforcement of the Oil and Gas Law. The act requires the rules to include an identification of the subjects that the Chief must address when attaching terms and conditions to a permit with respect to a well and production facilities of a well that are located within a municipal corporation or within a township that has a population of more than 15,000 in the most recent federal decennial census prior to the issuance of the permit.¹ The subjects must include all of the following:

¹ For changes in this provision, see the Final Analysis of Sub. H.B. 299 of the 125th General Assembly.

- (1) Safety concerning the drilling or operation of a well;
- (2) Protection of the public and private water supply;
- (3) Location of surface facilities of a well;
- (4) Fencing and screening of surface facilities of a well;
- (5) Containment and disposal of drilling and production wastes; and
- (6) Construction of access roads for purposes of the drilling and operation of a well. (Sec. 1509.03.)

Ongoing law generally requires the Chief to issue an order denying a permit if the Chief finds that there is a substantial risk that the operation will result in violations of the Oil and Gas Law or rules adopted under it that will present an imminent danger to public health or safety or damage to the environment. However, where the Chief finds that terms or conditions to the permit can reasonably be expected to prevent such violations, the Chief must issue the permit subject to those terms and conditions. The act states that those terms and conditions include the terms and conditions regarding the subjects discussed above, if applicable. (Sec. 1509.06.)

Permit applications

Application contents

Continuing law requires an applicant to file with the Chief an application for a permit to drill a new well, deepen an existing well, reopen a well, convert a well to any use other than its original purpose, or plug back a well to a different source of supply. The application must include the name and address of the applicant, the location of the tract or drilling unit on which the well is to be located, the designation of the well by name and number, the relevant geological formation and the proposed depth of the well, a plan for restoration of the land surface, and other specified requirements. The act adds that for an application for a permit to drill a new well, the application must include a sworn statement that the applicant has provided notice of the application to the owner of each occupied dwelling unit that is located within 500 feet of the surface location of the well if the surface location will be less than 500 feet from the boundary of the drilling unit and more than 15 occupied dwelling units are located less than 500 feet from the surface location of the well, excluding any dwelling that is located on real

property all or any portion of which is included in the drilling unit.² The notice must contain a statement that an application has been filed with the Division of Mineral Resources Management, identify the name of the applicant and the proposed well location, include the name and address of the Division, and contain a statement that comments regarding the application may be sent to the Division. The notice may be provided by hand delivery or regular mail. The act requires the identity of the owners of occupied dwelling units to be determined using the tax records of the municipal corporation or county in which the dwelling unit is located as of the date of the notice. (Sec. 1509.06(I).)

Notice of application to municipal corporations or townships

Continuing law requires the Chief to provide a copy of the weekly circular prepared by the Division to the county engineer of each county that contains active or proposed drilling activity. The act also requires the Chief to promptly transfer an electronic copy or facsimile, or if those methods are not available to a municipal corporation or township, a copy via regular mail, of a drilling permit application to the clerk of the legislative authority of the municipal corporation or to the clerk of the township in which the well or proposed well is or is to be located if the municipal corporation or township has a population of more than 15,000 in the most recent federal decennial census prior to the submission of the application, the legislative authority of the municipal corporation or the board of township trustees has asked to receive copies of such applications, and the appropriate clerk has provided the Chief an accurate, current electronic mailing address or facsimile number, as applicable.³ (Sec. 1509.06.)

Location of oil and gas wells

Law retained by the act provides that rules of the Chief may specify minimum distances that wells and other excavations, structures, and equipment must be located from water wells, streets, roads, highways, rivers, lakes, streams, ponds, other bodies of water, railroad tracks, and buildings. The act adds authority for the Chief to adopt rules specifying minimum distances that wells and other excavations, structures, and equipment must be located from public or private recreational areas, zoning districts, and structures other than buildings. (Sec. 1509.23.)

² "Drilling unit" means the minimum acreage on which one well may be drilled, but does not apply to a well for injecting gas into or removing gas from a gas storage reservoir (sec. 1509.01(G), not in the act).

³ For changes in this provision, see the Final Analysis of Sub. H.B. 299 of the 125th General Assembly.

Termination of independent producer marketing program that is operated by nonprofit corporation

Ongoing law allows independent producers of oil and gas in this state to propose, develop, and operate a marketing program to do all of the following: (1) demonstrate to the general public the importance and economic significance of the oil and natural gas industry in this state, (2) encourage the wise and efficient use of energy, (3) promote environmentally sound production methods and technologies in the industry, and (4) support research and educational activities concerning the industry (sec. 1510.02, not in the act).⁴ A program's operating committee may fund the program by levying assessments on the Ohio production of oil and natural gas (sec. 1510.08, not in the act). When independent producers favor termination of a marketing program, the operating committee and the technical advisory council in the Division of Mineral Resources Management must terminate all operations of the program. Upon termination of the program, the council must return any remaining unobligated money to the independent producers who paid assessments during the immediately preceding 12 months and must prorate the money accordingly (sec. 1510.11).

The act establishes a second procedure for the distribution of unobligated money remaining at termination of a program. The act provides that if a program is operated by a nonprofit corporation that is organized under the Nonprofit Corporation Law for the purpose of carrying out the purposes of an oil and gas marketing program, and if the nonprofit corporation is exempt from federal income taxation under specified provisions of the Internal Revenue Code, upon termination of the program, the nonprofit corporation must distribute any remaining unobligated money to be used for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or to the federal, a state, or a local government to be used for a public purpose. If there remains any unobligated money after the distribution by the nonprofit corporation, the court of common pleas of the county in which the principal office of the nonprofit corporation is located must distribute the remaining unobligated money to be used for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, to the federal, a state, or a local government to be used for a public purpose, or to one or more organizations that are organized and operated exclusively for one or more of the purposes that are within the meaning of section 501(c)(3) of the Internal Revenue Code, as the court determines is best to accomplish the exempt purposes of the nonprofit corporation. (Sec. 1510.11(B).)

⁴ *"Independent producer" means a person who complies with both of the following: (1) produces oil or natural gas and is not engaged in refining either product, and (2) derives a majority of income from ownership in properties producing oil or natural gas (sec. 1510.01(B), not in the act).*

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-16-03	pp. 1048-1049
Reported, H. Energy & Environment	01-13-04	pp. 1402-1403
Passed House (59-35)	01-21-04	pp. 1510-1515
Reported, S. Agriculture	03-31-04	p. 1688
Passed Senate (26-5)	04-27-04	p. 1769

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