

# **OHIO OIL & GAS COMMISSION**

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## **RULES OF PROCEDURE**

**O.A.C. 1509-1-01 THROUGH 26**

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**EFFECTIVE 06/20/2013**

# OHIO OIL & GAS COMMISSION

1509-1-01 through 1509-1-26

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## **1509-1-01 Official Address of the Oil and Gas Commission**

The oil and gas commission, state of Ohio, shall maintain its official office at "Oil and Gas Commission, 2045 Morse Road, Columbus, Ohio 43229." The official number for facsimile filing of documents with the commission is 614-262-1306. The official telephone number for the commission is 614-262-1269. Additional information regarding the oil and gas commission may be found on the commission's web site, located at <http://oilandgas.ohiodnr.gov/commission>.

## **1509-1-02 Definitions**

- (A) "Adjudication hearing" means a trial-type proceeding at which the parties may introduce evidence relevant to the resolution of disputed issues of fact.
- (B) "Appellant" means a person, claiming to be aggrieved or adversely affected by an order of the chief of the division of oil and gas resources management, who is applying or petitioning for review or relief, and who is requesting a hearing before the commission.
- (C) "Appellee" means the division of oil and gas resources management.
- (D) "Chief" means the chief of the division of oil and gas resources management.
- (E) "Commission" means the oil and gas commission, as established by section 1509.35 of the Revised Code.
- (F) "Discovery" means the ascertainment of information made pursuant to rule 1509-1-17 of the Administrative Code.
- (G) "Division" means the division of oil and gas resources management.
- (H) "Final Order of the Commission" means a determination of rights, claims and liabilities of the parties to an action issued by the commission, which is appealable to the courts pursuant to section 1509.37 of the Revised Code.
- (I) "Interested Person" means any person having a pecuniary or proprietary interest directly affected by an appeal before the commission.
- (J) "Intervenor" means any person granted the right to intervene pursuant to rule 1509-1-14 of the Administrative Code.
- (K) "Order Recipient" means any person that is the subject of an order issued by the chief requiring such person to either perform some act or refrain from some course of activity, or informing said person of certain rights, duties or obligations.
- (L) "Owner" shall have the same meaning as provided in division (K) of section 1509.01 of the Revised Code.
- (M) "Parties" to an appeal before the oil and gas commission means the appellant, the appellee and any person granted intervenor status by the commission, including an interested person, who has requested and has been granted intervenor status.
- (N) "Person" shall have the same meaning as provided in division (T) of section 1509.01 of the Revised Code.
- (O) "Regular Business Hours" for the oil and gas commission means ten a.m. to six p.m., Monday through Friday, except for state holidays or other days in which offices of the government of the state of Ohio are permitted to close due to weather, safety or other unforeseeable events which present a risk to the public or to the commission employees.
- (P) "Rules of the Oil and Gas Commission" means rules 1509-1-01 to 1509-1-26 of the Administrative Code, unless specifically provided otherwise.

### **1509-1-03 Quorum, Concurrence, etc.**

- (A) Three members of the commission shall constitute a quorum. No action taken by the commission shall be valid unless it has the concurrence of at least a majority of the members voting upon that action.
- (B) Concurrence by a member of the commission may be given orally or in writing, and by telephone, letter, or other written or oral means of communication.
- (C) When, as a result of vacancy or recusal, the chair of the commission determines that a quorum cannot be obtained for the purpose of considering a matter that is before the commission, the chair may contact the technical advisory council on oil and gas created in section 1509.38 of the Revised Code, and request a list of the members of that council who may then serve as temporary members of the oil and gas commission. Using the list provided by the council, the chair may appoint temporary commission members as needed to achieve a quorum. The appointment of temporary commission members shall be only for the matter for which a quorum cannot be obtained. The number of temporary members appointed by the chair shall not exceed the number that is necessary to obtain a quorum for the matter under consideration. A temporary commission member selected by the chair shall have no bias towards any of the parties in the matter for which the selection is made, and shall have no commercial, social, or political ties to any of the parties to the action. A temporary commission member shall have the same authority, rights, and obligations as a member of the commission, including the right to compensation and reimbursement of expenses as provided by law. The authority, rights, and obligations of a temporary member shall cease when the matter in which the temporary member's service was needed is concluded, or when the commission chair informs the temporary member that his service on the commission has ended.

