ORIGINAL

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO ex rel. JACK MORRISON, JR., LAW DIRECTOR, CITY OF MUNROE FALLS, OHIO, et al.	)	CASE NO. 2013-0465
Plaintiffs-Appellants	)	APPEAL FROM THE SUMMIT COUNTY COURT OF APPEALS, NINTH APPELLATE DISTRICT,
vs.	)	CASE NO. 25953
BECK ENERGY CORPORATION, et al.	)	
Defendants-Appellees	)	

APPELLANT, CITY OF MUNROE FALLS' MERIT BRIEF

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This case presents the question of whether an oil and gas driller, having been issued a permit to by the State of Ohio to drill for oil within a municipality, may ignore any and all municipal ordinances thereafter, including local zoning requirements.

Appellee, Beck Energy Corporation is an Ohio company engaged in the drilling of oil and gas wells who contracted with a property owner, Willingham, residing at 224 Munroe Falls Avenue, Munroe Falls, Ohio. Appellant Munroe Falls is a municipal corporation organized under the laws of the State of Ohio and brought suit by and through its law director.

Beck obtained a permit from the Ohio Department of Natural Resources' Mineral Resources Management Division to drill a well on Willingham's property. However, Beck and Willingham failed to comply with certain Munroe Falls City Ordinances. These ordinances were of three basic types. The first type was ordinances regarding streets and right-of-ways, which must be complied with by any person using the roads in Munroe Falls. Examples of these ordinances include a permit requirement to move oversized loads, and to connect a private road to a City right-of-way. The second basic category was zoning ordinances, which must be complied with by any person seeking to use land in Munroe Falls. Examples include the requirement that a person obtain a zoning certificate before commencing construction. Finally, Munroe Falls sought to enforce ordinances specifically regarding oil and gas drilling, which among other things, require notice to adjoining landowners prior to commencing drilling.

Because Beck refused to comply with any municipal ordinances, Munroe Falls issued a Stop Work Order. When Beck and Willingham advised Munroe Falls they had no intention of complying with the Stop Work Order, Munroe Falls filed an action seeking an injunction. Shortly after the action was filed, the parties agreed to maintain the status quo and submit the

issues related to the injunction upon briefs and documentary evidence. On May 3, 2011 the Summit County Court of Common Pleas trial court entered a preliminary injunction prohibiting the Beck from proceeding until such time as Beck complied with all relevant Munroe Falls City Ordinances.

At Beck's request, a status conference was scheduled for Thursday, May 26, 2011. At that time the Court and the parties agreed that the injunction would be converted to a permanent injunction so that Beck could take an immediate appeal. The permanent injunction was entered by the Court later that day. Beck appealed that order to the Ninth District.

In the Ninth District, Beck argued that all three types of Munroe Falls ordinances were preempted by their state-issued drilling permit. Munroe Falls argued that the ordinances operated in parallel to the State requirements.

The Ninth District affirmed the trial court's decision that Beck Energy must comply with the local street and road ordinances before undertaking actions that affected Munroe Falls' roads and rights-of-way. This issue was not appealed by Beck and has been conclusively determined. But the Ninth District reversed the trial court as to the other types of ordinances, finding that R.C. Chapter 1509 preempted local zoning ordinances and any ordinances speaking directly to oil and gas drilling. (February 6, 2013 Opinion, and February 8, 2013 Judgment Entry, Appendix p. 21-24, ¶ 63-73). Munroe Falls' Proposition of Law One demonstrates that the Ninth District erred in refusing to allow Munroe Falls to enforce its zoning ordinance. Munroe Falls' Proposition of Law Two details why the Ninth District erred in finding that other ordinances were preempted by State Law.

IV. LAW AND ARGUMENT

PROPOSITION OF LAW ONE: R.C. Chapter 1509 does not divest municipalities of their power to enact and enforce zoning laws.

A. Local authorities are in the best position to evaluate whether uses of land within the boundaries of a municipality are appropriate.

At the heart of all zoning power is the idea that property should be developed according to a plan which promotes efficient use of property, while protecting residents with investment-backed expectations from property devaluation, nuisances and annoyance. In the *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 387-88, 47 S. Ct. 114, 118, 54 A.L.R. 1016 (1926), the U.S. Supreme Court recognized that zoning is directed in no small part to preventing potential nuisances. As noted by the Court, "[a] nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard." *Id.* at 388. Local authorities are in the best position to assure that the right things end up in the right places, because the question of whether a particular building or other use is undesirable to its neighbors "is to be determined, not by an abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality." *Id.* (citations omitted).

This Court has noted that municipal zoning authorities may establish zones to balance items such as "the control of traffic, volume of traffic, burden of traffic, effect upon valuation of property, municipal revenue to be produced for the city, expense of the improvement, land use consistent with the general welfare and development of the community as a whole." *Willott v. Vill. of Beachwood*, 175 Ohio St. 557, 560, 197 N.E.2d 201 (1964). Local governments are familiar with local conditions, and in the best position to enact zoning regulations to sensibly limit the use of land in areas where nuisance is likely. *See Village of Hudson v. Albrecht, Inc.*, 9 Ohio St.3d 69, 71-72, 458 N.E.2d 852, 855 (1984). This power of the municipalities to engage

in land use planning flows directly from Section 3, Article XVIII of the Ohio Constitution. *Garcia v. Siffrin Residential Ass'n*, 63 Ohio St.2d 259, 270, 407 N.E.2d 1369, 1377 (1980), *overruled on other grounds, Saunders v. Clark Cty. Zoning Dept.*, 66 Ohio St.2d 259, 421 N.E.2d 152 (1981).

There can be little question that oil and gas drilling, if occurring in the middle of a residential neighborhood, imposes significant burdens on residents of the neighborhood. Media reports are replete with information of how noisy the process is,[1] how the drilling process involves bright lights at all hours of the night,[2] how continued truck traffic even after the drilling process is over may adversely affect neighborhood aesthetics,[3] and how proximity to a well increases the threat of pollution or spills.[4] As a concrete example, former Northeast Ohio resident Susan Fowler found a significant impairment to the property value of her home as a result of drilling in a residential neighborhood. A neighboring property owner placed several wells on a thirteen acre parcel next to Fowler's home, the closest being 89 feet from Fowler's property line.[5] Three wells now operate on this thirteen acre parcel, and at last media report,

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[1] What's the fracking noise? | 9news.com, http://www.9news.com/rss/story.aspx?storyid=270185 (last visited Aug. 13, 2013).

[2] Guest opinion: Fracking can happen to any of us - Boulder Daily Camera, http://www.dailycamera.com/ci_23739426/guest-opinion-fracking-can-happen-any-us (last visited Aug. 13, 2013).

[3] What's Up with that Fracking Well Next Door?, http://www.northernexpress.com/michigan/article-5954-whats-up-with-that-f.html (last visited Aug. 13, 2013).

[4] Resistance in Ohio, Fracking's Dumping Ground, http://truth-out.org/news/item/16547-resistance-in-ohio-frackings-dumping-ground (last visited Aug. 13, 2013).

[5] Erin O'Brien, *Drill, Baby, Drill , Cleveland Scene*, http://www.clevescene.com/cleveland/drill-baby-drill/Content?oid=1659409 (last visited Aug. 29, 2013).

Fowler's property had been on the market for 2 ½ years, even with its asking price having been reduced by nearly $140,000.[6]

By bringing this appeal, Munroe Falls is requesting that this Court permit it to protect its residents from these and other effects of oil and gas drilling through the application of traditional zoning principles, which generally speaking, confine oil and gas drilling to areas appropriate to that activity. Local authorities are best equipped to decide whether and to what extent the various zones of their cities can accommodate the type of externalities imposed by oil and gas drilling.

Municipalities have been traditionally afforded the power to place industrial activities in appropriate zones, to allow for the orderly planning and development of land within municipal boundaries. Strip-mining raises a number of the same concerns as the drilling of wells – noise, potential for pollution, aesthetics and other issues. Strip-mining is the most economical method of extraction of coal for deposits up to 180 feet below the surface, but imposes a large burden upon the neighbors of the strip mine. In the 1950's, strip-mining was as hot an issue as oil and gas drilling is today.

In *Smith v. Juillerat*, 161 Ohio St. 424, 119 N.E.2d 611 (1954), this Court considered a challenge to a zoning ordinance which prevented strip-mining in residential neighborhoods. The miner claimed that the zoning ordinance impaired its common-law right to use property "for any lawful purpose so long as a public nuisance is not created." *Id.* at 428. But this Court found that cities had a paramount right to "limit the use of land in the interest of the public welfare." *Id.*

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[6] Harlan Spector, The Plain Dealer, *As fracking debate heats up, Broadview Heights already shows strains of oil, gas well drilling* http://www.cleveland.com/metro/index.ssf/2012/06/as_fracking_debate_heats_up_br.html (last visited Aug. 29, 2013).

The Court noted that the power of municipalities to prohibit strip-mining in residential areas using zoning regulations has been generally recognized as valid. *Id.* at 429.

In the past, miners wanted to utilize strip-mining for the economic benefits it brings, and neighbors wanted to prevent it in order to maintain the value of their properties. Similarly, modern-day drillers want to locate their wells (in some instances) in residential neighborhoods, to optimize the placement of their wells for purposes of increasing their returns on investment, while neighbors, for the most part, want protection from the potential nuisances that drilling entails. When this Court, in *Smith*, was asked to balance these sorts of interests, the Court came down firmly on the side of entrusting local authorities to determine the right place for industrial coal mining operations. Munroe Falls asks for the same result in this case.

B. This Court previously recognized that oil and gas drilling is an activity incompatible with residential neighborhoods.

In 1992, this Court considered a prior version of R.C. Chapter 1509 and its interaction with local township zoning in *Newbury Twp. Bd. of Trustees. v. Lomak Petroleum (Ohio), Inc.*, 62 Ohio St.3d 387, 583 N.E.2d 302 (1992). In *Newbury*, this Court implicitly determined that oil and gas drilling is incompatible with residential neighborhoods. In *Newbury Twp.*, a township zoned essentially all of its land as residential, when in fact it was primarily agricultural in nature. *Id.* at 390-391. It then banned oil and gas drilling in residential zones. *Id.* at 390-391. The township defended its action by pointing to the permission granted in the 1992 version of R.C. §1509.39 (Appx. p. 69) to enforce "health and safety standards" applicable to oil and gas drilling. But this Court looked to the actual character of the lands where the driller wished to drill, and noted that the lands were "basically agricultural, and are of the type in which oil and gas well drillers * * * would conduct operations." *Id.* at 391. As a result, the Court found that

the practical effect of "the zoning resolution is to prohibit the drilling of oil and gas wells *in a type of area usually considered to be most appropriate for such activity.*" *Id.* (emphasis added).

This Court reasoned that the township had essentially "declared oil and gas wells to be nuisances per se in all areas zoned residential within the township, without regard to the fact that some of the areas may be farmland," and that in so doing, the township had not taken into account local factors such as population density in tailoring its zoning to meet the needs of the township. *Id.* The township's actions were found to exceed its permission to enact health and safety regulations affecting oil and gas drilling. *Id.*

This Court went on to authorize local courts presented with these sorts of disputes to look to population densities and "special local conditions" to determine whether or not zoning classifications truly were health and safety regulations. *Id.* This decision also specifically noted that, under R.C. Chapter 1509 as it existed at the time, a township may regulate oil and gas well site locations in bona fide residential areas pursuant to its power to protect the health and safety of its residents. *Id.* at 392.

Admittedly, *Newbury Twp.* differs from the present case in two very significant ways: (1) it was concerned with the zoning power of townships, which unlike the zoning power of municipalities, is derived from a grant of authority from the State, and (2) R.C. Chapter 1509 has changed substantially in the intervening years. But the implicit finding of the *Newbury Twp.* Court, which runs throughout its analysis, is that oil and gas drilling, that may be entirely appropriate for agricultural areas, is not appropriate for bona fide residential areas, and that the parties in the best position to identify the areas that are appropriate for drilling are those with local knowledge of the conditions. It is for those two purposes that Munroe Falls cites *Newbury Twp.* in support of its position.

C. Ohio's Home Rule cities have a long-standing and well recognized power to control development through zoning.

Charter cities in Ohio derive their authority to zone areas for property development directly from the Ohio Constitution, Article XVIII, Section 3 (Appx. p. 47). The zoning powers of a city are broad. Zoning ordinances are only invalid when they have "no substantial relation to the public health, safety, morals, or general welfare." *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. at 395. This Court has on many occasions reviewed the extent of a city's power to limit activities to particular zones, and almost uniformly has supported a city' power to do so. *Cent. Motors Corp. v. Pepper Pike*, 73 Ohio St.3d 581, 582, 653 N.E.2d 639, 641 (1995) (city's refusal to rezone residential property for high-rise office, condominium and townhouses); *Gerijo, Inc. v. Fairfield*, 70 Ohio St.3d 223, 228-29, 638 N.E.2d 533, 538 (1994) (city's refusal to rezone property to allow for multifamily residential development); *Village of Hudson,*, 9 Ohio St.3d at 74, (city's refusal to allow expansion of grocery store); *Franchise Developers, Inc. v. City of Cincinnati*, 30 Ohio St.3d 28, 29-30, 505 N.E.2d 966, 968 (1987) (city's refusal to allow use of property as fast-food restaurant).

As related in *Cent. Motors Corp.*, "[t]his court has consistently recognized that a municipality may properly exercise its zoning authority to preserve the character of designated areas in order to promote the overall quality of life within the city's boundaries." 73 Ohio St.3d at 585, *citing Gerijo, Franchise Developers,* and *Village of Hudson, supra.* Zoning classifications may be made to protect residents from traffic congestion, noise, and air pollution. *Brown v. City of Cleveland*, 66 Ohio St.2d 93, 96, 420 N.E.2d 103, 106 (1981). In fact, municipalities may base their zoning classifications on aesthetic considerations. *Village of Hudson*, 9 Ohio St.3d 69 at syllabus 1.

Thus, this Court has recognized that Ohio's charter municipalities have the power to enforce their residents' reasonable, investment-backed expectations that their residential neighborhoods will not abruptly change character into industrial uses.

D. Prior to 2004, the Ohio Department of Natural Resources and municipalities had concurrent jurisdiction over the technical aspects of oil and gas well construction.

Munroe Falls' position is that there is a difference between the Ohio Department of Natural Resource's power to control the details of well construction, including the spacing of wells to protect landowners' rights in the oil and gas below their parcels, and municipalities' power to control local development. Read together, the local zoning power determines what land is available for oil and gas drilling, and the State law determines the details of the oil and gas operations on that available land. The language chosen by the State legislature in amending R.C. Chapter 1509 supports this view.

In 1965, at the time of initial passage of R.C. Chapter 1509, the General Assembly committed to the Ohio Department of Natural Resources the responsibility to ensure that oil and gas wells were constructed properly and in areas with appropriate geology. Consistent with this authority, the ODNR has promulgated regulations concerning the proper construction of wells. See Ohio Adm. Code §1501:9-1-08 (Appx. p.33). These regulations mandate that certain casing materials and cement be used, wellbore diameters be a certain size, that drilling fluids be handled in certain ways, and further sets standards for properly constructing wells. Also delegated to the ODNR was the development of a comprehensive approach for the management of a system of correlative rights. "Correlative rights" are defined in R.C. §1509.01(I) (Appx. p. 52) as "the reasonable opportunity to every person entitled thereto to recover and receive the oil and gas in and under the person's tract or tracts...." As such, the ODNR's rules on the location of wells also

delve heavily into the proper spacing of wells, such that no landowner could exploit oil below the tracts of his or her neighbors. Ohio Adm. Code §1501:9-1-04 (Appx. p. 28).

As noted by the Legislative Service Commission, prior to 2004, local governments had concurrent jurisdiction in issues of well construction and spacing, and could enact more restrictive "health and safety standards for the drilling and exploration for oil and gas...." Legislative Service Commission Bill Analysis, Sub. H.B. 278. Thus, prior to 2004, a statewide patchwork of more restrictive local ordinances concerning the technical aspects of oil and gas drilling predominated. This patchwork of local oil and gas drilling ordinances was difficult for drillers to navigate, and was enforced by local governments which typically did not have geologists on staff and generally lacked expertise in well construction.

Accordingly, in 2004, the General Assembly passed Sub. H.B. 278, which added language to R.C. §1509.02 (Appx. p. 58) making the ODNR the "sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells" in the State of Ohio. This language sought to preempt the patchwork of more-restrictive local ordinances on the technical details of well construction. Sub. H.B. 278 presented a state-wide scheme of well construction standards that would be the same regardless of location. But the express language of Sub. H.B. 278 does not suggest that this change to statutory language has any effect on municipal zoning.

E. 2004 Sub. H.B. 278 purports to eliminate municipalities' power to adopt inconsistent technical requirements for the drilling and operation of oil and gas wells, but facially does not affect municipalities' zoning power.

