

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Natural Resources
Division of Oil and Gas Resources Management's

Regulation/Package Title: Incident Notification Rules

Rule Number(s): 1501:9-8-01 Definitions
1501:9-8-02 Standards

Date: August 10, 2016

Rule Type:

- | | |
|-----------------------------------------|----------------------------------------|
| <input checked="" type="checkbox"/> New | <input type="checkbox"/> 5-Year Review |
| <input type="checkbox"/> Amended | <input type="checkbox"/> Rescinded |

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The draft rules establish requirements for notification of the Ohio Department of Natural Resources (ODNR), Division of Oil and Gas Resources Management (DOGRM), when certain types of events occur that merit documentation, mitigation, and/or coordinated response with other responding agencies.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Sections 1509.02, 1509.03, 1509.22, 1509.222 and 1509.23 of the Ohio Revised Code.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The purpose of these regulations is to ensure that the DOGRM is informed of incidents such as releases of crude oil or natural gas, and other oil-field related substances including wastes, so that DOGRM can respond quickly, and in a manner that protects public health and safety and prevents or minimizes damage to the environment or natural resources.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Enhanced protection of public safety and other emergency responders;

Rapid awareness and DOGRM response to all reportable incidents;

DOGRM response to incidents, such as brine spills and small-quantity oil spills in sensitive areas, that aren't subject to other agency notification requirements;

Improved response time to oilfield emergencies;

Reduced environmental impact; and

More comprehensive approach to documenting incident resolution and site remediation, including but not limited to emergencies.

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Development of the Regulations

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The basis of these draft regulations originated from months of discussions with the Ohio Oil and Gas Association (OOGA) and American Petroleum Institute (API)-Ohio regarding incident notifications. The DOGRM participated in meetings or conference calls with OOGA and API-Ohio on February 19, 2015; March 4, 2015; April 13 and 16, 2015; May 8, 2015 and June 2, 2015. Additional meetings occurred with OOGA, API-Ohio, and the Southeastern Ohio Oil and Gas Association (SOOGA) on August 13, 2015, November 3, 2015, and January 13, 2016. The DOGRM also had discussions with the Environmental Defense Fund (EDF) on the broad list of topics, including incident notification.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

During a series of meetings beginning in February, 2015, affected party stakeholders agreed in principal that the regulated industry should notify the DOGRM when incidents or emergencies occur and that the notification triggers for releases (spills) should be at least as stringent as the notification requirements established by the State Emergency Response Commission (SERC) under Ohio Revised Code Chapter 3750 and associated rules. All parties agreed that a One-Call telephone notification system would improve the efficiency of the initial notification process. Oil and gas industry representatives challenged the reasonableness of the 30-minute notification standard. There was rigorous debate regarding notification standards for other types of incidents that are not subject to notification standards under Ohio Revised Code Chapter 3750, and appropriate notification triggers. Oil and gas industry trade associations supported contractor notification requirements when a regulated person's representative was not present at an operation and could not be immediately contacted. Based upon a review of draft rules, the Environmental Defense Fund expressed concern with the adequacy of the 210 gallon notification standard for crude oil releases, but supported the more stringent standard (25 gallons) for releases in sensitive areas, and otherwise viewed the intent of the draft rules favorably.

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9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The DOGRM reviewed and considered notification standards in federal law, Ohio law (SERC), other state oil and gas regulatory agency rules, guidelines established by the State Regulation of Oil and Natural Gas Environmental Regulations (STRONGER) Board of Directors and guidelines proposed by the Groundwater Protection Council (GWPC) for releases at Class II injection wells and associated brine storage facilities. The draft rules bring Ohio in line with notification regulations that have been effective in other states.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The alternative to mandatory incident notification requirements is reliance on voluntary notification. The regulated oil and gas industry has generally informed the DOGRM when incidents and emergencies occur; however, there have been noteworthy, unacceptable incidents when voluntary notification did not occur in a timely manner. As a result of these exceptions, the DOGRM considers this draft rule to be a necessity. The DOGRM is charged with sole and exclusive regulation of the oil and gas industry and, thus it is imperative that the DOGRM is informed when incidents occur to increase the protection of the public, the environment and, natural resources.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Specific notification timeframes and triggers are essential elements of notification regulations. The draft rules require notification of the DOGRM within "30 minutes after becoming aware of the occurrence....unless notification within that time is impracticable under the circumstances." This language is identical to the notification standard in Administrative Code 3750-25 and provides for exceptions based upon incident circumstances. This standard will improve response coordination by ensuring that DOGRM responders receive notification that is concurrent with notification provided to other responders. The rules also establish specific thresholds that trigger notification requirements. The rules provide industry with alternative ways to comply with notification standards.