### **1509-1-04 Appearances before the Commission**

- (A) Appearances before the commission shall be by parties as defined in rule 1509-1-02 of the Administrative Code.
- (B) Appearances before the commission shall be in person or by an attorney admitted to practice before the supreme court of Ohio. Corporations, limited liability companies, boards and associations shall be represented by counsel.
- (C) Attorneys not admitted to practice before the courts of the state of Ohio may petition the commission for admission pro hac vice. Attorneys appearing pro hac vice shall comply with Rule XII of the supreme court rules for the government of the bar of Ohio. In order for the commission to approve a petition to appear pro hac vice, a petitioning attorney shall present to the commission a copy of a certificate of pro hac vice registration with the Ohio supreme court.
- (D) Any person deemed to be an interested person may appear before the commission, and may participate in an appeal to the extent, and in the manner, allowed by the commission. An interested person may petition for intervenor status pursuant to rule 1509-1-14 of the Administrative Code.
- (E) All persons appearing before the commission shall conform to the standards of ethical conduct required in appearances in the courts of the state of Ohio. The commission shall have the authority, for good cause stated in the record, to bar from participation in a particular proceeding any person who shall refuse to comply with the commission's directions, or who engages in disorderly conduct, dilatory tactics, or contemptuous language in the course of such proceeding.

### **1509-1-05 Ex Parte Contacts or Communications**

No party to an action before the commission, or their counsel, associates, compatriots or any other person acting on behalf of a party, shall seek or make an ex parte contact or communication, either directly or indirectly, with any member of the commission concerning substantive issues of a pending appeal.

## **1509-1-06 Meetings, Hearings and Calendar**

The commission will meet from time to time as it deems necessary, at a time set by the commission, at either its official office or at other locations selected by the commission. The time and location for an adjudicatory hearing shall be set forth within a notice of hearing issued to the parties to an appeal. The time and location for commission hearings shall be announced in the "Hannah Report" published by the Hannah news service. Notice of commission hearings shall also be posted on the commission's web site.

## **1509-1-07 Minutes**

Minutes of all meetings of the commission will be promptly recorded and shall be open to public inspection during regular business hours at the commission's office.

## **1509-1-08 Availability of Commission Records and Files**

- (A) The records and files of the commission shall be maintained at the commission's office and shall be available for inspection and examination during regular business hours. Papers and files of the commission, or parts thereof, shall not be removed from the custody of the commission without the specific consent of the commission. The records and files of the commission, including transcripts or recordings of any proceedings before the commission, may be made available for reproduction upon application to the commission and payment of reasonable reproduction costs.
- (B) Any person who wishes to receive regular notification of notices or decisions of the commission, may file a request to receive such notification with the commission's executive director. The request for regular notification must state with particularity the type of notices or decisions desired, and must include an address to which the regular notification shall be sent. A request for regular notification shall be valid for one year, and may be renewed by filing a written request to this effect with the commission's executive director.

## **1509-1-09 Filing with the Commission**

- (A) A notice of appeal permitted to be filed with the commission under section 1509.36 of the Revised Code or under section 1509.37 of the Revised Code, shall be filed at the official office of the commission; and the filing thereof shall mean the actual delivery to the official office of the commission of said notice of appeal or shall mean the facsimile transmission of the notice of appeal to the official office of the commission.
- (B) Any other documents required or permitted to be filed with the commission under section 1509.36 of the Revised Code or under chapter 1509-1 of the Administrative Code may be mailed, faxed or delivered to the official office of the commission.
- (C) If a person filing such notice of appeal uses the United States mail as a means of filing such notice of appeal, said person assumes the risk that the notice of appeal may be lost or that delivery thereof to the commission may be delayed beyond the final filing date. If a person filing such notice of appeal uses facsimile transmission as a means of filing such notice of appeal, said person assumes the risk that delivery of the notice of appeal may fail due to problems in transmission.
- (D) After an appeal is initiated, the commission may allow subsequent filings of documents by electronic transmission.
- (E) Copies of all documents filed with the commission shall also be served by the party so filing on all other parties to an appeal. Service upon a party represented by counsel shall be made upon said counsel. Service upon parties may be made in person or by mail, or electronically, as allowed by the commission.