The State of Ohio, in enacting Sub. H. B. 278, did not re-zone all of the parcels in all of the municipalities in the State of Ohio. The bill itself says nothing about municipal zoning. Neither R.C. Chapter 1509, nor the regulations promulgated thereunder, set forth any standards for determining what zones – residential, business, industrial – are appropriate for oil and gas

drilling. None of the provisions of Chapter 1509 factor in concerns regarding the burden that may be imposed by oil and gas drilling, for example, if performed in a residential neighborhood. The State law and local zoning ordinances do not concern the same subject matter.

What the State enacted was a statute to standardize proper well construction and spacing, so that local oil and gas drilling ordinances did not interfere with technical standards concerning safe well construction and correlative rights. The ODNR and Beck Energy have incorrectly read the language in R.C. §1509.02 (Appx. p. 58), which grants the ODNR the exclusive power to control well "location," as overriding any and all municipal zoning restrictions which may say that certain land is, or is not, available for oil and gas development. This reading is in error.

Nothing in Chapter 1509 states that it displaces local zoning ordinances. In contrast, other similar State statutes expressly say exactly that. R.C. §3734.05(E) (Appx. p. 80), for example, states that "[n]o political subdivision of this state shall require any additional zoning or other approval, consent, permit, certificate, or other condition for the construction or operation of a hazardous waste facility...." See also R.C. §519.211 (Appx. p. 48) (prohibiting township zoning from affecting public utilities); R.C. §3772.26 (Appx. p. 87) (prohibiting local zoning from prohibiting the development of casinos); R.C. §5103.0318, R.C. §5104.054, and R.C. §5123.19(P) (Appx. p. 90, 91, 99) (overriding local zoning for foster homes, day cares, and group homes).

Where a statute does not expressly displace local zoning, the local zoning code exists in parallel with the State law. In *Sheffield v. Rowland*, 87 Ohio St.3d 9, 12, 716 N.E.2d 1121, 1124 (1999), this Court considered an absolute zoning ban on waste processing facilities, which are licensed by the State in a manner similar to oil and gas wells. While this Court struck down Sheffield's absolute zoning ban on waste facilities, it noted that the municipality retained the

power to place state-licensed facilities in appropriate zones: "Nothing in this decision should be construed to suggest that Sheffield cannot restrict state-authorized facilities to certain districts with appropriate zoning." *Id.*

There are even more compelling grounds to find parallel authority between the State and Munroe Falls in this case. While R.C. §3734.05(E) (Appx. p. 80) expressly limits the zoning power of municipalities, R.C. Chapter 1509 does not expressly limit municipal zoning authority. As a result, the State law operates in parallel to local zoning requirements. The General Assembly expressly stated in Sub. H.B. 278 that the ODNR's authority was limited to determining well construction, spacing and location regulations in order to strip away conflicting similar technical regulations enacted by cities. It did not strip away the municipalities' power to place oil and gas wells in particular zones. In Munroe Falls, the first step in determining whether an oil and gas well fits within the Munroe Falls zoning code is for the driller to file a zoning application and obtain a zoning certificate under Ordinance §1163.02 (Appx. p. 101). In this case, the driller refused to even start the process by making a zoning application.

A proper construction of R.C. Chapter 1509 and local zoning authority provides that the local zoning code designates what land is available for oil and gas drilling, and the State's permit assures that the well is constructed properly and spaced according to the correlative rights principles administrated by the ODNR.

F. R.C. Chapter 1509 and the Munroe Falls zoning ordinances regulate two different things and are not in conflict.

As detailed above, R.C. Chapter 1509 and local zoning authority, when properly exercised, can be harmonized, and no conflict exists between the two. This Court has specifically noted that the courts should make an effort to harmonize the laws of the State and

local municipalities to avoid preemption, if possible. *N. Ohio Patrolmen's Benev. Assn v. City of Parma*, 61 Ohio St.2d 375, 377, 402 N.E.2d 519, 521 (1980).

The municipality designates what land is available for oil and gas drilling, and the State sets forth the rules for operation of the drilling enterprise. If municipalities appropriately evaluate and classify lands according to demographic and local features, their zoning power does not conflict with State law. Only when the municipalities abuse their traditional zoning powers by trying to enact outright bans on certain activities through clever zoning, such as in *Newbury Tp.* or *Sheffield, supra*, can a conflict be found.

Here, as detailed above, R.C. §1509.02 (Appx. p. 58) expressly relates the powers vested in the ODNR, and it does not mention a word about zoning. R.C. §1509.03 (Appx. p. 60) directs the Chief of the Mineral Resources Management Division of the ODNR to promulgate rules for the drilling of wells, including topics such as safety, fencing, protection of water supplies, containment and disposal of drilling wastes, and noise mitigation. The Chief is not empowered to promulgate rules considering the existing uses of land, protecting the property values of neighbors, maintaining neighborhood aesthetics, or any of the other lawful considerations of local zoning.

R.C. §1509.06(A) (Appx. p. 63) requires the Chief to collect from any applicant for a drilling permit certain information about the proposed project, including well ownership information, oil and gas lease and royalty information, the location and name of the well, geological information, drilling equipment information, whether notice has been given to neighbors in an urbanized area, site restoration plans and access routes. The Chief is not empowered to collect or consider any information regarding existing zoning classifications, the use of nearby property, effect on aesthetics, or any of the matters considered by traditional

zoning. Under the terms of R.C. §1509.06(F) (Appx. p. 66), the Chief must issue the drilling permit unless he finds a "substantial risk" that the drilling operation will "present an imminent danger to public health or safety or damage to the environment" that cannot be addressed by placing conditions on the drilling permit.

It is therefore clear that the traditional concerns of zoning are not considered or applied by the ODNR in its decision to grant a drilling permit. Aside from the fact that ODNR staff do not have any experience with the local conditions within the city, the ODNR does not collect information sufficient to make a judgment on local land-use topics, such as whether a drilling operation is appropriate in a particular neighborhood, or compliance with a City's development plans. And the ODNR's sole authority to deny a permit extends only to situations where an operation would "present an imminent danger to public health or safety or damage to the environment." This limited authority makes it clear that the ODNR's authority is limited to the technical concerns of safe well drilling – not land use planning.

Combined with the fact that R.C. Chapter 1509 does not expressly preempt local zoning authority, as several other State statutes do, such as R.C. §3734.05(E) (hazardous waste facilities) (Appx. p. 80), R.C. §519.211 (public utilities) (Appx. p. 48), R.C. §3772.26 (casinos) (Appx. p. 87), R.C. §5103.0318 (foster homes) (Appx. p. 90), R.C. §5104.054 (day cares) (Appx. p. 91), and R.C. §5123.19(P) (group homes) (Appx. p. 99), R.C. Chapter 1509's focus on technical and safety requirements demonstrates conclusively that it is not a statute covering the same subject matter as local zoning. Accordingly, it is possible to harmonize R.C. Chapter 1509 and local zoning requirements by recognizing that R.C. Chapter 1509 controls technical safety and correlative rights topics, while local zoning maintains its validity in determining where those operations may take place.

The alternative reading, advanced by Beck, requires language to be read into R.C. Chapter 1509, making the ODNR the arbiter of proper land use planning for the entire State. Beck's reading takes municipalities' orderly land use planning classifications and replaces those classifications with ... nothing. The ODNR does not consider existing uses, neighborhood character, or development plans in its decision to issue a drilling permit. Thus, anyone in the State is subject to the harms related to a neighbor in a residential neighborhood placing three drilling rigs as close as 89 feet from his or her property line, decimating the character of the neighborhood and nearby property values.

This draconian reading of R.C. §1509.02 (Appx. p. 58), forcing oil wells where they don't belong in contravention of local zoning, would make Ohio a significant outlier nationwide. As set forth in detail below, it was not necessary for the leading states in oil and gas production to take such a step. Texas, California, Oklahoma, Colorado, and many other states maintain a parallel system of statewide oil and gas regulation and local controls. A reading of the statute which commits to the State the technical details of well drilling and protection of correlative rights and commits to the cities the power to promote orderly development is the better view. And when this view is applied, there is no conflict between the State statute and the local zoning ordinances.

The Ninth District's consideration of the issue of conflict was lacking. The Ninth District's analysis that a conflict existed because the State issued a permit to drill at Willingham's property, so any local ordinances touching the same property must be in conflict with State law. *State ex rel. Morrison v. Beck Energy Corp.*, 2013-Ohio-356 at ¶66. This application of the conflict analysis would only be valid if the State's drilling permit covered the same topic as the local ordinances. But as set forth above, the issuance of a drilling permit does

not consider local land use topics and is limited to issues of technical safety and correlative rights.

The granting of a drilling permit by the State is not a determination that oil and gas drilling is appropriate in a zone created by a municipality, and the granting of a zoning certificate by a municipality is not a determination that a well can be drilled safely and fit within the State's scheme of correlative rights. The two considerations operate independently of one another. The Ninth District's failure to consider the two different purposes of the State oil and gas law and parallel municipal authority, taken to its logical extreme, could lead to absurd results. For example, if a driller determined that the most expedient way of clearing land for drilling was to burn down the vegetation, under the Ninth District's logic, Munroe Falls would be powerless to enforce its open burning ordinance. Or the driller could take the position that it is exempt from Munroe Falls' tax on net profits derived from business operations conducted within the City.

Without a recognition that the State's authority is limited to the technical details of well construction and operation, then under the Ninth District's logic, oil and gas drillers are essentially exempt from any municipal authority. But the ODNR's issuance of a drilling permit does not give oil and gas drillers an inviolate right to drill a well on any particular piece of property. The State oil and gas statute and the zoning ordinance concern different topics altogether, just as the State oil and gas statute and Munroe Falls' open burning and taxation ordinances concern different topics than the State statute.

Because the Ninth District did not correctly identify the different purposes of State oil and gas drilling regulation and local zoning authority, it found a conflict where none exists. "No real conflict can exist unless the ordinance declares something to be right which the state law declares to be wrong, or vice versa." *Struthers v. Sokol,* 108 Ohio St. 263, 268 140 N.E. 519,

(1923). In *Cincinnati v. Baskin*, 112 Ohio St.3d 279, 2006-Ohio-6422, 859 N.E.2d 514, this Court was presented with a State law that prohibited firearms capable of firing more than 31 rounds without reloading, and a municipal ordinance prohibiting firearms capable of firing more than 10 rounds without reloading. A claim was made that the statute and the ordinance were in conflict because one who owned a firearm capable of firing 30 rounds within the municipality would be compliant with State law but in violation of the ordinance. This Court reasoned that the State's prohibition on weapons with a capacity of greater than 31 bullets did not imply a right to possess a weapon with a capacity of up to 31 bullets. *Id.* at ¶ 21. This Court looked to the State statute and found no express statement that municipalities were prohibited from regulating firearms below the State capacity threshold – just as R.C. Chapter 1509 does not expressly supersede local zoning. *Id.* at ¶ 23. Ultimately, because there was no "declaration to the contrary" in the statute, this Court found that there was no conflict between the State statute and the city's ordinance..

Here, Beck's state-issued drilling permit does not confer an unqualified right to drill in contravention of local ordinances or zoning classifications. The ODNR does not even collect sufficient information about local zoning to have made a judgment as to whether an oil and gas well "fits" within the local community, and the Chief of the Mineral Resources Management Division's decision to grant an oil and gas permit is expressly limited to topics related to technical well design and operation, not local aesthetics, traffic, or property values. See R.C. §1509.06(F) (Appx. p. 66). The considerations of local zoning and well construction are two different issues and operate independently of one another.

Thus, there is no conflict between the Munroe Falls zoning ordinances and R.C. Chapter 1509. The fact that the ODNR has the power to limit the location of wells requested by a driller

for safety or correlative rights reasons does not grant the ODNR the right to approve a well in any particular location within a municipality without regard to the zoning expectations of the residents. Nor do the Munroe Falls zoning ordinances permit what the State prohibits. Munroe Falls cannot license an oil and gas operation without a State permit.

G. If a preemption analysis is required to be performed, Munroe Falls zoning code survives, because R.C. §1509.02 is not a general law.

As detailed above, a full Home Rule preemption analysis is unnecessary because the State law and local zoning ordinances address two different topics and may be harmonized. In the absence of a conflict, no preemption analysis is necessary.

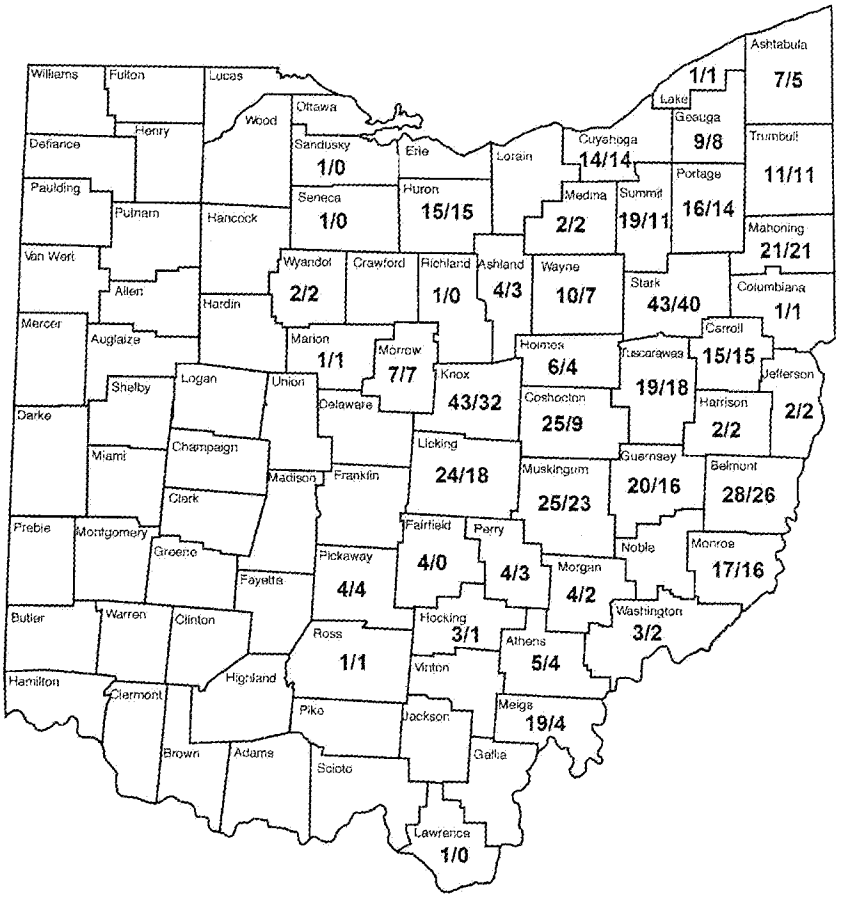
But even if one was to read R.C. §1509.02 (Appx. p. 58) as allowing the ODNR to issue a drilling permit in contravention of local zoning, R.C. §1509.02 (Appx. p. 66) is not a general law.[7] In *Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963, this Court was presented with a statute, which, unlike R.C. §1509.02 (Appx. p. 58), actively did seek to displace local zoning to promote the placement of manufactured homes in areas where they were prohibited by local zoning, R.C. §3781.184 (Appx. p. 88). But that statute contained an exception which allowed private landowners to incorporate restrictive covenants in deeds to prohibit the inclusion of manufactured homes within subdivisions.

In evaluating R.C. §3781.184 (Appx. p. 88), this Court, at paragraph 21 of its *Canton v. State* decision, set forth a four-part test to determine what constitutes a general law. Important in that test is that a general law must "apply to all parts of the state alike and operate uniformly throughout the state... and prescribe a rule of conduct upon citizens generally." *Id.* This Court found that the State's prohibition against mobile home zoning was not a general law, because it

[7] The Ninth District stated that Munroe Falls conceded that R.C. §1509.02 was a general law. *State ex rel. Morrison v. Beck Energy Corp.*, 2013-Ohio-356, ¶ 58. This is in error. Munroe Falls specifically challenged the status of the statute as general law at pages 17-20 of its brief.

did not operate uniformly throughout the State. This Court found that, because of the exception for restrictive covenants, the statute "will effectively apply only in older areas of the state, i.e., cities where residential areas no longer have effective deed restrictions or no longer have active homeowner associations." *Id.* at ¶ 30. As such, it did not apply uniformly to all citizens and was not a general law.

Similarly, R.C. §1509.02 cannot be considered a general law because it only applies to half of the state. The below diagram[8] sets forth the location of all of (1) the oil and gas drilling permits issued by the ODNR in 2011, and (2) all of the wells completed, by county:



[8] This diagram is reproduced from page 3 of the *2011 Ohio Oil and Gas Summary*, from the ODNR's Division of Oil and Gas Resources Management http://oilandgas.ohiodnr.gov/portals/oilgas/pdf/oilgas11.pdf (last visited Mar. 11, 2013).

As demonstrated graphically by the diagram, oil and gas is not found in economically viable quantities in the Western half of Ohio, at all. Pursuant to the ODNR's 2011 Ohio Oil and Gas Summary, at page 2, cited in footnote 8, among the most active counties for drilling are Stark, Knox, Mahoning, Muskingum, Belmont, and Summit counties. The cities in these counties, including Canton, Youngstown, Mt. Vernon, Akron and Munroe Falls are affected by the law, while cities in the Western part of the state, including Cincinnati, Dayton, and Toledo, are not affected. Therefore, if the Ninth District's interpretation of R.C. §1509.02 (Appx. p. 58) is correct – that the ODNR was granted the power to supersede local zoning – then, practically speaking, the ODNR was only provided the right to supersede local zoning for certain cities located in the Eastern part of the State. R.C. §1509.02 (Appx. p. 58) is therefore not a general law, but rather is a special or local law, and does not supersede Munroe Falls' zoning code.

