

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Natural Resources

Regulation/Package Title: Horizontal Well Site Construction

Rule Number(s): 1501:9-2-01, 02, and 1501:9-12-01

Date: February 14, 2014

Rule Type:

New

5-Year Review

Amended

Rescinded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 Horizontal Well Site Construction rule establishes the design standards and construction requirements for horizontal well pads in order to protect human health and safety and to prevent damage to natural resources.

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

Section 1509.23 and Section 1509.03 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 this regulation is to ensure that horizontal well pads are constructed in a manner that protects the public health and safety and prevents damage to the natural resources. With the increase in horizontal well activity anticipated in Ohio, properly constructed well sites are critical to the protection of the public and success of the industry.

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

The rules are judged as being successful when fewer violations and public complaints occur, horizontal well pads are structurally sound, and environmental impacts are minimized.

Development of the Regulation

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.

All stakeholders received the draft regulations by email correspondence on or about October 18, 2013 up through the CSI submittal.

- 1) Ohio Department of Health

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- 2) Ohio Environmental Protection Agency
- 3) Ohio Department of Commerce
- 4) Ohio Board of Registration for Engineers and Surveyors
- 5) American Petroleum Institute
- 6) Environmental Defense Fund
- 7) Nature Conservancy
- 8) Ohio Environmental Council
- 9) Advisory Work Group
- 10) Engineering Consultants (multiple)

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

Many stakeholders provided written comments on the draft rules and those comments were individually reviewed by the agency. Based on the merit of each individual comment, the rules were modified appropriately to reflect the input.

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?

Industry best practices and engineering design practices were evaluated to determine the required scope of well site construction to ensure the safe drilling of horizontal wells and the production operations. Incorporation of these practices ensures the protection of public health and safety and prevents damage to natural resources.

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 agency considered current regulations pertaining to vertical well drilling site construction. The regulations were not appropriate because the scope of existing regulations did not contemplate the size and complexity of the horizontal well operations.

- 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.

Yes. The rule is performance based.

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

The agency reviewed existing rules and statutes to determine if this rule would duplicate an existing regulation. DOGRM has sole and exclusive authority over all aspects of oil and gas production and operations pursuant to Section 1509.02 of the Ohio Revised Code. The review did not identify any duplicative regulation.

- 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.**

DOGRM is developing an administrative review process which will include checklists and procedures to ensure consistency and predictability for the regulated community. The draft rules will apply uniformly to construction of all horizontal well sites.

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, owners, and applicants who construct horizontal well site(s).

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

The majority of the rules are industry and engineering best practices, which are already employed by a significant portion of the regulated community. Impacts of the regulations may include the cost of performing construction administration. The rules do not require any additional fees.

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 would be the cost to perform construction administration. The cost estimate for construction administration services for inspection, oversight, record drawings, and certification is estimated between 5%-10% of the overall construction costs. This is consistent with construction administration costs throughout the construction industry.

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

Requiring sound engineering design and construction of the horizontal well site according to the design ensures reasonable protection of public health and safety and prevents damage to natural resources. With the increase in horizontal well construction activity anticipated in Ohio, the impact of poorly constructed well sites could be detrimental to the health and safety of the public and of the industry. Ohio has unique siting conditions that include unstable soils, mining impacted lands, and steep topography, which necessitates the planning, design, and construction as outlined in the rule.

Regulatory Flexibility

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

As the primary purpose of this rule is to ensure protection of public health and safety and prevent damage to natural resources, exemptions for small businesses would not be applicable.

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 rule consistent with Ohio Revised Code section 1509.04 (B)(2), which allows for time extensions and reasonable attempts to obtain necessary paperwork. Furthermore, paperwork violations likely will not occur because a small business regulated by the rule is required to file the paperwork in order to construct the applicable well site. Finally, 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. This would apply because the rule's ultimate purpose is 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?

DOGRM staff is available to assist with compliance of the regulation for all businesses. Additionally, DOGRM is developing resources that will be available on DOGRM's website.