## **1509-1-10 Computation and Extension of Time**

- (A) Upon motion and for good cause shown, the commission may increase or decrease the time prescribed by any rule of this chapter of the Administrative Code, or by its orders, for doing any act, or may permit an act to be done after the expiration of such time. However, the commission shall not increase or decrease the time for:
  - (1) Filing a notice of appeal pursuant to section 1509.36 or section 1509.37 of the Revised Code;
  - (2) Giving public notice of hearings on the adoption, amendment, or rescission of rules; or
  - (3) Taking any other action where a time period is prescribed by statute, unless agreed to by the parties and approved by the commission.
- (B) In computing any period of time prescribed or allowed by this chapter of the Administrative Code, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

## **1509-1-11 Appeals to the Commission**

- (A) All appeals from orders of the chief of the division to the commission shall be made by filing written notice to such effect with the commission within thirty days after the date upon which the order recipient received notice by registered or certified mail of the making of the order complained of or, for all other persons adversely affected by an order of the division chief, within thirty days after the date of the chief's issuance of the order complained of.
- (B) A copy of the notice of appeal shall be filed with the chief of the division within three days of the filing of such notice with the commission.
- (C) An appeal must be made in writing.
- (D) A notice of appeal must state clearly the order appealed from, the relief sought, a brief statement of the facts involved in the appeal, and the grounds which are the basis for the requested relief.
- (E) A copy of the order being appealed from should be included with, or appended to, the notice of appeal.
- (F) All notices of appeal filed with the commission must contain the address of the appellant, and the name and address of the attorney representing the appellant, if any.
- (G) All notices of appeal shall be signed by the appellant or by the appellant's attorney, and the signature thereon shall constitute a certificate that, to the best of the appellant's knowledge, the information contained in the notice of appeal is true.
- (H) A notice of appeal may be amended without leave of the commission during the time allowed for original filing, or a notice of appeal may be amended by leave of the commission at any time after the time allowed for original filing. Amendment of a notice of appeal may not be employed to cure jurisdictional defects in the filing of the notice of appeal, unless the amendment is filed within the time allowed for original filing of a notice of appeal.
- (I) Failure to comply with the provisions of section 1509.36 of the Revised Code governing the filing of appeals with the commission shall be sufficient basis for dismissing an appeal.

## **1509-1-12 Motion to Stay or Suspend Execution of Order**

The filing of an appeal with the commission does not automatically suspend or stay execution of the order appealed from. An appellant may apply to the commission to suspend or stay the execution of an order appealed from. Such request must be submitted in writing to the official office of the commission. The commission shall consider such request, and may suspend an order or stay the execution of an order, upon such terms and conditions as the commission considers proper.

### **1509-1-13 Interested Persons**

- (A) An interested person in an appeal before the commission is a person having a pecuniary or proprietary interest directly affected by an appeal before the commission, as defined in rule 1509-1-02 of the Administrative Code.
- (B) In the event that a question arises concerning whether a person is an interested person in an appeal, the commission may make a determination as to whether said person qualifies as an interested person. A person claiming to be an interested person in an appeal shall have the burden of establishing their status as an interested person.
- (C) An interested person may petition to intervene into an existing action before the commission. If granted intervenor status, the interested person shall be allowed to participate in such proceeding in the manner set forth in rule 1509-1-14 of the Administrative Code.
- (D) If an interested person has not demonstrated an interest in all of the issues presented in a particular appeal, the commission may limit the interested person's participation to only those issues in which an interest has been established.