In making this argument, Munroe Falls is aware of *Clermont Envtl. Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 50, 442 N.E.2d 1278, 1283 (1982), where this Court held that municipal zoning restrictions could not exist in parallel with the State's regulation of hazardous waste landfills under R.C. Chapter 3734. However, there are two key differences between this case and *Clermont*. First, as detailed above, R.C. §3734.05(E) (Appx. p. 80) contains an express statement displacing local zoning restrictions. R.C. Chapter 1509, pertaining to oil and gas wells, does not make such a statement. Second, R.C. Chapter 3734 was a general law which could be applied uniformly throughout the State, because every part of the State has the necessary precursor to a landfill – land. In contrast, as set forth above, R.C. Chapter 1509 is not a general law because it only applies to the Eastern half of the State, which is the only part of the State with gas and oil.

Munroe Falls' zoning ordinance at §1163.02 (Appx. p. 101) requires any party seeking to put land to use to obtain a zoning certificate before that use commences. Because R.C. §1509.02 (Appx. p. 58) is not a general law in conflict with that provision, it was error for the Ninth District to find that the state law preempted the local ordinance. *State ex rel. Morrison v. Beck Energy Corp.*, 2013-Ohio-356, ¶ 73.

H. Local zoning controls are not a significant impediment to the development of oil and gas resources.

The State of Texas has, for many years, been the far-and-away leader of oil production in the United States. In 2012, it produced 729,644,000 barrels of oil, equivalent to the next three largest oil-producing states, and dwarfing Ohio, which produced only 4,877,000 barrels of oil.[9] Texas was able to reach this level of production without a centralized state authority with regulations that superseded local zoning. Instead, in Texas, a city has the authority to prohibit the drilling of oil wells within city limits, or zone oil wells to a particular zone, however it sees fit. *Unger v. State*, 629 S.W.2d 811, 812 (Tex. App. 1982). Among the next largest producing states is California. The code of California does not purport to preempt local controls of oil and gas wells. See Cal. Pub. Res. Code § 3690 (Appx. p. 107).

In the production of natural gas, Texas is also a leader,[10] followed by Louisiana, Wyoming, and Oklahoma. In Louisiana, the courts have rejected the notion that its state law regulating many aspects of petroleum production supersedes local zoning of oil and gas wells. *City of Baton Rouge v. Hebert*, 378 So. 2d 144, 146 (La. Ct. App. 1979) (remarking "we do not

[9] U.S. Energy Information Administration, Crude Oil Production, http://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbbl_a.htm (last visited Aug. 26, 2013).

[10] U.S. Energy Information Adminstration, Natural Gas Dry Production (Annual Supply & Disposition), http://www.eia.gov/dnav/ng/ng_sum_snd_a_EPG0_FPD_Mmcf_a.htm (last visited Aug. 26, 2013).

believe the state's preemption in this field extends to abridging a municipality's control over land use within its corporate boundary..."). This is also true in Oklahoma. *Vinson v. Medley*, 737 P.2d 932, 936 (Okla. 1987) ("A city is empowered to enact zoning laws to regulate the drilling of oil-and-gas wells with a view to safeguarding public welfare."). In Wyoming, the State Oil and Gas rules expressly require drillers to obtain local approval to drill. Wyo. Oil & Gas Rules ch. 2, § 1(b) (Appx. p. 108).

Other states, too, have recognized a dual state and local authority where the municipality designates what land is available for drilling and the state controls how the wells are built. In Colorado, a state statute, similar to the statute before this Court, established a state-wide oil and gas commission and set forth comprehensive technical rules for well drilling and spacing to promote correlative rights. A claim was brought that this state-wide law controlling well spacing preempted local zoning. The Colorado Supreme Court disagreed, drawing a distinction between the function of the commission and the purpose served by municipal zoning. *Voss v. Lundvall Bros.*, 830 P.2d 1061, 1068–69 (Colo. 1992) (en banc). Ultimately, the court determined that "[t]he authority vested in the commission to promulgate and enforce regulations applicable to oil and gas development and production, including well location and spacing requirements, is not intended to involve the commission in land-use planning and control within a municipality...." *Id.* Similar arguments were raised, with similar results, in Kentucky, which considered zoning to be one of the "basic powers" of municipalities. *Blancett v. Montgomery*, 398 S.W.2d 877, 881 (Ky. 1966).

It is clear that states can have successful oil and gas exploration and recovery industries without preempting the zoning codes of local municipalities.

I. The recent experience of New York and Pennsylvania

More recently, two of the other states that sit atop the recently-viable deep shale oil and gas deposits in the eastern part of the country, New York and Pennsylvania, have addressed similar issues to those before this Court. Both states found that local zoning operates in parallel to state-wide oil well spacing and construction regulations.

In *Cooperstown Holstein Corp. v. Town of Middlefield*, 943 N.Y.S.2d 722, (N.Y. Sup. Ct. 2012), affirmed in *Cooperstown Holstein Corp. v. Town of Middlefield*, 964 N.Y.S.2d 431, (N.Y. App. Div. 2013), the court considered the claim that the language "this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries" in New York's state-wide oil and gas law preempted local zoning. The court balanced the topics addressed in the oil and gas law – the regulation of construction of oil and gas wells – against the traditional role of local zoning. *Id.* at 728-729. The court found it appropriate to treat the statewide oil and gas law as controlling the details of oil exploration and construction of oil wells, to assure uniformity across the state. *Id.* at 728. Meanwhile, local zoning maintained its traditional role of designating what land was available for those activities. *Id.* In other words, the court held, "[t]he state maintains control over the 'how' of such procedures while the municipalities maintain control over the 'where' of such exploration." *Id.* at 729.

Construing the same statute, the court in *Anschutz Exploration Corp. v. Town of Dryden*, 940 N.Y.S.2d 458, (N.Y. Sup. Ct. 2012) reached the same result. Important to the *Anschultz* court was the fact that, like Ohio R.C. Chapter 1509, the New York statute did not expressly purport to override local zoning, while other New York statutes expressly did, such as the statutes controlling hazardous waste facilities and group homes. *Id.* at 474. As further evidence that the statewide oil and gas law did not preempt local zoning, the *Anschultz* court found that

there was nothing in the statute that would require the statewide oil and gas agency to consider the traditional concerns of zoning in administrating the oil and gas law – instead, notice to the municipality was only issued after a well permit was issued. *Id.* As a result, the statewide oil and gas law and municipal zoning power should work together so that "local governments may exercise their powers to regulate land use to determine where within their borders gas drilling may or may not take place, while [the state agency] regulates all technical operational matters on a consistent statewide basis in locations where operations are permitted by local law." *Id.*

The *Anschultz* opinion was recently affirmed under the caption *Norse Energy Corp. USA v. Town of Dryden*, 964 N.Y.S.2d 714, (N.Y. App. Div. 2013). Therein, the New York Appellate Division held that the state-wide law was to "ensure uniform statewide standards and procedures with respect to the technical operational activities of the oil, gas and mining industries" and that the express preemption language in the statute was enacted to eliminate local regulations that provided inconsistent technical operational standards. *Id.* at 721. Because the language of the state-wide statute did not indicate "an intention to usurp the authority traditionally delegated to municipalities to establish permissible and prohibited uses of land within their jurisdictions," the court declined to read language into the statute mandating that result. *Id.* Instead, the court harmonized the state statute and the local ordinance so that both may operate in the manner that Munroe Falls suggests is the appropriate outcome here. *Id.*

Similar issues were also considered by an appellate court in Pennsylvania. *Robinson Twp. v. Pennsylvania*, 52 A.3d 463, (Pa. Commw. Ct.. 2012) (en banc), on further appeal and awaiting decision in *Robinson Twp. v. Pennsylvania*, Pennsylvania Supreme Court Docket No. 73 MAP 2012. The considerations at issue in Pennsylvania are different that the considerations in Ohio, in that in Pennsylvania municipalities are not afforded home-rule rights, but rather all

municipal power is derived from the Commonwealth government. *Id.* at 480. So at issue in *Robinson Twp.* was a balancing of two different provisions of Commonwealth law – one provision which required municipalities to zone according to a comprehensive plan, and a second provision that required municipalities' zoning to comply with state-wide oil and gas drilling laws. *Id.* The plaintiff in *Robinson Twp.* brought suit against the Commonwealth government, indicating that it could not comply with both provisions at the same time because doing so would require the municipality to allow gas drilling in all zoning districts, regardless of the classification of those districts in its comprehensive plan, making any zoning irrational. *Id.* at 481.

The *Robinson Twp.* court first focused on the requirement that municipalities zone according to a comprehensive plan. The Court noted that the purpose of zoning is to separate municipal areas into different zones containing compatible uses, after a process of study and public input. *Id.* at 481-482. Typical zoning plans "segregate industrial districts from residential districts, and there is segregation of the noises and odors necessarily incident to the operation of industry from those sections in which the homes are located." *Id.* at 482. By classifying properties according to reasonable uses, a zoning plan creates a situation where "each piece of property pays, in the form of reasonable regulation of its use, for the protection that the plan gives to all property lying within the boundaries of the plan." *Id.*

Zoning ordinances are evaluated in Pennsylvania according to a substantive due process analysis, which involves a "balancing of landowners' rights against the public interest sought to be protected by an exercise of the police power." *Id., quoting In re Realen Valley Forge Greenes Assocs.*, 576 Pa. 115, 131, 838 A.2d 718, 728 (2003). Under this standard, in order for zoning to be constitutional, it must be directed at the community as a whole and supporting the general

public interest. *Id.* at 483. Giving due effect to the general public interest requires protecting the public from "oil and gas operations that are incompatible with the uses by people who have made investment decisions regarding businesses and homes on the assurance that the zoning district would be developed in accordance with comprehensive plan...." *Id.* at 484. As a result, the Commonwealth's oil and gas law was "irrational because it requires municipalities to allow [in] all zones, drilling operations and impoundments, gas compressor stations, storage and use of explosives in all zoning districts, and applies industrial criteria to restrictions on height of structures, screening and fencing, lighting and noise." *Id.* at 485. Thus, the court returned Pennsylvania to a parallel system of oil and gas controls, where the Commonwealth controlled the details of well construction and operations, and the municipalities designated what land within their borders was available for those activities.

PROPOSITION OF LAW TWO: Municipal ordinances do not conflict with Ohio's Oil and Gas drilling laws at R.C. §1509.02 when local ordinances require the beneficiary of a permit issued under R.C. §1509.02 to submit information to the municipality to allow the municipality to protect the interests of its residents. *Fondessy Enters., Inc. v. City of Oregon*, 23 Ohio St.3d 213, 492 N.E.2d 797 (1986), approved and followed

Like many municipalities, Munroe Falls has its own oil and gas ordinance on the books, which, prior to 2004, would have provided a parallel set of safety and construction requirements for those drillers seeking to put a well into the municipality. However, Munroe Falls' oil and gas ordinances also include ordinances that are not directed at safe well construction, but rather ordinances that require drillers to provide certain information to the community and pay a fee to help fund possible emergency response in the event of a well mishap. Those ordinances include §1329.03 (Appx. p. 103), which requires drillers to obtain a zoning certificate prior to commencing work, §1329.04 (Appx. p. 104), which requires an application fee be paid before

drilling; §1329.05 (Appx. p. 105), which requires a public hearing and approval by City Council and notification to adjoining land owners before drilling may be commenced; and §1329.06 (Appx. p. 106), which requires a performance bond be posted before drilling can commence.

The Ninth District found that all of these provisions were preempted by the State law. *State ex rel. Morrison v. Beck Energy Corp.*, 2013-Ohio-356, ¶ 63-73 (Appx. p. 21-24). But, in doing so, the Ninth District failed to properly apply this Court's authority in *Fondessy Enters., Inc. v. City of Oregon*, 23 Ohio St.3d 213, 492 N.E.2d 797 (1986). In *Fondessey*, the city of Oregon enacted an ordinance regarding hazardous waste landfills. The ordinance required a hazardous waste landfill to pay a monthly permit fee in order to allow the city to generate sufficient funds to protect the environmental safety and community welfare. The ordinance required the operator to maintain records of the amount and type of waste disposed on city-supplied forms and to remit the forms along with a permit fee monthly. *Fondessey*, 23 Ohio St.3d at 213.

The landfill operator sued the City of Oregon, claiming that the State's comprehensive regulation of landfills under R.C. Chapter 3734 automatically preempted the ordinance in its entirety. But this Court disagreed. Reexamining its decision in *Clermont, supra*, this Court found that despite the State's decision to comprehensively regulate a field, the municipality retained the police power guaranteed by the Ohio Constitution, and an analysis of the conflict, if any, between the State and local laws must be performed. *Id.* at 216.

In performing the conflict analysis in *Fondessy*, the Court looked to the language of R.C. §3734.05(D)(3) (now §3734.05(E)) (Appx. p. 80), which stated that "[n]o political subdivision of this state shall require any additional zoning or other approval, consent, permit, certificate, or other condition for the construction or operation of a hazardous waste facility...." *Id.* at 217.

Looking to this language, the Court emphasized that the statute "*may be utilized only to limit the legislative power of municipalities by the precise terms it sets forth.*" *Id.* (Emphasis in the original). Because the statute at issue in *Fondessy* set forth an express statement of what municipalities were not permitted to regulate, that language became the standard by which a conflict was measured. *Id.* In discussing *Fondessy,* the Ninth District did not recognize that the statute at issue in *Fondessy* contained an express statement that it preempted local zoning, while R.C. §1509.02 does not. *State ex rel. Morrison v. Beck Energy Corp.*, 2013-Ohio-356, ¶ 38-42, (Appx. p. 14-16).

Because the ordinance in *Fondessy* required only recordkeeping, the submission of records to the city, and the payment of a fee to fund safety and environmental response, it did not violate the express terms of the State statute. As noted by the Court, there was "nothing in the ordinance which requires [Fondessy] to have taller fences, or more guards or more monitoring wells." *Id.* Because the ordinance did not impact what the State was regulating – the operation of a hazardous waste facility – it did not conflict with the State statute.

R.C. §1509.02 (Appx. p. 58) does not provide an express statement of what sorts of municipal ordinances would conflict with the statute. All the statute says is that the ODNR is the "sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells." Given the matters regulated by the statute, it is appropriate to consider this a statement that only the ODNR can issue a permit providing for the drilling of wells using certain construction methods, located in geologically appropriate areas, and spaced to protect the correlative rights of neighboring landowners. So any municipal ordinances that purports to mandate that, for example, certain cements be used in casing a well, or that certain geological features not be drilled through, or spacing wells in such a way to disrupt the State-established

correlative rights scheme, would be invalid. But ordinances that do not, so to speak, require "taller fences" or "more guards" are not in conflict.

The Munroe Falls ordinances in question do not change the State's requirements for permitting a well. Ordinance §1329.03 (Appx. p. 103) requires a driller to obtain a zoning certificate, just as any other landowner or lessee must do prior to commencing construction of any structure. Ordinance §1329.04 (Appx. p. 104) requires the payment of a fee before drilling, funds which can be used to fund safety and emergency response forces, as in *Fondessy*. Ordinance §1329.05 (Appx. p. 105) requires public hearing, notice to adjoining landowners, and approval by city council before drilling commences. These requirements are grounded in educating the public as to the project, so the city or its citizens can be prepared to respond in the event of a mishap. Finally, §1329.06 (Appx. p. 106) requires a two thousand dollar performance bond to be posted. The obvious purpose of this requirement is to provide the City with funds to assure safety of the drilling operation.

As with the ordinance at issue in *Fondessy*, none of the Munroe Falls ordinances impede the driller's "seminal operations in any substantive or significant way." 23 Ohio St.3d at 217. Simply because the State chooses to regulate a field does not mean that a municipality may not also protect its interests and the interests of its citizens. *Id.* As such, the Ninth District erred by finding preemption of the Munroe Falls oil and gas ordinances.

V. CONCLUSION

Reading R.C. Chapter 1509 and local zoning ordinances in harmony results in an efficient system that allows a proper balance in oil and gas development. Local municipalities declare what land within its borders is available for oil and gas drilling. Drillers then obtain a permit for drilling upon that land from the State, meeting uniform well construction and safety

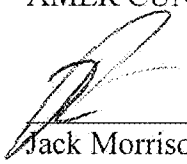
regulations that are predictable regardless of location. And the investment-backed interests of local residents are protected from the intrusion of industrial operations in unexpected locations. The experience of the leading states in oil and gas production demonstrate that it is not necessary to disregard the traditional roles of municipalities in making and enforcing appropriate land use zones in order to effectively develop Ohio's oil and gas resources. As such, this Court should read the State statute in harmony with local zoning controls, reserving to each political body the appropriate sphere of responsibility.

