



# Ohio Department of Natural Resources

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## ODNR, DIVISION OF MINERAL RESOURCES MANAGEMENT INTERNAL PERMITTING GUIDANCE FOR REVIEW, DIRECTION, AND CONSISTENCY

To: Mine Safety Staff, Coal Permitting Staff, Oil and Gas Permitting Staff

From: John F. Husted, Chief

JFH

Date: May 1, 2011

Subject: Coordination of Reviews of Permit Applications to Drill Oil and Gas Wells in  
Coal-Bearing Townships

### **PURPOSE: TO PROVIDE PROCEDURAL GUIDANCE TO STAFF MEMBERS RESPONSIBLE FOR MAKING RECOMMENDATIONS REGARDING THE ISSUANCE OF PERMITS TO DRILL AN OIL AND GAS WELL TO BE LOCATED IN COAL BEARING TOWNSHIPS.**

RC 1509.08, a copy of which is attached, grants broad discretion to the Chief to determine whether to allow an oil and gas well to be drilled in areas where a coal mine may be adversely affected. The guidance offered by the statute is limited to a two-step process of determining if an "affected mine" exists in relation to the location of the proposed well and whether the objections, if any, filed by the coal owner/lessee are "sufficiently well founded". These terms are not defined. The problems and conflicts associated with the simultaneous pursuit to produce these resources are site specific and variable, especially in the context of longwall mining.

The Permitting Manager of the oil and gas program will take the lead in the review process upon receipt of an application proposing to drill a well in a coal bearing township. A copy of the map accompanying the application will be given to the mine safety inspector knowledgeable in the coal mining operations in the area where the well is to be located. The Inspector shall coordinate the review with the Coal Permitting Manager. Using mine maps, the application map and personal knowledge and experience, each will evaluate the proximity of the proposed well to activate coal mining operations, direction of such mining operations, likelihood of mining in the foreseeable future and any other relevant information to determine if there is a potentially affected mine.

If the review indicates there is a possibility of the existence of an affected mine, the oil and gas program will prepare a letter from the Chief notifying the coal owner/lessee that an objection to the proposed well location may be filed within six days of receipt of the notification letter, provided the mine owner/lessee also demonstrates "affected mine" status.

Generally, a mine will be considered affected if the well is to be located within the limits of either an existing or pending permit. An active mine will generally not be considered affected if the proposed well is to be located 10 miles or more away.

If the coal owner/lessee submits an objection to the location of the well, the oil and gas program will coordinate the review process. The knowledge and expertise of appropriate management staff from the mine safety, coal permitting and oil and gas permitting programs is essential to making a recommendation to the Chief. Each program area will bring to a meeting their respective maps, relevant permit information and both general and specific expertise. Each case must be reviewed and analyzed on its own merits based upon the particular facts and circumstances of the case. Division Legal Counsel will facilitate discussions among the program areas.

While the question of whether a particular mine is affected by the location of a well is separate from the determination that an objection is or is not well founded, the factors to be considered in the review process frequently overlap. At a minimum, the following factors will be considered:

1. Mine safety factors including the perimeter of the mine, the thickness and type of overburden and sealed areas of the mine, including ventilation shafts and bleeder shafts.
2. Mining elevation, geology, hydrology, drainage patterns, contour, mining history and thickness of coal.
3. The projected direction of the mining, using projection maps included in permit and application files; anticipated time frame for the mining operation to intercept the well.
4. Geographical location of existing oil and gas wells.
5. The angle of draw if the affected mine is a longwall operation and the well is to be located in a barrier pillar.
6. Whether the well can be located in a block of coal if a room and pillar operation.
7. Additional information may be requested and any other information deemed relevant to the particular facts of the case will be considered.

The above list is meant to provide the minimum information that is to be considered. It is understood coal mining plans are subject to change and dependant upon many factors. Using your best judgment based on the particular facts of a given case, after full discussion and consideration of all relevant information, should form the basis of the recommendation to the Chief. Each analysis should be mindful of the mission statement of the Department to ensure a wise balance between the wise use and protection of our natural resources for the benefit of all as well as the Division's mission to provide for the responsible development of Ohio's energy

and mineral resources. RC 1509.08 grew out of the mine safety laws and miner safety continues to be of paramount importance.

Where it can be determined only that coal can be mined at some unknown time in the future, the oil and gas operator should be given the opportunity to decide if it is in their best interest to drill the well. It is appropriate in these instances to recommend the objection is not sufficiently well founded because conditions can be placed on the drilling permit to prevent violations of RC Chapter 1509 that will present an imminent danger to public and miner health and safety. The Division will encourage and facilitate the exchange of information between the mine operator and the drilling company to allow for an educated business decision to be made.

The permit condition would require the oil and gas operator to plug the well to MSHA standards before the actual removal of coal or submit a final judgment entry from a court of competent jurisdiction declaring the right to produce the well despite existing coal rights. The oil and gas operator will be responsible for coordinating with the coal owner/lessee the timing of plugging the well, if necessary, and will take all appropriate action in a timely manner to avoid any disruption to the coal mining operation. For good cause shown, the Chief will take appropriate action to enforce the terms and conditions of the drilling permit.