### **1509-1-14 Intervention, Participation by Amicus Curiae**

- (A) Any person may petition for leave to intervene at any stage of a proceeding before the commission. A petitioner for intervention shall have the burden of showing an interest which is or may be affected by the outcome of a proceeding before the commission.
- (B) The commission may consider the following in determining whether intervention is appropriate:
  - (1) The nature of the issues;
  - (2) The adequacy of representation of the petitioner's interest which is provided by the existing parties to the proceeding; and
  - (3) The ability of the petitioner to present relevant evidence and argument.
- (C) Any person granted leave to intervene in a proceeding may participate in such proceeding as a full party, or, if desired by the Intervenor or so determined by the commission, in a capacity less than that of a full party. If an Intervenor is to participate in a limited capacity, the extent and the terms of the participation shall be in the discretion of the commission and shall be set forth when the commission rules upon the petition for intervention.
- (D) The commission may allow the filing of briefs and permit oral argument at hearing by an amicus curiae. A person wishing to participate in an appeal as an amicus curiae shall move the commission for permission to so participate. Amicus curiae participation is discretionary and will be permitted only upon the terms and conditions imposed by the commission.

### **1509-1-15 Notice of Adjudication Hearing**

- (A) When an appeal has been placed upon the calendar for hearing, the commission will, not less than ten days in advance of the hearing, notify the parties to an appeal of the place where, and the date and time when, the appeal will be called for hearing.
- (B) Notice of hearing sent by certified mail to a party at the last known address of such person shall be deemed sufficient notice of hearing if mailed at least ten days prior to the date set for hearing.

### **1509-1-16 Continuances**

Continuances may be ordered by the commission on its own motion, or may be granted by the commission in its discretion, upon application of any party, filed in writing and showing good and sufficient cause therefor. If such application is made, it must be made not less than seven days prior to the date set for hearing. An application for continuance must be directed to the commission and not to an individual commission member, and may be acted upon only by the commission. This rule shall be without prejudice to the right of the commission to continue a hearing to a later date.

## **1509-1-17    Discovery, Depositions**

Parties to a proceeding before the commission may obtain discovery in preparing their case. Discovery shall be conducted in accordance with the procedural provisions of the "Ohio Rules of Civil Procedure." Depositions may be taken and may be used by any party in the same manner and to the same extent as is permissible in the common pleas courts of this state. The party taking the deposition shall pay the costs of the deposition. The use of a deposition in lieu of the deponent's oral testimony at hearing shall be allowed under the same provisions as are articulated in rule 32 of the "Ohio Rules of Civil Procedure." A party desiring to use a deposition, or any designated part thereof, at hearing shall file the deposition with the commission and serve written notice to every other party at least five days prior to hearing. At hearing, a party may object to receiving into evidence any portion of deposition testimony in the same manner and for the same reasons as if the deponent were testifying in person at the hearing.

## **1509-1-18    Subpoenas**

If a party to a proceeding pending before the commission desires to secure the attendance of a witness to testify in said party's behalf, said party shall, at least twelve days prior to the date of hearing thereon, unless such time is lessened by the commission, file with the commission a praecipe therefor comparable to like praecipis used in proceedings before a common pleas court. The full name and address, including street name and number and county of residence, of the witness must be given; and if the praecipe is for a subpoena duces tecum, the specific books and records which the witness is required to bring with him shall be described in detail. Witness fees, if any, shall be paid directly to said witness by the party filing the praecipe therefor.