Further, this Court should recognize that municipalities have the power to protect their citizens by enacting ordinances requiring the disclosure of information by oil and gas well drillers, public hearing, record keeping, and other similar topics so long as those ordinances do not impede the driller's seminal operations in any substantive or significant way. Otherwise, city safety forces, the first responders to any significant oil well mishap, may find themselves at an informational disadvantage when asked to advance into a dangerous situation. In this way, the types of informational ordinances authorized by *Fondessy* advance the public interest and are the right policy for the State of Ohio.

Pursuant to the foregoing law and argument, the February 6, 2013 Decision of the Ninth District Court of Appeals in this matter should be REVERSED insofar as it invalidated Munroe Falls' zoning ordinances and the types of ordinances authorized by *Fondessey, supra.* Insofar as the Ninth District's disposition of Beck Energy's challenge to Munroe Falls' road and traffic ordinances was not appealed to this court, that portion of the Ninth District's decision should be unaffected.

Respectfully submitted,

AMER CUNNINGHAM CO., LPA



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VI. CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served via ordinary United States Mail this 6 day of September, 2013 upon:

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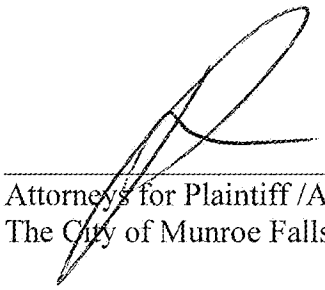

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The City of Munroe Falls

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13-0465

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO ex rel. JACK MORRISON, JR., LAW DIRECTOR, CITY OF MUNROE FALLS, OHIO, et al.	)	CASE NO.
Plaintiffs-Appellants	)	APPEAL FROM THE SUMMIT COUNTY COURT OF APPEALS, NINTH APPELLATE DISTRICT,
vs.	)	CASE NO. 25953
BECK ENERGY CORPORATION, et al.	)	
Defendants-Appellees	)	

APPELLANT, CITY OF MUNROE FALLS' NOTICE OF APPEAL

Counsel for Plaintiff/Appellant:

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Representing Appellee Beck Energy Corporation

Appellant, the City of Munroe Falls, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Summit County Court of Appeals, Ninth Appellate District, entered in the case on February 8, 2013. This case is one of great public or general interest and involves a substantial Constitutional question.

Respectfully submitted,

AMER CUNNINGHAM CO. L.P.A.

By_____

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent this 21st day of March, 2013 by ordinary U.S. Mail to **John R. Keller**, Attorney for Beck Energy, VORYS SATER SEYMOUR & PEAS, 52 E. Gay Street, Columbus, Ohio 43215.

Attorneys for Plaintiff/Appellant City of Munroe Falls

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COPY

IN THE COURT OF APPEALS

NINTH APPELLATE DISTRICT

SUMMIT COUNTY, OHIO

STATE OF OHIO ex rel. JACK MORRISON, JR., LAW DIRECTOR CITY OF MUNROE FALLS, OHIO, et al.,	:	**OPINION**
Plaintiffs-Appellees,	:	
- vs -	:	**CASE NO. 25953**
BECK ENERGY CORPORATION, et al.,	:	
Defendants-Appellants.	:	

Civil Appeal from the Summit County Court of Common Pleas, Case No. CV2011-04-1897.

Judgment: Reversed and remanded.

Thomas Saxer and *Scott E. Mullaney*, Amer Cunningham Co., LPA, Sixth Floor, Society Building, 159 South Main Street, Suite 1100, Akron, OH 44308-1322 (For Plaintiffs-Appellees).

John W. Solomon, Vorys, Sater, Seymour and Pease LLP, 106 South Main Street, Suite 1100, Akron, OH 44308, and *John K. Keller* and *Robert J. Krummer*, Vorys, Sater, Seymour and Pease LLP, 52 East Gay Street, P. O. Box 1008, Columbus, OH 43216-10008 (For Defendants-Appellants).

MARY JANE TRAPP, J., Eleventh Appellate District, sitting by assignment.

{¶1} Beck Energy Corporation secured a permit from Ohio's Department of Natural Resources to drill on Joseph Willingham's property located in the City of Munroe Falls, Ohio. When Beck Energy began drilling on the property, the city issued a Stop Work Order and filed a complaint in the Summit County Court of Common Pleas for an

injunction to stop Beck Energy from drilling. The city claimed Beck Energy did not comply with its ordinances requiring permits for drilling, zoning, and rights-of-way construction. The trial court granted the injunctive relief sought by the city and Beck Energy and Mr. Willingham brought this appeal.

{¶2} On appeal, the question to be answered is whether the City of Munroe Falls can enforce its ordinances governing oil and gas drilling and related zoning and rights-of-way issues despite the state's comprehensive statutory scheme for drilling set forth in R.C. Chapter 1509. This appears to be an issue of first impression.[1]

{¶3} In 2004, the General Assembly enacted statutes granting exclusive regulation over oil and gas wells in Ohio to the Ohio Department of Natural Resources. While we recognize that gas and oil drilling brings economic benefits to the entire state, we also recognize that the burden of potential risk and harm, especially to a local area's infrastructure, is borne by the local residents in the wells' immediate surroundings. But our role is not to make policy decisions and re-write either state law and regulations or local zoning ordinances; we are compelled to follow the established law in our application of the constitutional home-rule analysis to Monroe Falls' drilling ordinances. Because the drilling ordinances are in direct conflict with the state statutes, the city cannot enforce the ordinances as presently written. The city, however, is permitted to enforce pertinent right-of-way ordinances in the face of the drilling activities, provided these ordinances are not enforced in a discriminatory manner against oil and gas well drilling.

1. All the judges from the Ninth District Court of Appeals recused themselves from the case. The instant panel from the Eleventh District Court of Appeals sits by assignment.

Substantive Facts and Procedural History

{¶4} Mr. Willingham leased gas rights to Beck Energy Corporation ("Beck Energy") for several acres of property he owns within the City of Munroe Falls. Beck Energy applied for a well permit from the Ohio Department of Natural Resources ("ODNR"), Division of Mineral Resources Management, to drill a gas well on the property. After reviewing the application, the division issued a well permit (#2-3126) to Beck Energy on February 16, 2011. The permit sets forth terms and conditions, including 29 Urbanized Area Permit Conditions, which include specific requirements governing tree trimming, fencing, parking, noise, erosion, drainage, landscaping, and site restoration.

{¶5} When Beck Energy began excavation and drilling at Mr. Willingham's residence, the city issued a Stop Work Order, alleging Beck Energy violated several ordinances in drilling at the property without first obtaining various necessary permits from the city. On April 6, 2011, the city and its Law Director, Jack Morrison, Jr. (hereafter "the city"), filed a complaint in the Summit County Court of Common Pleas to enjoin Beck Energy from engaging in drilling activities on Mr. Willingham's property until it complies with 11 ordinances and acquires the necessary permits pursuant to the ordinances. In conjunction with the complaint, the city also filed an application for preliminary and permanent injunction.

{¶6} The city claimed that in order to engage in the drilling activity, Beck Energy must, as prescribed in the city's ordinances: (1) obtain a drilling permit, a "conditional" zoning certificate, and a zoning certificate; (2) appear before the city's planning commission in a public hearing and obtain its approval; (3) pay the necessary

fees and post the requisite performance bond; and (4) obtain a rights-of-way construction permit and pay the required fees.

{¶7} After the city filed the complaint, the parties agreed to maintain the status quo and refrain from any drilling activity, and to submit briefs to the trial court addressing whether an injunction should be issued. On May 3, 2011, the trial court entered a preliminary injunction, and subsequently entered an order granting a permanent injunction, enjoining Beck Energy from operations related to drilling on the subject property until all relevant Munroe Falls ordinances have been complied with.

{¶8} Beck Energy now appeals from that order.[2] It assigns the following error for our review:

{¶9} "The trial court erred as a matter of law when it held that local city ordinances, which prohibit defendants' gas drilling operations in the absence of City-issued permits, are not in conflict with Ohio state statutes, which specifically allow those operations pursuant to a State-issued permit. The trial court's ruling that the ordinances are within the city's home-rule authority should therefore be reversed."

Standard of Review for Injunction

{¶10} "'An injunction is an extraordinary remedy in equity where there is no adequate remedy available at law. It is not available as a right but may be granted by a court if it is necessary to prevent a future wrong that the law cannot.' * * * The grant or denial of an injunction is within the trial court's discretion and will not be disturbed by a reviewing court absent an abuse of that discretion. * * * In order to find an abuse of that discretion, we must determine that the trial court's decision was unreasonable, arbitrary

2. The State of Ohio, through its Attorney General, filed an amicus curiae brief in this appeal. It states that it "supports neither party, but seeks only to protect the integrity of Ohio's comprehensive, statewide system for regulating oil and gas drilling while allowing for local regulations that do not interfere with state law." This court accepted the amicus curiae brief.

or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 5 Ohio B. 481, 450 N.E.2d 1140 (1983)." (Internal citations omitted.) *Heron Point Condo. Unit Owner's Assn. v. E.R. Miller, Ltd.*, 9th Dist. Nos. C.A. Nos. 25861, 25863, 25998, 2012-Ohio-2171, ¶15.

Standard of Review for Conflict Determination

{¶11} The central issue in this case is whether Monroe Falls' ordinances governing drilling and related matters conflict with R.C. 1509.02. "Whether there is a conflict between a city's ordinance and the state's general law presents a question of law, which this Court reviews de novo." *Smith Family Trust v. City of Hudson Bd. of Zoning and Bldg. Appeals*, 9th Dist. No. 24471, 2009-Ohio-2557, ¶10, citing *Ohio Bell Tel. Co. v. Pub. Util. Comm.*, 64 Ohio St.3d 145, 147 (1992).

R.C. 1509.02: The Oil and Gas Drilling Statute

{¶12} This appeal concerns the scope of R.C. Chapter 1509, Ohio's oil and gas drilling statutes. Pursuant to its constitutional authority, the General Assembly enacted R.C. Chapter 1509 in 1965 to regulate all oil and gas drilling and production operations in Ohio. *See Redman v. Ohio Dept. of Industrial Relations*, 75 Ohio St.3d 399 (1996). In 2004, the General Assembly enacted H.B. 278, which expanded the regulatory scheme and amended R.C.1509.02 to give the Division of Mineral Resources Management of the Ohio Department of Natural Resources the "sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells."

{¶13} Subsequently, the General Assembly enacted S.B. 165, effective June 30, 2010, which further expanded ODNR's regulatory authority to include "production operations."

{¶14} The General Assembly again expanded ODNR's authority in H.B. 153, effective September 28, 2011. It amended ODNR's authority to include "well stimulation," "completing," "construction" of site, and "permitting related to those activities."

{¶15} R.C. 1509.02 in its current form reads, in pertinent part:

{¶16} "There is hereby created in the department of natural resources the division of oil and gas resources management, which shall be administered by the chief of the division of oil and gas resources management. The division has sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations within the state, excepting only those activities regulated under federal laws for which oversight has been delegated to the environmental protection agency and activities regulated under sections 6111.02 to 6111.029 of the Revised Code. The regulation of oil and gas activities is a matter of general statewide interest that requires uniform statewide regulation, and this chapter and rules adopted under it constitute a comprehensive plan with respect to all aspects of the locating, drilling, well stimulation, completing, and operating of oil and gas wells within this state, including site construction and restoration, permitting related to those activities, and the disposal of wastes from those wells. Nothing in this section affects the authority granted to the director of transportation and local authorities in section 723.01 or 4513.34 of the Revised Code, provided that the authority granted under those sections shall not be exercised in a manner that discriminates against, unfairly impedes, or obstructs oil and gas activities and operations regulated under this chapter."

{¶17} R.C. Chapter 1509 thus provides a comprehensive regulatory scheme for oil and gas wells operations in the state. A person wishing to drill a well for oil or gas

must first obtain a drilling permit from the Division of Mineral Resources Management. R.C. 1509.05 and R.C. 1509.06. R.C. 1509.021 governs minimum distance restrictions on the surface location of wells and other facilities relative to existing property lines, dwellings, buildings, and streets and roads. R.C. 1509.03 governs safe operations of wells, protection of water supplies, necessity of fencing and screening, and mitigation of noise. R.C. 1509.04 authorizes ODNR's oversight after a permit is issued – by providing for enforcement mechanisms which would allow the state to suspend operations that threaten public safety or endanger natural resources. Finally, R.C. 1509.07 governs insurance and surety bond requirements.

{¶18} The statute on its face, however, reserves certain aspects of the oil and gas wells' operations to the control of other authorities, stating, "Nothing in this section affects the authority granted to the director of transportation and local authorities in section R.C. 723.01 and R.C. 4513.34."

{¶19} R.C. 4513.34, not at issue in this case, permits local authorities and the Ohio Department of Transportation to grant permits for oversize vehicles to use the roads in their respective jurisdictions.

{¶20} R.C. 723.01 ("Care, supervision, and control of public roads") is relevant to this appeal. That statute provides, in relevant part:

{¶21} "Municipal corporations shall have special power to regulate the use of the streets. * * * [T]he legislative authority of a municipal corporation shall have the care, supervision, and control of the public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipal corporation."

{¶22} However, the statute expressly forbids the local authorities or the director of transportation from exercising power under R.C. 723.01 or R.C. 4513.34 in a manner

that "discriminates against, unfairly impedes, or obstructs oil and gas activities and operations regulated." R.C. 1509.02.

Issue on Appeal

{¶23} Beck Energy claims the city impermissibly applied its ordinances to prohibit drilling on Mr. Willingham's property, which has been sanctioned by a well permit issued by ODNR, pursuant to R.C. 1509.02. It maintains the city's attempt to use its ordinances to regulate gas wells conflicts with the express directive of R.C. 1509.02, which gives the state the sole and exclusive authority to regulate gas production operations within Ohio. Its position is that the permit issued by the state precludes any regulation or control of the drilling activity by the city.

{¶24} The city, on the other hand, maintains local municipalities have home-rule authority, under Section 3, Article XVIII of Ohio Constitution, to regulate gas drilling operations, because the authority given to the state by the statute only pertains to "permitting, location, and spacing of" oil and gas well productions.

{¶25} The issue to be resolved in this appeal, as we see it, is whether, under a home-rule analysis, R.C. Chapter 1509 precludes *any* local control or oversight of oil and gas drilling taking place within the municipality's boundaries.

The Home-Rule Analysis

{¶26} Ohio Constitution, Article XVIII, Section 3 confers upon municipalities the "authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." *Morris v. Roseman*, 162 Ohio St. 447, 449 (1954). This section "is self-executing, and [ ] the power of local self-government is inherent in all

municipalities regardless of enabling legislation and the existence of municipal charters." *Id.* at 450.

{¶27} The Supreme Court of Ohio reiterated a three-step process for a home-rule analysis in *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605.

A. First Step: Whether the Ordinance is an Exercise of Local Self-government

{¶28} The first step is to determine whether the ordinance is an exercise of local self-government or an exercise of local police power. *Clyde* at ¶24. "An ordinance created under the power of local self-government must relate 'solely to the government and administration of the internal affairs of the municipality.'" *Clyde* at ¶30, quoting *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St.3d 553, 2008-Ohio-92, ¶11, quoting *Beachwood v. Cuyahoga Cty. Bd. of Elections*, 167 Ohio St. 369 (1958), paragraph one of the syllabus. The Supreme Court of Ohio provided the following test to determine whether a particular ordinance is an exercise of local self-government:

{¶29} "'To determine whether legislation is such as falls within the area of local self-government, the result of such legislation or the result of the proceedings thereunder must be considered. If the result affects only the municipality itself, with no extraterritorial effects, the subject is clearly within the power of local self-government and is a matter for the determination of the municipality. However, if the result is not so confined it becomes a matter for the General Assembly.'" *Kettering v. State Employment Relations Bd.*, 26 Ohio St.3d 50, 54 (1986), quoting *Cleveland Elec. Illuminating Co. v. Painesville*, 15 Ohio St.2d 125, 129 (1968), quoting *Beachwood* at 371.

{¶30} Once a local ordinance is determined to relate solely to matters of self-government, it is the end of the analysis, because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction. *Clyde* at ¶24.

B. Second Step: If the Ordinance is an Exercise of Police Power, then We Apply General-Law Analysis

{¶31} The second step is necessary if the local ordinance is determined to be an exercise of police power, rather than local self-government. *Clyde* at ¶25. Police-power ordinances are those that "protect the public health, safety, or morals, or the general welfare of the public." *Id.*

{¶32} If an ordinance is determined to be an exercise of police power, the court then is required to review the statute at issue to determine whether the statute is a "general law." *Clyde* at ¶25. If the statute qualifies as a "general law," it trumps the local ordinance, *if* the local ordinance conflicts with the state statute. *Id.*

{¶33} "General laws are those 'which prescribe a rule of conduct upon citizens generally, and which operate with general uniform application throughout the state under the same circumstances and conditions.'" *Smith Family Trust, supra,* at ¶10, quoting *Garcia v. Siffrin Residential Assn.*, 63 Ohio St.2d 259, 271 (1980), overruled on other grounds by *Saunders v. Clark County Zoning Dept.*, 66 Ohio St.2d 259 (1981).

{¶34} The Supreme Court of Ohio set forth a four-part test in *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, to determine if the statute qualifies as a general law:

{¶35} "To constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police,

sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally." *Id.* at syllabus.

