



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: January 25, 2022

RE: **CSI Review – Oil and Gas Safety Rules (OAC 1501:9-2-01, 1501:9-2-02, 1501:9-2-03, 1501:9-2-04, 1501:9-2-05, 1501:9-2-06, 1501:9-2-07, 1501:9-2-08, 1501:9-2-09, 1501:9-2-10)**

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 ten 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 November 24, 2021, and the public comment period was held open through December 21, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on November 24, 2021.

The rules in this package establish safety regulations for oil and gas operations. Ohio Administrative Code (OAC) 1501:9-2-01 sets forth definitions for terms used in the rules. OAC 1501:9-2-02 requires individuals engaging in activities regulated by the Division to use reasonable means to safeguard against hazards, including complying with fire protection and prevention standards, developing and submitting an emergency response plan for approval by the Division, mitigating noise and light when necessary, ensuring that no gas, condensate or fluids escape oil and gas wells, installing an appropriate fence to safeguard the facility, and maintaining all equipment in good working condition, among others. OAC 1501:9-2-03 requires all wells drilled

after the effective date of the rule to monitor annular pressure, maintain records for one year from the date of recording, and immediately report to the Division if the well pressure exceeds a maximum level. The rule requires operators of wells drilled prior to the rule's effective date to maintain any gauges currently installed and authorizes the Division to require such wells, if deemed unsafe, to be subject to the additional reporting requirements required of new wells.

OAC 1501:9-2-04 specifies special regulations applicable to oil and gas wells where hydrogen sulfide has been identified. These regulations include requirements that operators implement a monitoring plan and an emergency notification and evacuation plan, complete an affidavit indicating that safety trainings have been completed, notify the Division or stop operations if certain hydrogen sulfide concentration levels are reached, and otherwise comply with terms prescribed by the Division as part of the drilling operations permitting process, among others. OAC 1501:9-2-05 requires tank batteries, separators, and related equipment for wells drilled after the effective date of the rule to be no closer than seventy-five feet from any property not part of the drilling unit, unless authorized by the property owner and property resident and specifies alternative distances for equipment used at wells drilled prior to the effective date of the rule, unless the Division determines that the alternative distances would be hazardous (in which case the Division is authorized to apply the requirements for new wells to wells drilled prior to the effective date of the rule).

OAC 1501:9-2-06 requires surface equipment to be pressure rated for the maximum anticipated operating pressure it may experience and prohibits equipment not being used in production operations from being stored at the well site for more than thirty days without approval from the surface landowner. OAC 1501:9-2-07 requires the use of well control valves, blowout preventers, or a rotating airhead with an appropriate pressure rating when drilling unless the Division waives the requirements in writing and allows the Division to require a blowout preventer effectiveness demonstration. OAC 1501:9-2-08 requires drilling operators in urban areas to maintain fencing around the rig until the equipment has been removed, requires operators to modify drilling methods and notify the Division if certain hydrogen sulfide levels are reached, modify drilling operations or flare the gas if there a sustained flow of gas is experienced, and allows the chief to require fluid drilling as a condition of a permit if there is a known occurrence of shallow gas.

OAC 1501:9-2-09 specifies additional operation requirements for well production, such as that all wells be conspicuously identified and lettered, all berms and dikes be maintained appropriately, and all gates, electrical boxes and valves be secured, among others. Finally, OAC 1501:9-2-10 sets forth standards concerning the simultaneous operation of wells, including that the operator obtain approval from the Division prior to commencing operations.

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 and emailed to a stakeholder list maintained by the Division. Based on input from the business community, the Division made changes to the rules prior to submitting the rule to CSI for review. Two comments were received during the CSI public comment period. The Ohio Brine Task Force shared general concerns regarding the toxicity of (and potential exposure to) chemical compounds associated with the oil and gas production and suggested that the Division reevaluate the rules to enhance regulatory oversight and ensure alignment with federal environmental standards. The Division responded to the comment stating that the rule was designed not to duplicate or incorporate state requirements that are elsewhere addressed in Ohio Revised Code and drafted the rule using various relevant national safety standards.

Secondly, the Ohio Farm Bureau Federation (OFBF) raised concerns regarding a requirement that the well owner ensure the access road to the wellsite is sufficient to provide for the entrance and exit of oil and gas emergency vehicles. The OFBF suggested that the rule be amended to ensure that access roads are compatible for both emergency oil and gas vehicles as well as farm equipment that might use the access road, by requiring any modifications of access roads to first obtain the approval of the landowner. The Division responded stating that the minimum access standards in the rule are necessary to ensure an appropriate emergency response to a well incident. However, the interests of the landowner to utilize the access road for farming purposes are beyond the purview of the regulatory agency and should be a topic of negotiations between the property owner and the oil and gas producer. The OFBF also suggested that required vertical distances for various electrical conductors be set at 18 feet throughout the rules (rather than at 12, 15, or 18 feet depending on the type of conductor) to ensure that the movement of farming equipment is not obstructed, and that additional consideration be made to proximity to various other farm structures. The Division responded to the comment stating that the vertical requirements prescribed in the rule are aligned with the National Electric Code and establish minimum standards for safety purposes. Moreover, the Division noted that the property owner may negotiate with the well owner regarding minimum distances for areas not addressed by the standards (such as other farm structures not mentioned in the rule), or if desired, to exceed the minimum vertical distances for such conductors to ensure easy mobility of farming equipment.

The business community affected by the rule includes oil and gas well operators regulated by the Division. The adverse impacts to business include the costs associated with developing and submitting emergency response and related plans to the Division for review, costs associated with the removal of brine tanks by 2024, monitoring costs of tracking annular pressure at well sites, costs associated with complying with hydrogen sulfide safety standards, expenses connected to requirements to report information to the Division and comply with any inspection or

demonstration requests, costs connected to complying with fencing and other security standards, and potential loss of business opportunity if a well location is shut down or unable to operate due to safety or permit problems. The Division states that the adverse impact to business is necessary to protect the public health safety, and the environment and the well-being of workers and other persons near these sites.

Recommendations

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

Conclusion

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.