## **1509-1-19    Motions, Briefs**

- (A) Except for oral motions made upon the record at hearing, a motion shall be in writing and shall state with particularity the grounds upon which it is based.
- (B) Unless otherwise directed by the commission, a party must file written motions at least ten days in advance of hearing. The ten day deadline for filing a motion may be waived or shortened, if the movant demonstrates that unusual circumstances exist justifying an exception to this rule.
- (C) Unless otherwise directed by the commission, any party to a proceeding shall have ten days from service of a motion, or until hearing, whichever is earlier, to file a response to said motion.
- (D) The commission may grant a motion for the admission of additional evidence when satisfied that such additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the proceeding before the commission.
- (E) In any matter or cause pending before the commission, the commission may request that briefs be furnished by the parties to the appeal within a time prescribed by the commission. Responsive briefs may be filed as determined by, and within a time limited by, the commission.
- (F) Upon motion made and with leave of the commission as set forth in rule 1509-1-14 of the Administrative Code, amicus curiae briefs may be filed.
- (G) Any application for an extension of time will be denied unless there is incorporated therein a good and sufficient reason for any such extension.
- (H) Briefs, motions and responses filed with the commission shall be legible and signed by the party or by the party's counsel.
- (I) If documents filed with the commission cite case law as authority in support of argument, the filing shall include a copy of the case law cited and shall refer to the page number or paragraph where the cited language is found.

## **1509-1-20 Conduct of Evidentiary Hearings**

- (A) The commission shall conduct hearings and other proceedings in such a manner as to render a fair and complete decision on all issues which are presented, and shall take any steps consistent with the impartial discharge of its duties which appear reasonable and necessary to ascertain all relevant facts.
- (B) At an adjudication hearing, the commission shall not be bound by common law, by the rules of evidence or by technical or formal rules of procedure, except as articulated by rules in this chapter or otherwise determined by the commission.
- (C) The commission shall admit into the record of the proceedings at an adjudication hearing, all relevant evidence offered on the issue of whether the order under appeal is lawful and reasonable.
- (D) A party may object to the admission of any evidence and the commission shall rule upon the admissibility of said evidence. If a party objects to the admission or rejection of any evidence, or to other limitations of the scope of examination, that party shall state briefly the grounds for such objection on the record, and the record may include argument thereon, as allowed by the commission.
- (E) If the commission refuses to admit evidence, the party offering same may make a proffer thereof, and such proffer shall be made a part of the record of such proceeding.
- (F) All hearings shall be conducted in an orderly manner.
- (G) Parties shall have the right of presentation of evidence, examination of witnesses, cross-examination of witnesses, objection, motion and argument. All witnesses shall be sworn or shall affirm the truthfulness of their testimony.
- (H) Commission members may examine on record the parties or witnesses to a proceeding.
- (I) The parties to a proceeding must bring to hearing sufficient copies of each proposed exhibit, so that one copy of each exhibit will be made a part of the record of the proceeding and so that each commission member present at hearing will be provided with a copy of each exhibit.
- (J) A record of the proceedings before the commission shall be made by an official court reporter or by any other means approved by the commission. The record shall include all of the testimony and other evidence, the rulings regarding the admissibility of evidence, and any arguments allowed by the commission.
- (K) Parties desiring copies of the transcript of a hearing shall obtain such copies from the official court reporter upon payment of the costs of said copies to the reporter. If the original or a copy of the official transcript is in the possession of the commission, parties desiring copies of the transcript may approach the commission for copies of said transcript in accordance with rule 1509-1-08 of the Administrative Code.

## **1509-1-21 Stipulation of Fact**

The parties may, by stipulation in writing, filed with the commission or presented at a hearing, agree on any or all facts involved in a proceeding before the commission; provided, however, that the commission may thereafter require development of any fact it may deem necessary to a proper determination of a controversy.

### **1509-1-22 Substitution of Parties, Dismissal and Withdrawal**

- (A) In the event of the death of the appellant or other party or for other proper cause, the commission may order the substitution of the proper parties.
- (B) Failure to comply with the provisions of section 1509.36 of the Revised Code governing the filing of appeals with the commission shall be sufficient basis for dismissing an appeal.
- (C) If an appellant fails to appear personally or by counsel or other authorized representative at a hearing scheduled, after being duly notified of the hearing by the certified mailing of a notice of hearing to such party's last known address, and if good cause for such failure to appear is not shown, the commission shall dismiss an appeal.
- (D) The effect of a dismissal of an appeal shall be to leave in effect the order of the chief from which the dismissed appeal had been made and shall not constitute an affirmance of the chief's order by the commission.
- (E) Upon application of an appellant, and with the concurrence of the commission, an appeal may be withdrawn.