{¶36} "A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law." *Id.* at 151.

{¶37} At the same time, a municipality "is vested with primary authority to enact police power ordinances not in conflict with the state's general laws. Section 3, Article XVIII of the Ohio Constitution grants municipalities the power '* * * to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.'" *Fondessy Enterprises, Inc. v. Oregon*, 23 Ohio St.3d 213, 215 (1986). "Nor can this power of home rule, expressly conferred upon municipalities, be withdrawn by the General Assembly." *Id.* citing *Akron v. Scalera*, 135 Ohio St. 65, 66 (1939). "The authority conferred by Section 3, Article XVIII of the Ohio Constitution upon municipalities to adopt and enforce police regulations is limited only by general laws in conflict therewith upon the same subject matter." *Id.* at paragraph one of the syllabus.

C. <u>Third Step: the Conflict Analysis</u>

{¶38} The final step in the home-rule analysis is, therefore, to determine whether the ordinance conflicts with the statute. The test is "whether the ordinance prohibits that which the statute permits, or vice versa." *Clyde, supra,* at ¶53, citing *Struthers v. Sokol*, 108 Ohio St. 263 (1923), paragraph two of the syllabus. *See also Marich, supra,* at ¶30. "Determining whether a conflict exists requires us to examine inconsistencies and

contradictions between the ordinance and the statute." *Rispo Realty & Dev. Co. v. Parma*, 55 Ohio St.3d 101, 105 (1990).

{¶39} Applying the *Struthers* conflict test, the Supreme Court of Ohio in *Fondessy, supra,* validated a local ordinance which appeared to regulate an area seemingly preempted by a state statute.

{¶40} In *Fondessy*, the court considered whether there was a conflict between the state statute that granted the state the power to license and regulate hazardous waste facilities (R.C. Chapter 3734), and a municipal ordinance that imposed a permit fee on all hazardous waste landfills located within the city, and also required that waste facility operators keep complete and accurate records. The court, applying the conflict test, concluded that the municipal ordinance did not conflict with the statute regulating the state's hazardous waste landfills, because the ordinance did not permit anything prohibited by the state statute, or prohibit anything permitted by the statute. The court held that the reporting requirement did not "alter, impair, or limit" the operation of the hazardous waste facility licensed, as prohibited by the statute.

{¶41} The court held that "[w]here state laws and municipal ordinances concerning the monitoring of hazardous waste landfill facilities located within the corporate limits of the city do not conflict, the state and municipality have concurrent authority under their respective police powers to enforce their respective directives within the corporate limits of the city." *Fondessy* at paragraph four of the syllabus. In addition, "[t]he authority of the Environmental Protection Agency to license, supervise, inspect, and regulate hazardous waste facilities does not preclude municipalities from enacting police power ordinances which do not conflict with that authority." *Id.* at paragraph five of the syllabus.

{¶42} The court explained that the city's requirement for the waste facility operator to keep daily records and to report to the municipality did not impede the operator "in any substantive or significant way." *Id.* at 217. It observed, for example, that nothing in the ordinance required the operator to have taller fences, more guards, or more monitoring wells. Thus, although the statute regulating the hazardous waste landfill facility (R.C. 3734) seemingly preempted the regulations of such facilities, the court nonetheless validated the municipal ordinance, which it deemed not in conflict with the state law.[3]

{¶43} With the three-step home-rule analysis in mind, we are now ready to review the 11 ordinances the City of Munroe Falls sought to enforce regarding Beck Energy's drilling activities on Mr. Willingham's property.

Munroe Falls Ordinances

{¶44} The city's complaint for injunction cited 11 ordinances the city believed to be implicated by Beck Energy's drilling activity. The 11 ordinances are from various chapters of the Munroe Falls Codified Ordinances, enacted in the 1980's and 1990's. They fall into three categories, drilling, zoning, and rights-of-way. Among the 11, four are from Chapter 1329, which specifically governs oil and gas drilling and were enacted in 1980.

Drilling Permit and Public Hearing Required

3. The Eighth District, in *Cleveland v. GSX Chemical Services, Inc.*, 8th Dist. No. 60512, 1992 Ohio App. LEXIS 2353 (May 7, 1992), a case also concerning whether R.C. Chapter 3734 preempted a municipal ordinance governing hazardous waste facilities, applied *Fondessy* and validated the ordinance, which required reporting to the local authority upon the breakdown of an emission source and subsequent release of excessive air contaminants. The Eighth District concluded that the local regulation did not impair or limit the operation of a chemical company; the local regulation included additional requirements that were "not contained in or required by the state law and were also not proscribed by state law." *Id.* at *18.

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{¶45} Ordinance 1329.03, at the heart of this appeal, states that no one "shall commence to drill a well for oil, gas, or other hydrocarbons" within the corporate limits until such a person has "wholly complied with all provisions of this chapter and a conditional zoning certificate has been granted by Council."

{¶46} Ordinance 1329.04 requires any person "desiring to drill a well for oil and/or gas within the corporate limits" to apply for a "conditional zoning certificate" to the city's Planning Commission. The ordinance also requires an application of $800 to be paid when an application is filed.

{¶47} Ordinance 1329.05 requires a mandatory public hearing be held at least three weeks before the commencement of drilling. All property owners and residents within 1,000 feet of the well head are to be notified of the hearing. This public hearing is required before the "conditional zoning certificate" can be granted for drilling.

{¶48} Ordinance 1329.06 requires a $2,000 performance bond at the time of an application under Chapter 1329.

Zoning Certificate Required

{¶49} Next, one of the 11 cited ordinances is from Chapter 1163, which governs zoning. Ordinance 1163.02 governs the issuing of zoning certificates and was enacted in 1995. The zoning ordinance is implicated in this case because the city requires a zoning certificate to be obtained before any "building or other structure" is erected or constructed. This ordinance also requires that a "conditional zoning certificate" be approved before a zoning certificate can be issued.

Rights-of-Way Construction Permit and Excavation Permit Required

{¶50} Six of the 11 cited ordinances govern rights-of-way matters within the city's limit. Ordinance 919.04 requires a rights-of-way construction permit and a street

opening permit for any activities impacting the city's roads in any manner. Ordinance 919.05 prohibits the obstruction of rights-of-way without the city's prior consent. Ordinance 919.06 and 919.07 govern the application and issuance of a rights-of-way construction permit. Ordinance 919.08 governs the fees for such permits. Ordinance 905.02 requires anyone seeking to "make any tunnel, opening, or excavation of any kind in or under the surface of any street" to secure an excavation permit from the city.

{¶51} Citing the 11 ordinances, the city claims that for a drilling activity to begin, the person seeking to drill must (1) appear at a public hearing three weeks before the drilling starts, (2) obtain a drilling permit (which is granted only after a "conditional zoning certificate" is approved by the city council), (3) receive a "zoning certificate" (which also requires the prior issuance of a "conditional zoning certificate"), (4) apply for a rights-of-way construction permit and street excavation permit, and (5) pay all permit fees and performance bond.

The Trial Court's Judgment

{¶52} In its application of the home-rule analysis to these ordinances, the trial court pointed out that the ordinances governing the public roads fall clearly within the authority over public roads reserved for the local authorities in the statute, and further, that Beck Energy did not claim that the ordinances were applied to it in an unreasonable manner prohibited by the statute.

{¶53} Regarding the ordinances unrelated to the city's rights of way, the court opined that, although the General Assembly has created a uniform system for the permitting of oil and gas wells throughout the state, it did not authorize drilling companies, "permit-in-hand," to ignore any and all local regulations. Without elaborating, the court concluded local subdivisions retain a limited interest in regulating

gas and oil production in their communities. The court held that Beck Energy is enjoined from the drilling operations until it has complied with "all relevant Munroe Falls ordinances."

Our Application of Home-Rule Analysis to the Munroe Falls Ordinance

{¶54} We begin with the recognition that oil and gas drilling statute specifically states that the regulation of oil and gas activities "is a matter of general statewide interest that requires uniform statewide regulation, and [Chapter 1509] constitutes a comprehensive plan" for such activities. We are reminded by the Supreme Court of Ohio, as recently as 2008, however, that "'[a] statement by the General Assembly of its intent to preempt a field of legislation is a statement of legislative intent' that may be considered in a home-rule analysis but does not dispose of the issue." *Clyde* at ¶29, citing *Am. Fin. Servs. Assn. v. City of Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, ¶31. When a statute embodies the General Assembly's intent to occupy a certain field, that intent "does not trump the constitutional authority of municipalities to enact legislation pursuant to the Home Rule Amendment, provided that the local legislation is not in conflict with general laws." *Id.* Thus, although the statute seemingly preempts local ordinances in oil and gas drilling, we still must engage in the home-rule analysis to determine whether any local regulations survive under the home-rule power. *Id.* We begin with the inquiry of whether the ordinances are local self-government or police power legislation.

{¶55} In the first step of the analysis, we consider whether the ordinances implicate a municipality's exercise of local self-government. If the subject matter relates to a municipality's self-governance under the analysis given by the Supreme Court of Ohio in *Beachwood, supra,* and *Kettering, supra,* the analysis ends because the

Constitution authorizes a municipality to exercise powers of local self-government within its jurisdiction. *Am. Fin. Serv. Assn.* at ¶23. If, on the other hand, the ordinances implicate health, safety, or the general welfare of the public, then it is an exercise of a municipality's police power. *Clyde* at ¶30.

{¶56} Regarding Munroe Falls' ordinances that require a "conditional zoning certificate" before drilling (Ordinances 1163.02, 1329.03, 1329.04, 1329.05, 1329.06), Ohio law has long recognized that the enactment of zoning laws by a municipality is an exercise of its police power as described under Section 3, Article XVIII of the Ohio Constitution. *Rispo Realty & Dev. Co., supra,* at 103, citing *Garcia, supra,* at paragraph two of the syllabus.

{¶57} Regarding the rights-of-way ordinances, the parties do not dispute that they are the city's exercise of its police power, as they seek to protect the public safety and general welfare.

{¶58} The next step in the home-rule analysis asks whether the oil and gas drilling statute is a "general law." This court has already determined, in *Smith Family,* that "R.C. 1509 et seq., regulates the conservation of natural resources and is unquestionably a general law." *Smith Family* at ¶11. The city concedes it is a general law; thus, we will refrain from engaging anew in the "general law" analysis provided in *Canton, supra,* and follow the precedent from this court.

{¶59} Therefore, the issue to be resolved in this appeal boils down to whether the ordinances Munroe Falls attempts to enforce are in conflict with R.C. 1509.02. "In the event of a direct conflict, the state regulation prevails." *Smith Family* at ¶10, citing *Garcia* at 271

Rights- of-Way Ordinances Do Not Conflict with R.C. 1509.02

{¶60} Ordinances from Chapter 905 (Excavations) and Chapter 919 (Rights-of-Way) do not conflict with R.C. 1509.02. R.C. 1509.02 specifically leaves the regulation of rights-of-way to the municipalities, stating, "Nothing in this section affects the authority granted to * * * local authorities in section 723.01 * * * of the Revised Code, provided that the authority granted under those sections shall not be exercised in a manner that discriminates against, unfairly impedes, or obstructs oil and gas activities and operations regulated under this chapter." R.C. 723.01, in turn, provides "[m]unicipal corporations shall have special power to regulate the use of the streets. * * * [T]he legislative authority of a municipal corporation shall have the care, supervision, and control of the public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipal corporation."

{¶61} Munroe Falls' rights-of-way ordinances regulate the care, supervision, and control of the city's public roads. Therefore, they fall under the authority expressly reserved for the municipalities in R.C. 1509.02 and R.C. 723.01. By the statute's own terms, no conflict exits.

{¶62} We now turn to the heart of this appeal: whether Munroe Falls' drilling ordinances, which require a permit, application fees, and performance bond prior to the commencement of drilling activities, are in conflict with the statute.

The Drilling Ordinances Conflict With R.C. 1509.02

{¶63} Munroe Falls' position, with which the trial court agreed, is that R.C. 1509.02 limits the state's authority to the "permitting, location, and spacing" of oil and gas wells. And, as Monroe Falls maintains, because none of the ordinances infringe upon "permitting, location, and spacing" of oil and gas wells, they are not in conflict with the statute. Munroe Falls bases its claim on the second sentence of R.C. 1509.02,

which states, "[t]he division has sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations within the state * * *." [4]

{¶64} Munroe Falls' position is difficult to maintain, because the statute goes on to state that, "this chapter and rules adopted under it constitute a comprehensive plan with respect to all aspects of the locating, drilling, well stimulation, completing, and operating of oil and gas wells within this state, including site construction and restoration, permitting related to those activities, and the disposal of wastes from those wells."

{¶65} Thus, the statute is more encompassing than Munroe Falls claims. It includes not only "permitting, locating, and spacing" but also "drilling, well stimulation, completing, and operating" of oil and gas wells. In our view, the city's requirement for a permit directly conflicts with the statute, as it could prohibit what the state has permitted.

{¶66} In this case, the state had issued a permit to Beck Energy to drill at Mr. Willingham's property. Munroe Falls cannot hinder the drilling activity by requiring a drilling permit. *See Sheffield, supra*. We note, additionally, that the permit remains valid for only 12 months, thus, even if the city ultimately approves of the drilling, the application process could potentially consume much of that time and effectively

4. In *Natale v. Everflow Eastern, Inc.*, 195 Ohio App.3d 270, 2011-Ohio-4304 (11th Dist.), appellant filed a nuisance action against a neighbor who operated a drilling well. The Eleventh District held that, because appellant's claims were based on the *location* and *operation* of the well, the local nuisance ordinance is preempted by the statute.

prevents the drilling already permitted by the state.[5] The drilling ordinance (Ordinance 1329.03) undeniably conflicts with the state statute.

{¶67} Indeed, the city's own Ordinance 1329.02 recognizes that its drilling ordinances cannot conflict with R.C. Chapter 1509. Ordinance 1329.02 states:

{¶68} "(a) It is hereby expressly stated to be the intent of this chapter in addition to prescribing minimum standards to make drillings as safe as possible within the Municipality and to also cause drilling activities to be carried on within the Municipality in non-industrial and industrially zoned areas, in accordance with Ohio R.C. 1509." By the city's own recognition, the intent of its drilling ordinances is to prescribe "minimum standards to make drillings as safe as possible" and to cause drilling activities to be carried out "in accordance with Ohio R.C. 1509."

{¶69} Similarly, we find the city's imposition of an $800 local permit application fee and a $2,000 performance bond to be in conflict with the state law, which already imposes a fee of $2,000 and a performance bond.

{¶70} We now turn to the city's requirement for a pre-drilling public hearing.

Public Hearing Requirement Also Conflicts with R.C. 1509.02

{¶71} Ordinance 1329.05 requires that "[a]fter the first reading, but before the third reading of the legislation granting a conditional zoning certificate, Council shall require the applicant to schedule a public hearing * * * and the permittee shall cause all

5. As a side note, we observe that Beck Energy's permit expired on February 12, 2012. The expiration of the permit, however, did not render the instant appeal moot, because the issue presented here is capable of repetition, yet evading review. The "capable of repetition, yet evading review" doctrine is an exception to the general rule against deciding moot issues that applies when: (1) the challenged action is too short in duration to be fully litigated before its expiration, and (2) there is a reasonable expectation that the complaining party will be subjected to the same action in the future. *See City of Munroe Falls v. Chief, Div. of Mineral Res. Mgmt.*, 10th Dist. No. 10AP-66, 2010-Ohio-4439, citing *State ex rel. Cincinnati Enquirer v. Ronan*, 124 Ohio St.3d 17, 2009-Ohio-5947. In any event, appellant filed a "Notice of Supplemental Authority" informing us that the subject permit has been extended to June 12, 2013.

property owners and residents * * * within 1,000 feet of the well head to be notified of such hearing * * *." It also requires that the public meeting occur no less than three weeks before the drilling commences. It states that compliance with the hearing provision is a mandatory condition precedent to the commencement of drilling under the permit.

{¶72} The elected representatives of Munroe Falls enacted the ordinance to allow, understandably, the residents in the adjacent area most directly affected by the drilling activity to publicly voice their concerns by way of a public hearing. However, Ordinance 1329.05(d) states: "Compliance with the hearing provision of this chapter shall be mandatory conditions precedent to the commencement of drilling under the permit." Because the public hearing provision is tied to the issuance of a drilling permit, which we have determined the city has no authority to require, Ordinance 1329.05, as drafted, is invalid as it is in conflict with R.C. 1509.02. However, the statute does not expressly prohibit a public hearing, thus, in our view, the city is within its authority to require a public hearing. Such a requirement may be achieved by a proper redrafting of the ordinance, where it is not a condition precedent to the issuance of a drilling permit.

Zoning Ordinance Invalid to the Extent it Interferes with the State's Permit

{¶73} Ordinance 1163.02 was enacted 15 years after the city's drilling ordinances, and is not a model of clarity. It governs zoning in general, requiring a zoning certificate for the construction of any building or structure, which, in turn, can only be issued if a "conditional zoning certificate" has been approved. Because drilling necessarily involves the construction of a well, this ordinance, to the extent it requires a zoning certificate and "conditional zoning certificate" for drilling, conflicts with R.C. 1509.02 and cannot be enforced against a person seeking to drill.