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12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

SERC regulations pertaining to release notification and follow-up reporting have been enforced since 1990. These rules require oil and gas well owners to notify Ohio EPA, County Emergency Planning Districts and local fire departments when certain types of releases occur. There are no similar requirements to notify DOGRM. It is essential that the DOGRM, an agency with foremost knowledge of the oil and gas industry practices and the regulating authority to which sole and exclusive authority was assigned by the Ohio General Assembly, be amongst the first agencies notified when an oil and gas-related incident occurs. The draft rules add DOGRM to the list of notified agencies while streamlining the process for notifying state agencies through development of the One-Call notification system.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The DOGRM worked with sister state agencies to develop a new statewide toll-free number for reporting incidents 24/7/365. The DOGRM also prepared an electronic reporting system. The regulated industry may report an incident using either option and can access information concerning both options on DOGRM's website. The DOGRM has also created a new Emergency Response Section with personnel who are on call 24/7/365 to coordinate incident response with all appropriate parties.

The new toll-free number is: **1-844-OHCALL1 (1-844-642-2551)**. The ODNR's 24-hour dispatching center will receive all calls made to 1-844-OHCALL1. ODNR dispatchers are trained and have a queue of required questions that they will ask to acquire all necessary information to guide the initial response. Dispatchers will document incident information via ODNR's Computer Aided Dispatching (CAD) system, and then notify a DOGRM Duty Officer about the incident. The ODNR dispatching center has established agency notification processes based upon notification criteria and contact information provided by the agencies. This will enable ODNR to efficiently distribute incident information to other Ohio agencies such as OEPA, ODH, ODC, PUCO, and Fire Marshal, as required by law to meet all notification requirements. Once initial notification has been completed, the DOGRM Duty Officer will continue to coordinate incident response with each respective agency. Each

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agency will be responsible for making its own internal notification and deploying processes/personnel to respond to incident on an as-needed basis.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

The impacted business community consists of oil and gas operators, their contractors, gas storage field operators, owners of brine injection wells, registered brine haulers, salt solution mining operators, and owners of facilities to temporarily store, treat, or recycle brine and oil field wastes, and locally authorized brine spreaders.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The rule will streamline state notification requirements by allowing regulated parties to make a single phone call or submit one electronic notification to one, rather than multiple, state agencies. The draft rule does not relieve the responsibility of the owner or authorized person from making calls to federal or local agencies that are required by law.

If a follow-up report is already required by Ohio Revised Code Chapter 3750 and associated rules, the report must be sent to one additional agency (DOGRM). The Chief may also require an additional follow-up report, if necessary to document factors that contributed to an occurrence and final resolution.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

The expected impact from the regulation is minimal. A “representative business” would spend approximately one to two hours to make the required phone call and prepare and send the follow-up report. Time may vary with the complexity and magnitude of site impacts associated with and incident. The time estimation was determined by information obtained from SERC for similar reporting requirements.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

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It is essential that the oil and gas industry notify the DOGRM, the agency with sole and exclusive authority, when incidents occur. Notification will ensure response by persons with knowledge of oil and gas operations to prevent or minimize adverse impacts to the public or the environment. The associated compliance costs will be minimal.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No. The oil and gas industry includes small businesses; but the same types of incidents can occur at oilfield operations regardless of the size of the regulated business. Nevertheless, DOGRM response is necessary to mitigate adverse impacts and document resolution.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

DOGRM will enforce the draft rules consistent with Ohio Revised Code section 1509.04 (B)(2), which allows for time extensions and reasonable attempts to obtain necessary reports. However, Ohio Revised Code section 119.14 (C)(5) states in part that the waiver of fines and penalties for paperwork violations do not apply when the violation presents a direct danger to the public health or safety or presents the risk of severe environmental harm. The ultimate purpose of the rules are to ensure protection of public health and safety and prevent damage to natural resources.

18. What resources are available to assist small businesses with compliance of the regulation?

Ohio has developed a statewide toll-free number for reporting incidents 24/7/365. The DOGRM also prepared an electronic notification system. The regulated industry may report an incident using either option and can access information concerning both options on DOGRM's website. The DOGRM will work through the oil and gas industry trade associations to distribute information and educate business owners that are subject to this rule. DOGRM will also assist small businesses by responding to questions regarding the new rules.

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