### **1509-1-23 Decisions of the Commission**

- (A) If, upon completion of an evidentiary hearing, the commission finds that the order appealed from was lawful and reasonable, it shall make a written decision affirming the order appealed from. If the commission finds that the order appealed from was unreasonable or unlawful, it shall make a written decision vacating the order appealed from, and making the order that it finds the chief should have made or remanding the matter to the chief for further proceedings.
- (B) All decisions of the commission shall incorporate:
  - (1) Findings of fact;
  - (2) Conclusions of law; and
  - (3) An order granting or denying relief.
- (C) When a final order of the commission is issued, the commission shall give notice thereof by certified mail to all parties to the proceeding.
- (D) The decision of the commission is final unless vacated by the courts in an appeal as provided for in section 1509.37 of the Revised Code.

### **1509-1-24 Appeals from Commission Decisions**

- (A) Any party aggrieved or adversely affected by a final order of the commission may file an appeal in accordance with section 1509.37 of the Revised Code.
- (B) The expense of preparing and transcribing the record of proceedings shall be borne by the party appealing the decision of the commission.
- (C) All matters remanded to the commission shall be disposed of in accordance with the order of the court arising from judicial review.

## **1509-1-25 Rules of the Commission, Notice of Public Hearing**

- (A) The commission shall adopt rules governing procedures to be followed in proceedings before the commission.
- (B) Whenever the commission proposes to adopt, amend or rescind any rule which the commission is authorized by law to do, the commission will hold a public hearing. The hearing will be held at least thirty days after the proposed rule changes have been filed pursuant to section 119.03 of the Revised Code and after reasonable public notice has been given pursuant to this rule.
- (C) Public notice shall state the commission's intention to consider adopting, amending, or rescinding a rule, shall include a synopsis of the proposed rule, amendment, or rule to be rescinded, or a general statement of the subject matter to which such rule relates, and the date, time, and place of a hearing on said proposed action. The notice shall also state the place from which copies of the proposed rule, amendment, or rule to be rescinded may be obtained. Public notice shall be published in the register of Ohio, found on the internet at <http://www.registerofohio.state.oh.us>, and shall be announced in the "Hannah Report" published by the Hannah news service.
- (D) The commission shall have available at all times, copies of all rules governing the procedures of the commission and shall furnish a copy of said rules free of charge to any person requesting said rules.

## **1509-1-26 Notice of Public Meetings ("Sunshine Law")**

Notice of all public meetings of the commission may be obtained by any of the following methods:

- (A) Any person may learn of the time and place of regularly scheduled meetings or the time, place, and purpose of any special meeting by calling the office of the commission.
- (B) Any person may obtain advance notice of all meetings at which any specific type of public business is to be discussed by identifying the type of public business for which the person desires to be notified and by supplying the executive director of the commission with stamped self-addressed envelopes. The executive director shall mail to such person a notice of the time, place, and type of business to be discussed at the meeting at least four calendar days before the meeting is scheduled to occur unless the meeting is an emergency meeting.
- (C) The executive director of the commission shall maintain a list of representatives of the news media who have requested in writing notice of special or emergency meetings. The executive director shall mail or email such representatives notice at least four days before special meetings or shall provide telephone or email notice at least twenty-four hours before special meetings. In the event of an emergency meeting, the representatives of the news media who have requested notification of emergency meetings shall be notified immediately of the time, place, and purpose of the meeting. News media requesting notice pursuant to this paragraph shall supply the executive director with the name, mailing address, email address, and telephone number of the representative to be contacted.
- (D) Notice of public meetings shall be announced in the "Hannah Report" published by the Hannah news service.
- (E) Notice of commission hearings shall be posted on the commission's web site.