Conclusion

{¶74} With the state permit in hand, Beck Energy began drilling at the residence of Mr. Willingham. The city issued a Stop Work Order and sought to enjoin Beck Energy from drilling without first obtaining various permits from the city pursuant to its 11 ordinances. Stating "local communities retain a right to oversee [drilling] activities within their territory," the trial court granted the city the injunctive relief it sought and ordered Beck Energy to comply with the ordinances cited by the city. As we have concluded in the foregoing analysis, the drilling ordinances (Ordinances 1329.03, 1329.04, 1329.05, and 1329.06) are in direct conflict with R.C. 1509.02 and therefore preempted by this state law. Moreover, the provision of the zoning ordinance (Ordinance 1163.02) cannot be applied to drilling activities as it is similarly in conflict with R.C. 1509.02. The city, however, may enforce ordinances governing rights-of-way and excavations (Ordinances 919.04, 919.05, 919.06, 919.07, 919.08, and 905.02), but cannot enforce these rights-of-way ordinances in a way that discriminates against, unfairly impedes, or obstructs oil and gas activities and operations.

{¶75} We therefore conclude the trial court abused its discretion by enjoining its drilling operations until Beck Energy has complied with all the ordinances cited by the city of Munroe Falls in its complaint.

{¶76} Therefore, we reverse and remand the matter to the trial court with instructions to enter judgment stating that Ordinances 1329.03, 1329.04, 1329.05, 1329.06, and 1163.02 are preempted by the state law and cannot be enforced against Beck Energy's drilling activity. Beck Energy, however, must apply for pertinent permits in compliance with the ordinances governing rights-of-way and excavations (Ordinances

919.04, 919.05, 919.06, 919.07, 919.08, and 905.02), if its activity impacts in any manner the city's streets.

{¶77} The judgment of the Summit County Court of Common Pleas is reversed and remanded.

TIMOTHY P. CANNON, P.J.,
Eleventh Appellate District,
Sitting by assignment,

THOMAS R. WRIGHT, J.,
Eleventh Appellate District,
Sitting by assignment,

concur.

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IN THE COURT OF APPEALS

NINTH DISTRICT

STATE OF OHIO ex rel. JACK MORRISON, JR., LAW DIRECTOR et al.,

Plaintiffs-Appellees,

- vs -

BECK ENERGY CORPORATION, et al.,

Defendants-Appellants.

JUDGMENT ENTRY

CASE NO. 25953

For the reasons stated in the opinion of this court, it is the judgment and order of this court that the judgment of the Summit County Court of Common Pleas is reversed, and this matter is remanded to the trial court for further proceedings consistent with the opinion.

Costs to be taxed against appellees.

Mary Jane Trapp

JUDGE MARY JANE TRAPP
Eleventh Appellate District,
Sitting by assignment.

TIMOTHY P. CANNON, P.J.,
Eleventh Appellate District,
Sitting by assignment,

THOMAS R. WRIGHT J.,
Eleventh Appellate District,
Sitting by assignment.

concur.

Baldwin's Ohio Administrative Code Annotated Currentness
1501 Natural Resources Department (Refs & Annos)
1501:9 Mineral Resources Management Division--Oil and Gas (Refs & Annos)
Chapter 1501:9-1. Well Drilling and Operation Permits (Refs & Annos)
→→ 1501:9-1-04 Spacing of wells

(A) General spacing rules:

(1) The division of mineral resources management shall not issue a permit for the drilling of a new well, the reopening of an existing well, or the deepening or plugging back of an existing well to a different pool for the production of oil and gas unless the proposed well location and spacing substantially conform to the requirements of this rule.

(2) This rule shall not apply to any wells drilled in areas under special order from the chief for pool spacing pursuant to section 1509.25 of the Revised Code. The chief shall grant an exception to the requirements of any special order from the chief for pool spacing pursuant to section 1509.25 of the Revised Code, if an applicant can demonstrate that such exception will protect correlative rights and/or promote conservation by permitting oil and/or gas to be produced which could not otherwise be produced.

(3) Upon receipt of an application by the division, the chief shall determine if the proposed total depth is reasonable to penetrate the objective geological formation or geological zone. If the chief determines that the proposed total depth is insufficient to penetrate the proposed geological formation or zone and that, because of the insufficient proposed total depth, the spacing and acreage requirements as per paragraph (C) of this rule are not fulfilled the permit shall be denied. In any event, no well shall be drilled deeper than the proposed total depth without prior permission from the chief.

(4) A permit shall not be issued unless the proposed well satisfies the acreage requirements for the greatest depth anticipated. If oil or gas is produced at a lesser depth than the geological formation or zone for which the permit was issued, the acreage requirements may be changed to conform with paragraph (C) of this rule by application to the chief.

(B) Scope:

Paragraph (C) of this rule, location of wells, shall apply to the drilling of a new well, the reopening of an existing well, and the deepening or plugging back of an existing well regardless of its depth or the producing geological horizon or zone except in areas under temporary minimum well spacing orders of the chief pursuant to paragraph (D) of this rule.

(C) Location of wells:

(1) No permit shall be issued to drill, deepen, reopen, or plug back a well for the production of oil and gas from pools from zero to one thousand feet in depth unless the proposed well is located:

(a) Upon a tract or drilling unit containing not less than one acre;

(b) Not less than two hundred feet from any well drilling to, producing from, or capable of producing from the same pool;

(c) Not less than one hundred feet from any boundary of the subject tract or drilling unit.

(2) No permit shall be issued to drill, deepen, reopen, or plug back a well for the production of oil or gas from pools from one thousand feet to two thousand feet in depth unless the proposed well is located:

(a) Upon a tract or drilling unit containing not less than ten acres;

(b) Not less than four hundred sixty feet from any well drilling to, producing from, or capable of producing from the same pool;

(c) Not less than two hundred thirty feet from any boundary of the subject tract or drilling unit.

(3) No permit shall be issued to drill, deepen, reopen, or plug back a well for the production of oil or gas from pools from two thousand to four thousand feet unless the proposed well is located:

(a) Upon a tract or drilling unit containing not less than twenty acres;

(b) Not less than six hundred feet from any well drilling to, producing from, or capable of producing from the same pool;

(c) Not less than three hundred feet from any boundary of the subject tract or drilling unit.

(4) No permit shall be issued to drill, deepen, reopen, or plug back a well for the production of the oil or gas from pools from four thousand feet or deeper unless the proposed well is located:

(a) Upon a tract or drilling unit containing not less than forty acres;

(b) Not less than one thousand feet from any well drilling to, producing from, or capable of producing from the same pool;

(c) Not less than five hundred feet from any boundary of the subject tract or drilling unit.

(5) For new applications to drill wells in urbanized areas, the proposed wellhead location shall be no closer than seventy five feet to any property not within the subject tract or drilling unit. Locating the wellhead closer than seventy five feet to a property not within the subject tract or drilling unit may be approved by the chief if the owner and resident of the property in question, in writing, approves of the proposed wellhead location, or the chief waives the seventy five foot requirement.

(6) Wells drilled, deepened, reopened, reworked, or plugged back for purposes other than the production of oil and gas will be considered as special situations, and each will be evaluated in accordance with the issues of conservation of natural resources and of safety. Decisions as to spacing of such wells will be determined after evaluation of the special circumstances. Rules may be promulgated for some specific types of these wells.

(D) Temporary minimum well spacing in the vicinity of discovery wells:

(1) For the purpose of orderly development of a pool until such time as ultimate spacing is determined, the chief on his own motion or upon consideration of an application by an owner in an affected area, and with approval of the technical advisory council, may order temporary well spacing for wells to be drilled, deepened, reopened or plugged back to a particular pool or field in an area in the vicinity of a discovery well. Such order shall contain the following:

(a) Description of the area covered by the order;

(b) Identification of the pool, field or horizons covered by the order;

(c) Minimum distance wells may be drilled from the tract or drilling unit boundaries;

(d) Minimum distance between wells;

(e) Minimum acreage for tracts or drilling units; and may contain other requirements deemed necessary by the chief to accomplish the purpose of paragraph (D) of this rule.

(2) An order of the chief for temporary minimum well spacing in the vicinity of a discovery well shall be effective on the date the order is made and shall continue in effect until it is either rescinded or amended by the chief or until such time as an order for special drilling unit requirements is made by the chief after hearing pursuant to section 1509.25 of the Revised Code.

(3) No well shall be drilled, deepened, reopened, or plugged back to or below the particular pool or field located in the area covered by an order of the chief under paragraph (D) of this rule unless the requirements of such order are met. Permits issued prior to the effective date of such order for wells to be located in the area and to or below the pool covered by such order which do not comply with the requirements of the order and where actual drilling operations have not commenced, shall be revoked.

(E) Offset wells - spacing exception:

(1) The chief shall grant an exception to the requirements of paragraph (C) of this rule to an

applicant who demonstrates that the well proposed for production of oil or gas will be an offset to a well drilled or commenced before the effective date of paragraph (C) of this rule, and which is producing or may be capable of producing on an adjacent tract, and which is so located on said adjacent tract as not to comply with any one or more of the requirements of paragraph (C) of this rule.

(2) The chief shall grant an exception to the requirements of paragraph (C) of this rule if an applicant can demonstrate that such exception will protect correlative rights and/or promote conservation by permitting oil and gas to be produced which could not otherwise be produced.

(3) A well proposed to be drilled pursuant to such exceptions shall, nevertheless, be subject to the requirements of rule 1501:9-1-05 of the Administrative Code.

HISTORY: 2005-06 OMR pam. #2 (A), eff. 8-11-05; 2003-04 OMR pam. #10 (A), eff. 4-15-04; 1997-98 OMR 3297 (RRD); 1982-83 OMR 879 (A), eff. 1-31-83; prior NRo-1-04
Ohio Admin. Code 1501:9-1-08

Baldwin's Ohio Administrative Code Annotated Currentness

1501 Natural Resources Department (Refs & Annos)

1501:9 Mineral Resources Management Division--Oil and Gas (Refs & Annos)

Chapter 1501:9-1. Well Drilling and Operation Permits (Refs & Annos)

➞➞ 1501:9-1-08 Well construction

(A) General. A well permitted under Chapters 1501:9-1 to 1501:9-12 of the Administrative Code shall be constructed in a manner that is approved by the chief as specified by these rules, the terms and conditions of the approved permit, plans submitted in the approved permit, and the standards established in section 1509.17 of the Revised Code. The casing and cementing plans in the approved permit are understood to be estimates based upon the best available geologic information prior to drilling. The division shall evaluate compliance with this rule for the as-built well. Where this rule does not detail specific methods to meet these standards, the owner shall use sound design and industry practices that effectively achieve the standards established in section 1509.17 of the Revised Code.

(B) Field standards. The chief may establish alternative well construction standards that are well-specific, field-specific, or play-specific by permit condition, to ensure protection of public health or safety or the environment.

(C) Drilling fluids.

(1) All intervals drilled prior to reaching the USDW protective depth shall be drilled with air, fresh water, a freshwater based drilling fluid, or a combination of the above. Only additives suitable for drilling through potable water supplies may be used while drilling these intervals.

(2) Based on regional knowledge of groundwater resources, well control, or safety factors, the chief may by permit condition require the use of a freshwater based drilling fluid and specify its characteristics while the owner is drilling any interval prior to reaching the USDW protective depth.

(3) Below cemented surface casing, other drilling fluids may be utilized consistent with sound design and effective industry practice.

(D) Casing standards.

(1) All casing installed in a well shall be steel alloy casing that has been manufactured and tested consistent with standards established by the American petroleum institute (API) in "5 CT Specification for Casing and Tubing" or ASTM international (ASTM) in "A500/A500M

Standard Specification for Cold-Formed Welded and Seamless Carbon Steel Structural Tubing in Rounds and Shapes" and has a minimum internal yield pressure rating designed to withstand at least 1.2 times the maximum pressure to which the casing may be subjected during drilling, production or stimulation operations.

(a) The minimum internal yield pressure rating shall be based upon engineering calculations listed in API "TR 5C-3 Technical Report on Equations and Calculations for Casing, Tubing and Line Pipe used as Casing and Tubing, and Performance Properties Tables for Casing and Tubing."

(b) Reconditioned casing that is permanently set in a well shall be hydrostatically pressure tested with an applied pressure at least 1.2 times the maximum internal pressure to which the casing may be subjected, based upon known or anticipated subsurface pressure, or pressure that may be applied during stimulation, whichever is greater, and assuming no external pressure. The casing shall be marked to verify the test status. The owner shall provide a copy of the test results to the inspector before the casing is installed in the well.

(c) Where subsurface reservoir pressure is unknown and cannot be reasonably anticipated, the owner shall assume a pressure gradient of 0.45 pounds per square inch per foot in a fully evacuated hole, under shut-in conditions.

(d) All hydrostatic pressure tests shall be conducted pursuant to API "5 CT Specification for Casing and Tubing" or other method(s) approved by the chief.

(2) Reconditioned casing shall not be set in a well unless it has passed an approved hydrostatic pressure and drift test or has otherwise been approved by the inspector. The inspector shall reject casing that is excessively pitted, patched, bent, corroded, or crimped, or if threads are severely worn or damaged.

(3) In order to verify casing integrity and proper cement displacement, the owner shall pressure test each cemented casing string greater than two hundred feet long in accordance with the test method of either paragraph (D)(3)(a) or (D)(3)(b) of this rule.

(a) Immediately upon landing the latch-down plug, the owner shall increase displacement pressure by at least five hundred pounds per square inch and hold pressure for five minutes. If pressure declines by ten per cent or more, casing integrity and cement placement shall be further evaluated and appropriate corrective action shall be taken to verify casing integrity and cement displacement. If the float apparatus does not hold, the

owner shall pump the volume that flowed back, and shut in until the cement has sufficiently set.

(b) Prior to drilling the cement plug, the owner shall test any permanently cemented casing strings, at a minimum pump pressure in pounds per square inch calculated by multiplying the length of the casing string by 0.2, but not less than three hundred pounds per square inch. The test pressure may not decline by more than ten per cent during the thirty-minute test period.

(i) If, at the end of thirty minutes of such testing, the pressure shows a drop greater than ten per cent, the owner shall not resume further operations until the condition is corrected. A pressure test demonstrating a pressure drop equal to or less than ten per cent after thirty minutes is evidence that the condition has been corrected.

(ii) Casing integrity may be verified in conjunction with blowout preventer testing without a test plug using either the test pressure described in paragraph (D)(3)(b) of this rule, or the pressure required to test the blowout preventer, whichever is greater.

(E) Casing shoe tests. The chief may require the owner to conduct a casing shoe test after drilling below the surface casing and/or the intermediate casing seat if the pressure gradient of the permitted hydrocarbon reservoir exceeds 0.5 pounds per square inch per foot, or in areas where fracture gradients are unknown.

(F) Surface water infiltration. Before drilling below the first casing string, the owner shall either crown the location around the wellbore to divert fluids to a flow ditch, or construct a liquid-tight cellar at least three feet in diameter to prevent surface infiltration of fluids adjacent to the wellbore. If a reserve pit is used to contain cuttings and drilling fluids, the flow ditch from the cellar or crown to the reserve pit shall also be liquid tight.

(G) Mouse and rat holes. If a mouse and/or rat hole is used, it shall be constructed of liquid tight steel pipe with a welded basal plate or bull plug. The annulus shall be sealed with clay or cement in a manner that effectively prevents fluids from entering the annular space.

(H) Wellbore diameters.

(1) The diameter of each section of the wellbore in which casing will be set and cemented shall be at least one inch greater than the outside diameter of casing collar to be installed, unless otherwise approved by the chief.

(2) The wellbore diameter shall be consistent with manufacturer's recommendations for all float equipment, centralizers, packers, cement baskets, and all other equipment run into the wellbore on casing.

(I) Wellbore conditioning.

(1) Prior to cementing, the wellbore shall be conditioned to kill gas flow, foster adequate cement displacement, and ensure a high quality bond between cement and the wellbore. If circulation cannot be established or maintained, the inspector shall require testing to evaluate cement displacement. If tests indicate cement displacement or quality is inadequate to meet the standards, the owner shall not resume drilling activity until corrective action has achieved compliance with the standards.

(2) If oil-based drilling mud is used, the wellbore shall be conditioned with a mud flush and the spacer volume should be designed for a minimum of ten minutes of contact time prior to cementing production casing in the horizontal segment of a wellbore.

(3) Where underground mine voids, solution voids, or other geologic features render circulation infeasible, the owner shall install a cement basket or other approved device as close as possible above the top of the void or thief zone. Mine strings shall be cemented above and below the mine void in accordance with paragraph (M) of this rule.

(J) Cement standards.

(1) All cement placed into the wellbore shall be Portland cement that is manufactured to meet the standards of API "10 A Specification for Cements and Materials for Well Cementing" or ASTM "C150/C150M Standard Specification for Portland Cement."

(2) Cemented conductor, mine, and surface casing strings shall remain static until all cement has reached a compressive strength of at least five hundred pounds per square inch before drilling the plug, or initiating a test.