## **1509.08 Determinations if well in coal bearing township.**

Upon receipt of an application for a permit required by section 1509.05 of the Revised Code, or upon receipt of an application for a permit to plug and abandon under section 1509.13 of the Revised Code, the chief of the division of mineral resources management shall determine whether the well is or is to be located in a coal bearing township.

Whether or not the well is or is to be located in a coal bearing township, the chief, by order, may refuse to issue a permit required by section 1509.05 of the Revised Code to any applicant who at the time of applying for the permit is in material or substantial violation of this chapter or rules adopted or orders issued under it. The chief shall refuse to issue a permit to any applicant who at the time of applying for the permit has been found liable by a final nonappealable order of a court of competent jurisdiction for damage to streets, roads, highways, bridges, culverts, or drainways pursuant to section 4513.34 or 5577.12 of the Revised Code until the applicant provides the chief with evidence of compliance with the order. No applicant shall attempt to circumvent this provision by applying for a permit under a different name or business organization name, by transferring responsibility to another person or entity, by abandoning the well or lease, or by any other similar act.

If the well is not or is not to be located in a coal bearing township, or if it is to be located in a coal bearing township, but the landowner submits an affidavit attesting to ownership of the property in fee simple, including the coal, and has no objection to the well, the chief shall issue the permit.

If the application to drill, reopen, or convert concerns a well that is or is to be located in a coal bearing township, the chief immediately shall notify the owner or lessee of any affected mine that the application has been filed and send to the owner or lessee two copies of the map accompanying the application setting forth the location of the well.

If the owner or lessee objects to the location of the well or objects to any location within fifty feet of the original location as a possible site for relocation of the well, the owner or lessee shall notify the chief of the objection, giving the reasons for the objection and, if applicable, indicating on a copy of the map the particular location or locations within fifty feet of the original location to which the owner or lessee objects as a site for possible relocation of the well, within six days after the receipt of the notice. If the chief receives no objections from the owner or lessee of the mine within ten days after the receipt of the notice by the owner or lessee, or if in the opinion of the chief the objections offered by the owner or lessee are not sufficiently well founded, the chief immediately shall notify the owner or lessee of those findings. The owner or lessee may appeal the decision of the chief to the reclamation commission under section 1513.13 of the Revised Code. The appeal shall be filed within fifteen days, notwithstanding provisions in divisions (A)(1) of section 1513.13 of the Revised Code, to the contrary, from the date on which the owner or lessee receives the notice. If the appeal is not filed within that time, the chief immediately shall approve the application and issue the permit if the provisions of this chapter pertaining to the issuance of such a permit have been complied with.

If the chief receives an objection from the owner or lessee of the mine as to the location of the well within ten days after receipt of the notice by the owner or lessee, and if in the opinion of the chief the objection is well founded, the chief shall disapprove the application and suggest a new location for the well, provided that the suggested new location shall not be a location within fifty feet of the original location to which the owner or lessee has objected as a site for possible relocation of the well if the chief has determined that the objection is well founded. The chief immediately shall notify the applicant for the permit of the disapproval and any suggestion as to a new location for the well. The

applicant may withdraw the application or amend the application to drill the well at the location suggested by the chief, or the applicant may appeal the disapproval of the application by the chief to the reclamation commission.

If the chief receives no objection from the owner or lessee of a mine as to the location of the well, but does receive an objection from the owner or lessee as to one or more locations within fifty feet of the original location as possible sites for relocation of the well within ten days after receipt of the notice by the owner or lessee, and if in the opinion of the chief the objection is well founded, the chief nevertheless shall approve the application and issue a permit if the provisions of this chapter pertaining to the issuance of such a permit have been complied with, incorporating as a term or condition of the permit that the applicant is prohibited from commencing drilling at any location within fifty feet of the original location that has been disapproved by the chief. The applicant may appeal to the reclamation commission the terms and conditions of the permit prohibiting the commencement of drilling at any such location disapproved by the chief.

Any such appeal shall be filed within fifteen days, notwithstanding provisions in division (A)(1) of section 1513.13 of the Revised Code to the contrary, from the date the applicant receives notice of the disapproval of the application, any other location within fifty feet of the original location, or terms or conditions of the permit, or the owner or lessee receives notice of the chief's decision. No approval or disapproval of an application shall be delayed by the chief for more than fifteen days from the date of sending the notice of the application to the mine owner or lessee as required by this section.

All appeals provided for in this section shall be treated as expedited appeals. The reclamation commission shall hear any such appeal in accordance with section 1513.13 of the Revised Code and issue a decision within thirty days of the filing of the notice of appeal.

The chief shall not issue a permit to drill a new well or reopen a well that is or is to be located within three hundred feet of any opening of any mine used as a means of ingress, egress, or ventilation for persons employed in the mine, nor within one hundred feet of any building or inflammable structure connected with the mine and actually used as a part of the operating equipment of the mine, unless the chief determines that life or property will not be endangered by drilling and operating the well in that location.

Effective Date: 09-05-2001