(3) The tail cement for all intermediate and production casings and liners shall remain static until the cement has reached a compressive strength of at least five hundred pounds per square inch before drilling out the plug or initiating a test. Tail cement shall have a seventy-two-hour compressive strength of at least one thousand two hundred pounds per square inch. Lead cements with volume extenders may be used to seal these strings, but in no case shall the cement have a compressive strength of less than one hundred pounds per square inch at the time of drill out nor less than two hundred fifty pounds per square inch twenty-four hours

after being placed.

(4) The density of the cement slurry shall be based upon a laboratory free fluid separation test demonstrating an average fluid loss no more than three milliliters per two hundred fifty milliliters of cement tested in accordance with API "RP 10 B-2 Recommended Practice for Testing Well Cements." Slurry should be mixed and pumped at a rate that ensures consistent slurry density.

(5) The chief may require, by permit condition, a specific cement mixture to be used in any well or any area if evidence of local conditions indicate a specific cement is necessary.

(6) The owner shall ensure that the cement mix water quality and chemistry is proper for the cement slurry design. An authorized representative of the owner shall be on site observing the cement mixing equipment for the entire duration of the cement mixing and placement to ensure that cement slurry design parameters are followed.

(7) Sulfate resistant cement shall be used whenever necessary to protect the casing string and prevent the migration of hydrogen sulfide. When the owner is drilling in a township where hydrogen sulfide occurs commonly in specific intervals, the chief shall require as a permit condition that the owner use sulfate resistant cement.

(8) Compressive strength test requirements.

(a) Cement mixtures for which published performance data are not available shall be tested by the owner or service company and approved by the chief prior to usage. Tests shall be made on representative samples of the basic mixture of cement and additives used, using distilled water or potable tap water for preparing the slurry. The tests shall be conducted using the equipment and procedures established in API "RP 10 B-2 Recommended Practice for Testing Well Cements." Test data showing competency of a proposed cement mixture to meet the above requirements shall be furnished to the inspector prior to the cementing operation. To determine that the minimum compressive strength has been obtained, the owner shall use the typical performance data for the particular cement mixture used in the well at the following temperatures and at atmospheric pressure:

(i) For conductor, mine string, and surface casing cement, the test temperature shall be sixty degrees Fahrenheit;

(ii) For intermediate and production casing cement, the test temperature shall be

within ten degrees Fahrenheit of the formation equilibrium temperature of the cemented interval.

(K) Centralizer standards.

(1) All bowspring centralizers shall meet the standards of API "10 D, Specification for Bow-Spring Casing Centralizers."

(2) All rigid centralizers shall meet the standards of API "10 TR 4 Considerations Regarding Selection of Centralizers for Primary Cementing Operations."

(3) Casing shall be centralized in each segment of the wellbore to provide sufficient casing standoff and foster effective circulation of cement to isolate critical zones including aquifers, flow zones, voids, lost circulation zones, and hydrocarbon production zones.

(L) Notification. The owner shall notify the inspector at least twenty-four hours prior to setting any casing or liner string and before commencing any casing cementing operation pursuant to this rule to enable the inspector to participate in the pre-job safety and procedures meeting, independently test mix water, evaluate casing condition, and observe and document the execution of the cementing operation.

(M) Casing strings.

(1) Drive pipe. Drive pipe may be driven through unconsolidated materials and need not be cemented if there is no annular space.

(2) Mine string.

(a) Casing through an active underground mining operation.

(i) If a well is drilled within the geographic limits of an active underground mining operation, the owner shall construct the well in a manner that protects personnel working in the mine, and, if possible, shall locate the well so as to penetrate a pillar, a barrier, or the unmined perimeter of the seam.

(ii) If a well is drilled within the limits of an active underground mining operation that may penetrate the excavations of a mine and groundwater has been encountered below the base of the conductor casing, the hole shall be reduced fifteen feet above the roof of the mine. This string of casing shall be cemented to surface to shut off all

groundwater. Drilling shall continue to a point at least thirty but no more than fifty feet below the floor of the mine and another string of casing shall be set and cemented.

(b) Casing through any underground mine void. After drilling through any underground mine void or rubble zone, casing shall be set at least thirty feet but no more than fifty feet below the base of the mine void or rubble zone and cemented at this point. The owner shall design the casing and cementing plans considering the maximum number of casing strings that may be necessary to isolate mine voids prior to setting and cementing surface casing.

(c) A mine string shall not serve as the only water protection casing. Where a mine string isolates one or more water-bearing zones, either surface or intermediate casing shall be cemented to surface inside the mine string.

(d) Each mine string shall be equipped with a guide shoe or other appropriate device to prevent deformation of the bottom of the casing.

(e) Cementing the mine string.

(i) If a mine void or rubble zone is encountered, the owner shall equip the mine string with a cement basket or other approved device as close to the top of the void as practical.

(ii) The interval from the casing seat to the base of the coal seam shall be cemented.

(iii) Cement shall be placed on top of the basket or other approved device by pour string or pumping from surface.

(3) Conductor casing.

(a) Conductor casing shall be set where necessary to:

(i) Stabilize unconsolidated sediments;

(ii) Isolate shallow aquifers that provide or are capable of providing groundwater for water wells and springs in the vicinity of the well;

(iii) Isolate groundwater before penetrating the working of an active underground

mine; or

(iv) Provide a base for equipment to divert shallow, naturally occurring natural gas.

(b) Conductor casing shall be cemented to surface if there is an annular space.

(c) If circulated cement drops or fails to circulate, cement shall be emplaced from surface by a method approved by the inspector.

(4) Surface casing.

(a) An owner shall set and cement sufficient surface casing at least fifty feet below the base of the deepest USDW, or at least fifty feet into competent bedrock, whichever is deeper, and as specified by the permit, unless otherwise approved by the chief. Surface casing shall be cemented before drilling though hydrocarbon bearing flow zones or zones which contain concentrations of total dissolved solids exceeding ten thousand milligrams per liter unless otherwise approved by the chief. For the purposes of this paragraph, hydrocarbon bearing flow zones shall include all formations that have historically, are currently, or are anticipated to be commercially productive.

(b) Sufficient cement shall be used to fill the annular space outside the casing from the seat to the ground surface or to the bottom of the cellar.

(c) If cement is not circulated to the ground surface or the bottom of the cellar and the top of cement cannot be measured from surface, the owner shall perform tests as approved by the inspector. The owner shall notify the inspector prior to performing the tests. After the nature of the well construction deficiency is determined, the owner shall contact the inspector and obtain approval for the procedures to be used to perform any required additional cementing operations. Surface casing shall not be perforated for the purpose of remedial cementing unless intermediate casing is set and cemented to surface, or otherwise authorized by the chief.

(d) If remedial options fail and the chief determines that USDWs are not adequately isolated or protected, the chief may issue an administrative order suspending further drilling operations. If the chief determines additional remedial measures will not isolate and protect the USDW, the chief shall issue an administrative order requiring the well to be plugged.

(e) For surface holes drilled through glacial drift deposits that exceed one hundred feet in

thickness, a guide shoe shall be run on the surface casing.

(f) In areas where bedrock USDWs cannot be mapped, except in areas subject to paragraph (M)(4)(g) of this rule, surface casing shall be set and cemented at the depth stated in paragraph (M)(4)(f)(i) or (M)(4)(f)(ii) of this rule, whichever is deeper and as determined by permit condition, or, as an alternative method for protecting groundwater resources, at the depth stated in paragraph (M)(4)(f)(iii) of this rule:

(i) At least three hundred feet deep; or

(ii) At least one hundred feet below the deepest local perennial stream base; or

(iii) At least fifty feet below the base of the lowest spring or deepest water well developed for any legitimate purpose, based upon an inventory of water supplies within a five hundred foot radius of the proposed oil and gas well. If there are no springs or water wells within the five hundred foot radius, conductor casing shall be set and cemented at a minimum depth of one hundred feet. After conductor casing is set through the deepest useable water zone and cemented to surface, the owner shall set and cement to surface a surface casing string through water zones that may include brackish or brine bearing zones. This casing string shall be set and cemented to surface before the owner drills into potential flow zones that can reasonably be expected to contain hydrocarbons in commercial quantities.

(g) In areas where bedrock USDWs cannot be mapped and where groundwater resources can be developed in valley-fill aquifers, surface casing shall be cemented at least one hundred feet below the base of the valley-fill aquifer for any well within one thousand feet of the one hundred year floodplain.

(5) Alternative surface casing requirements. An alternative method of protecting USDWs may be approved upon written application to the chief. The owner shall state the reason for the alternative USDW protection method and outline the alternative method for casing and cementing through the deepest USDW. Alternative methods for setting more than specified amounts of surface casing for well control purposes may be requested on a field-specific or area-specific basis. Alternative methods for setting less than specified amounts of surface casing shall be authorized on an individual well basis only. The chief may approve, modify, or reject the proposed alternative method. The chief shall reject the proposed method by order if the owner has not demonstrated that the alternative casing plan will meet the standards of section 1509.17 of the Revised Code and this rule. The owner may file an appeal with the oil and gas commission pursuant to section 1509.36 of the Revised Code. An owner

shall obtain the chief's written approval of any alternative method before commencing operations.

(6) Intermediate casing.

(a) Intermediate casing may be set at the discretion of the owner to isolate flow zones, lost circulation zones, or other geologic hazards, unless otherwise required by this rule or the approved permit.

(b) The owner shall set and cement intermediate casing in a competent formation in the following situations:

(i) If groundwater containing total dissolved solids of less than ten thousand milligrams per liter is encountered below the base of cemented surface casing;

(ii) Through a gas storage reservoir when drilling to strata beneath a gas storage reservoir within the storage protective boundary;

(iii) When drilling to permitted hydrocarbon zones deeper than the silurian clinton sandstone east of the updip pinchout; such casing shall be set through the Mississippian berea sandstone, or one thousand feet, whichever is greater;

(iv) For wells drilled horizontally, in the Marcellus shale, or deeper, such casing shall be set through the Mississippian berea sandstone or one thousand feet, whichever is greater; or

(v) In other situations as determined by the chief.

(c) For each intermediate string of casing that is permanently set in the wellbore, tail cement shall extend from the seat to a point at least five hundred true vertical feet above the casing seat, or to a point at least two hundred feet above the seat of the next larger diameter casing string.

(d) If the intermediate wellbore penetrates one or more flow zones, cement shall be placed at least five hundred feet above the uppermost flow zone. The cement used to control annular gas migration from flow zones shall be designed consistent with recommended methods in API "65-2 Isolating Potential Flow Zones during Construction." The cement shall reach a compressive strength of five hundred pounds per square inch before drill out. Annular pressure shall be measured prior to drill out to verify

isolation of the flow zone.

(e) If the cement placement indicators including fluid returns, lift pressure, or annular pressure indicate inadequate isolation of any flow zone, the owner shall obtain approval of the inspector for the proposed plan for determining top of cement and/or performing additional cementing operations.

(f) Liners may be set and cemented as intermediate casing provided that the cemented liner has a minimum of two hundred feet of cemented lap within the next larger casing, and the liner top is pressure tested to a level equal to or higher than the maximum anticipated pressure to be encountered in the interval to be drilled below the liner. The test pressure may not decline by more than ten per cent during the thirty minute test period. If at the end of a thirty minute pressure test, the pressure has dropped by more than ten per cent, the owner shall not resume operations until the condition is corrected and verified by a thirty minute pressure test.

(7) Production casing and liners.

(a) Cemented completions.

(i) The production casing shall be cemented with sufficient cement to fill the annular space to a point at least five hundred true vertical feet above the seat in an open-hole vertical completion or the uppermost perforation in a cemented vertical completion, or one thousand feet above the kickoff point of a horizontal well. If any flow zone is present, including strata that may contain hydrocarbons in commercial quantities or a hydrogen sulfide-bearing flow zone, the casing shall be cemented in a manner that effectively isolates such strata with at least five hundred feet of cement above the zone. The cement slurry shall be designed to control annular gas migration consistent with recommended methods in API "65-2 Isolating Potential Flow Zones during Construction."

(ii) When cementing the production string of a well that will be stimulated by hydraulic fracturing, and the uppermost perforation is less than five hundred feet below the base of the deepest USDW, sufficient cement shall be used to fill the annular space outside the casing from the seat to the ground surface or to the bottom of the cellar. If cement is not circulated to the ground surface or the bottom of the cellar, the owner shall notify the inspector and perform tests approved by the inspector. After the top of cement outside the casing is determined, the owner or his authorized representative shall contact the inspector and obtain approval for the

procedures to be used to perform any required additional cementing operations.

(iii) Liners may be set and cemented as production casing, provided that the cemented liner has a minimum of two hundred true vertical depth feet of cemented lap within the next larger casing, and the liner top is pressure tested to a level that is at least five hundred pounds per square inch higher than the maximum anticipated pressure to be encountered by the wellbore during completion and production operations. The test pressure may not decline by more than ten per cent during the thirty minute test period. If at the end of a thirty minute pressure test, the pressure has dropped by more than ten per cent, the owner shall not resume operations until the condition is corrected and verified by a thirty minute pressure test. Liners may only be set and cemented as production casing in horizontal shale gas wells if approved by the chief.

(iv) If operations indicate inadequate cement coverage or isolation of the hydrocarbon bearing zones, the owner shall obtain approval of the inspector for procedures to determine the top of cement and/or perform corrective actions.

(b) Packer completions. Packer or other non-cemented completions may be used in place of cemented completions. If intermediate casing is run with this type of completion, cementing shall meet the requirements of paragraph (M)(7) of this rule. If intermediate casing is not run, a multi-stage cementing tool shall be run above the top external packer and cemented to fill the annular space outside the casing to the surface or to a point at least five hundred feet above the packer or casing seat. The chief may approve alternative completion proposals. Any approved alternative shall meet the well construction standards of section 1509.17 of the Revised Code and these rules.

(N) Annular pressure.

(1) Wellhead assemblies shall be used to maintain surface control of the well. Each component of the wellhead shall have a working pressure rating equal to or greater than the highest anticipated operating pressure to which the particular component might be exposed during the course of drilling, testing, completing, stimulating, or producing the well.

(2) The valve on the surface-production casing annulus or surface-intermediate casing annulus shall be accessible and equipped with a pressure gauge to allow continual monitoring of mechanical integrity. The valve shall also be equipped with a properly functioning pressure relief valve set at or below the hydrostatic pressure at the surface casing seat assuming a pressure gradient of 0.433 pounds per square inch times the height of the groundwater column. If the hydrostatic head at the casing seat is unknown, the surface-

production casing annulus is assumed to be over-pressurized when annular pressure measured at surface exceeds 0.303 multiplied by the length of the surface casing. If the inspector approves perforation of surface casing and intermediate casing is not installed and cemented, the allowable annular pressure measured at surface in pounds per square inch will be established by multiplying the depth of the uppermost perforation by 0.303.

(3) If any time after installation of the wellhead assembly, the sustained annular pressure exceeds the prescribed pressure or releases the pressure relief valve, the owner shall immediately notify the inspector.

(4) The inspector shall approve tests or logging procedures to evaluate the cause of over-pressurized conditions and approve a plan for corrective action. If remedial cementing, replacement of defective casing, or implementation of other mechanical barriers or operational solutions cannot eliminate over-pressurized conditions, the owner shall plug the well.

(5) During stimulation or workover operations, all annuli shall be pressure-monitored. Stimulation or workover operations shall be immediately suspended for any inexplicable pressure deviation above those anticipated increases caused by pressure or thermal transfer. In the event that stimulation fluids circulate, or annular pressures deviate from anticipated, the owner shall immediately notify the inspector and acquire approval for remediation of casing or cement. If the chief determines that the stimulation of the well has resulted in irreparable damage to the well, the chief shall order that the well be plugged and abandoned within thirty days of issuance of the order.

(O) Well construction records.

(1) Within sixty days after drilling to total depth, the owner shall file a legible copy of all cement job logs with the chief furnishing complete data documenting the cementing of all cemented casing strings, on a form approved by the chief and signed by the owner of the well or his authorized agent having personal knowledge of the facts, and representatives of the cementing company performing the cementing job, attesting to compliance with the cementing requirements of this rule.

(2) Each job log shall include the following information:

(a) Date cemented;

(b) Name of the cementing contractor;

(c) Mix water temperature and pH;

(d) Whether or not the wellbore circulated prior to cementing;

(e) Hole diameter in inches, casing outer diameter in inches, casing length in feet, float equipment depth in feet, basket depth in feet, and centralizer depth in vertical segments of the wellbore in feet;

(f) Number of centralizers placed in the horizontal segment of a wellbore;

(g) Cement type, additives by percent of unit volume, volume of cement in sacks, cement yield per sack, average slurry density in pounds per gallon, slurry volume in barrels, and displacement volume in barrels;

(h) Pumping rates in barrels per minute, displacement pressure in pounds per square inch, and final circulating pressure prior to landing the plug in pounds per square inch;

(i) The time the latch-down or wiper plug landed;

(j) Casing test pressure in pounds per square inch and final test pressure in pounds per square inch;

(k) Whether or not cement circulated to surface; and

(l) Volume of cement slurry circulated to surface in barrels.

HISTORY: 2011-12 OMR pam. # 11 (E), eff. 8-1-12.

OH Const. Art. XVIII, § 3

Baldwin's Ohio Revised Code Annotated Currentness
Constitution of the State of Ohio (Refs & Annos)
Article XVIII. Municipal Corporations (Refs & Annos)
O Const XVIII Sec. 3 Municipal powers of local self-government

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

CREDIT(S)

(1912 constitutional convention, adopted eff. 11-15-12)

Baldwin's Ohio Revised Code Annotated Currentness
Title V. Townships
Chapter 519. Township Zoning (Refs & Annos)
Inapplicability of Township Zoning
519.211 Township zoning not to affect public utilities, railroads, liquor sales, or oil and gas production; exception for telecommunications towers

(A) Except as otherwise provided in division (B) or (C) of this section, sections 519.02 to 519.25 of the Revised Code confer no power on any board of township trustees or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad, for the operation of its business. As used in this division, "public utility" does not include a person that owns or operates a solid waste facility or a solid waste transfer facility, other than a publicly owned solid waste facility or a publicly owned solid waste transfer facility, that has been issued a permit under Chapter 3734. of the Revised Code or a construction and demolition debris facility that has been issued a permit under Chapter 3714. of the Revised Code.

(B)(1) As used in this division, "telecommunications tower" means any free-standing structure, or any structure to be attached to a building or other structure, that meets all of the following criteria:

(a) The free-standing or attached structure is proposed to be constructed on or after October 31, 1996.

(b) The free-standing or attached structure is proposed to be owned or principally used by a public utility engaged in the provision of telecommunications services.

(c) The free-standing or attached structure is proposed to be located in an unincorporated area of a township, in an area zoned for residential use.

(d)(i) The free-standing structure is proposed to top at a height that is greater than either the maximum allowable height of residential structures within the zoned area as set forth in the applicable zoning regulations, or the maximum allowable height of such a free-standing structure as set forth in any applicable zoning regulations in effect immediately prior to October 31, 1996, or as those regulations subsequently are amended.

(ii) The attached structure is proposed to top at a height that is greater than either the height of the building or other structure to which it is to be attached, or the maximum allowable height of such an attached structure as set forth in any applicable zoning regulations in effect immediately prior to October 31, 1996, or as those regulations subsequently are amended.

(e) The free-standing or attached structure is proposed to have attached to it radio frequency transmission or reception equipment.

(2) Sections 519.02 to 519.25 of the Revised Code confer power on a board of township trustees or board of zoning appeals with respect to the location, erection, construction, reconstruction, change, alteration, removal, or enlargement of a telecommunications tower, but not with respect to the maintenance or use of such a tower or any change or alteration that would not substantially increase the tower's height. However, the power so conferred shall apply to a particular telecommunications tower only upon the provision of a notice, in accordance with division (B)(4)(a) of this section, to the person proposing to construct the tower.

(3) Any person who plans to construct a telecommunications tower in an area subject to township zoning regulations shall provide both of the following by certified mail:

(a) Written notice to each owner of property, as shown on the county auditor's current tax list, whose land is contiguous to or directly across a street or roadway from the property on which the tower is proposed to be constructed, stating all of the following in clear and concise language:

(i) The person's intent to construct the tower;

(ii) A description of the property sufficient to identify the proposed location;

(iii) That, no later than fifteen days after the date of mailing of the notice, any such property owner may give written notice to the board of township trustees requesting that sections 519.02 to 519.25 of the Revised Code apply to the proposed location of the tower as provided under division (B)(4)(a) of this section.

If the notice to a property owner is returned unclaimed or refused, the person shall mail the notice by regular mail. The failure of delivery of the notice does not invalidate the notice.

(b) Written notice to the board of township trustees of the information specified in divisions (B)(3)(a)(i) and (ii) of this section. The notice to the board also shall include verification that the person has complied with division (B)(3)(a) of this section.

(4)(a) If the board of township trustees receives notice from a property owner under division (B)(3)(a)(iii) of this section within the time specified in that division or if a board member makes an objection to the proposed location of the telecommunications tower within fifteen days after the date of mailing of the notice sent under division (B)(3)(b) of this section, the board shall request that the fiscal officer of the township send the person proposing to construct the tower written notice that the tower is subject to the power conferred by and in accordance with division (B)(2) of this section. The notice shall be sent no later than five days after the earlier of the date the board first receives such a notice from a property owner or the date upon which a board member makes an objection. Upon the date of mailing of the notice to the person, sections 519.02 to 519.25 of the Revised Code shall apply to the tower.

(b) If the board of township trustees receives no notice under division (B)(3)(a)(iii) of this section within the time prescribed by that division or no board member has an objection as provided under division (B)(4)(a) of this section within the time prescribed by that division, division (A) of this section shall apply to the tower without exception.

(C) Sections 519.02 to 519.25 of the Revised Code confer power on a board of township trustees or board of zoning appeals with respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of a public utility engaged in the business of transporting persons or property, or both, or providing or furnishing such transportation service, over any public street, road, or highway in this state, and with respect to the use of land by any such public utility for the operation of its business, to the extent that any exercise of such power is reasonable and not inconsistent with Chapters 4901., 4903., 4905., 4909., 4921., and 4923. of the Revised Code. However, this division confers no power on a board of township trustees or board of zoning appeals with respect to a building or structure of, or the use of land by, a person engaged in the transportation of farm supplies to the farm or farm products from farm to market or to food fabricating plants.

(D) Sections 519.02 to 519.25 of the Revised Code confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the sale or use of alcoholic beverages in areas where the establishment and operation of any retail business, hotel, lunchroom, or restaurant is permitted.

(E)(1) Any person who plans to construct a telecommunications tower within one hundred feet of a residential dwelling shall provide a written notice to the owner of the residential dwelling and to the person occupying the residence, if that person is not the owner of the residence stating in clear and concise language the person's intent to construct the tower and a description of the property sufficient to identify the proposed location. The notice shall be sent by certified mail. If the notice is returned unclaimed or refused, the person shall mail the notice by regular mail. The failure of delivery does not invalidate the notice.

(2) As used in division (E) of this section:

(a) "Residential dwelling" means a building used or intended to be used as a personal residence by the owner, part-time owner, or lessee of the building, or any person authorized by such a person to use the building as a personal residence.

(b) "Telecommunications tower" has the same meaning as in division (B) (1) of this section, except that the proposed location of the free-standing or attached structure may be an area other than an unincorporated area of a township, in an area zoned for residential use.

CREDIT(S)

(2008 H 562, eff. 9-23-08; 2005 S 107, eff. 12-20-05; 2004 H 278, eff. 9-16-04; 1998 S 132, eff. 9-30-98; 1997 H 210, eff. 3-31-97; 1996 H 291, eff. 10-31-96; 1991 H 15, eff. 10-15-91; 1986 H 582)

R.C. § 1509.01

Baldwin's Ohio Revised Code Annotated Currentness
Title XV. Conservation of Natural Resources

Chapter 1509. Oil and Gas (Refs & Annos)

Definitions

1509.01 Definitions

As used in this chapter:

(A) "Well" means any borehole, whether drilled or bored, within the state for production, extraction, or injection of any gas or liquid mineral, excluding potable water to be used as such, but including natural or artificial brines and oil field waters.

(B) "Oil" means crude petroleum oil and all other hydrocarbons, regardless of gravity, that are produced in liquid form by ordinary production methods, but does not include hydrocarbons that were originally in a gaseous phase in the reservoir.

(C) "Gas" means all natural gas and all other fluid hydrocarbons that are not oil, including condensate.

(D) "Condensate" means liquid hydrocarbons that were originally in the gaseous phase in the reservoir.

(E) "Pool" means an underground reservoir containing a common accumulation of oil or gas, or both, but does not include a gas storage reservoir. Each zone of a geological structure that is completely separated from any other zone in the same structure may contain a separate pool.

(F) "Field" means the general area underlaid by one or more pools.

(G) "Drilling unit" means the minimum acreage on which one well may be drilled, but does not apply to a well for injecting gas into or removing gas from a gas storage reservoir.

(H) "Waste" includes all of the following:

(1) Physical waste, as that term generally is understood in the oil and gas industry;

(2) Inefficient, excessive, or improper use, or the unnecessary dissipation, of reservoir energy;

(3) Inefficient storing of oil or gas;

(4) Locating, drilling, equipping, operating, or producing an oil or gas well in a manner that reduces or tends to reduce the quantity of oil or gas ultimately recoverable under prudent and proper operations from the pool into which it is drilled or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas;

(5) Other underground or surface waste in the production or storage of oil, gas, or condensate, however caused.

(I) "Correlative rights" means the reasonable opportunity to every person entitled thereto to recover and receive the oil and gas in and under the person's tract or tracts, or the equivalent thereof, without having to drill unnecessary wells or incur other unnecessary expense.

(J) "Tract" means a single, individually taxed parcel of land appearing on the tax list.

(K) "Owner," unless referring to a mine, means the person who has the right to drill on a tract or drilling unit, to drill into and produce from a pool, and to appropriate the oil or gas produced therefrom either for the person or for others, except that a person ceases to be an owner with

respect to a well when the well has been plugged in accordance with applicable rules adopted and orders issued under this chapter. "Owner" does not include a person who obtains a lease of the mineral rights for oil and gas on a parcel of land if the person does not attempt to produce or produce oil or gas from a well or obtain a permit under this chapter for a well or if the entire interest of a well is transferred to the person in accordance with division (B) of section 1509.31 of the Revised Code.

(L) "Royalty interest" means the fee holder's share in the production from a well.

(M) "Discovery well" means the first well capable of producing oil or gas in commercial quantities from a pool.

(N) "Prepared clay" means a clay that is plastic and is thoroughly saturated with fresh water to a weight and consistency great enough to settle through saltwater in the well in which it is to be used, except as otherwise approved by the chief of the division of mineral resources management.

(O) "Rock sediment" means the combined cutting and residue from drilling sedimentary rocks and formation.

(P) "Excavations and workings," "mine," and "pillar" have the same meanings as in section 1561.01 of the Revised Code.

(Q) "Coal bearing township" means a township designated as such by the chief under section 1561.06 of the Revised Code.

(R) "Gas storage reservoir" means a continuous area of a subterranean porous sand or rock stratum or strata into which gas is or may be injected for the purpose of storing it therein and removing it therefrom and includes a gas storage reservoir as defined in section 1571.01 of the Revised Code.

(S) "Safe Drinking Water Act" means the "Safe Drinking Water Act," 88 Stat. 1661 (1974), 42

U.S.C.A. 300(f), as amended by the "Safe Drinking Water Amendments of 1977," 91 Stat. 1393, 42 U.S.C.A. 300(f), the "Safe Drinking Water Act Amendments of 1986," 100 Stat. 642, 42 U.S.C.A. 300(f), and the "Safe Drinking Water Act Amendments of 1996," 110 Stat. 1613, 42 U.S.C.A. 300(f), and regulations adopted under those acts.

(T) "Person" includes any political subdivision, department, agency, or instrumentality of this state; the United States and any department, agency, or instrumentality thereof; and any legal entity defined as a person under section 1.59 of the Revised Code.

(U) "Brine" means all saline geological formation water resulting from, obtained from, or produced in connection with exploration, drilling, well stimulation, production of oil or gas, or plugging of a well.

(V) "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, springs, irrigation systems, drainage systems, and other bodies of water, surface or underground, natural or artificial, that are situated wholly or partially within this state or within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters.

(W) "Exempt Mississippian well" means a well that meets all of the following criteria:

(1) Was drilled and completed before January 1, 1980;

(2) Is located in an unglaciated part of the state;

(3) Was completed in a reservoir no deeper than the Mississippian Big Injun sandstone in areas underlain by Pennsylvanian or Permian stratigraphy, or the Mississippian Berea sandstone in areas directly underlain by Permian stratigraphy;

(4) Is used primarily to provide oil or gas for domestic use.

(X) "Exempt domestic well" means a well that meets all of the following criteria:

(1) Is owned by the owner of the surface estate of the tract on which the well is located;

(2) Is used primarily to provide gas for the owner's domestic use;

(3) Is located more than two hundred feet horizontal distance from any inhabited private dwelling house other than an inhabited private dwelling house located on the tract on which the well is located;

(4) Is located more than two hundred feet horizontal distance from any public building that may be used as a place of resort, assembly, education, entertainment, lodging, trade, manufacture, repair, storage, traffic, or occupancy by the public.

(Y) "Urbanized area" means an area where a well or production facilities of a well are located within a municipal corporation or within a township that has an unincorporated population of more than five thousand in the most recent federal decennial census prior to the issuance of the permit for the well or production facilities.

(Z) "Well stimulation" or "stimulation of a well" means the process of enhancing well productivity, including hydraulic fracturing operations.

(AA) "Production operation" means site preparation, access roads, drilling, well completion, well stimulation, well operation, site reclamation, and well plugging. "Production operation" also includes all of the following:

(1) The piping and equipment used for the production and preparation of hydrocarbon gas or liquids for transportation or delivery;

(2) The processes of extraction and recovery, lifting, stabilization, treatment, separation, production processing, storage, and measurement of hydrocarbon gas and liquids;

(3) The processes associated with production compression, gas lift, gas injection, and fuel gas supply.

(BB) "Annular overpressurization" means the accumulation of fluids within an annulus with sufficient pressure to allow migration of annular fluids into underground sources of drinking water.

(CC) "Idle and orphaned well" means a well for which a bond has been forfeited or an abandoned well for which no money is available to plug the well in accordance with this chapter and rules adopted under it.

(DD) "Temporarily inactive well" means a well that has been granted temporary inactive status under section 1509.062 of the Revised Code.

(EE) "Material and substantial violation" means any of the following:

(1) Failure to obtain a permit to drill, reopen, convert, plugback, or plug a well under this chapter;

(2) Failure to obtain or maintain insurance coverage that is required under this chapter;

(3) Failure to obtain or maintain a surety bond that is required under this chapter;

(4) Failure to plug an abandoned well or idle and orphaned well unless the well has been granted temporary inactive status under section 1509.062 of the Revised Code or the chief has approved another option concerning the abandoned well or idle and orphaned well;

(5) Failure to restore a disturbed land surface as required by section 1509.072 of the Revised Code;

(6) Failure to reimburse the oil and gas fund pursuant to a final order issued under section 1509.071 of the Revised Code;

(7) Failure to comply with a final nonappealable order of the chief issued under section 1509.04 of the Revised Code.

(FF) "Severer" has the same meaning as in section 5749.01 of the Revised Code.

CREDIT(S)

(2010 S 165, eff. 6-30-10; 2000 H 601, eff. 6-14-00; 1998 S 187, eff. 3-18-99; 1995 S 162, eff. 10-29-95; 1990 S 277, eff. 9-28-90; 1985 H 572; 1984 H 501; 1982 H 745; 1976 S 404; 132 v S 226; 131 v H 234)

R.C. § 1509.02

Baldwin's Ohio Revised Code Annotated Currentness
Title XV. Conservation of Natural Resources

Chapter 1509. Oil and Gas (Refs & Annos)

Division of Mineral Resources Management

1509.02 Mineral resources management division; oil and gas well fund

There is hereby created in the department of natural resources the division of mineral resources management, which shall be administered by the chief of the division of mineral resources management. The division has sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations within the state. The regulation of oil and gas activities is a matter of general statewide interest that requires uniform statewide regulation, and this chapter and rules adopted under it constitute a comprehensive plan with respect to all aspects of the locating, drilling, and operating of oil and gas wells within this state, including site restoration and disposal of wastes from those wells. Nothing in this section affects the authority granted to the director of transportation and local authorities in section 723.01 or 4513.34 of the Revised Code, provided that the authority granted under those sections shall not be exercised in a manner that discriminates against, unfairly impedes, or obstructs oil and gas activities and operations regulated under this chapter.

The chief shall not hold any other public office, nor shall the chief be engaged in any occupation or business that might interfere with or be inconsistent with the duties as chief.

All moneys collected by the chief pursuant to sections 1509.06, 1509.061, 1509.062, 1509.071, 1509.13, 1509.22, 1509.221, 1509.222, 1509.34, and 1509.50, ninety per cent of moneys received by the treasurer of state from the tax levied in divisions (A)(5) and (6) of section 5749.02, all civil penalties paid under section 1509.33, and, notwithstanding any section of the Revised Code relating to the distribution or crediting of fines for violations of the Revised Code, all fines imposed under divisions (A) and (B) of section 1509.99 of the Revised Code and fines imposed under divisions (C) and (D) of section 1509.99 of the Revised Code for all violations prosecuted by the attorney general and for violations prosecuted by prosecuting attorneys that do not involve the transportation of brine by vehicle shall be deposited into the state treasury to the credit of the oil and gas well fund, which is hereby created. Fines imposed under divisions (C)

and (D) of section 1509.99 of the Revised Code for violations prosecuted by prosecuting attorneys that involve the transportation of brine by vehicle and penalties associated with a compliance agreement entered into pursuant to this chapter shall be paid to the county treasury of the county where the violation occurred.

The fund shall be used solely and exclusively for the purposes enumerated in division (B) of section 1509.071 of the Revised Code, for the expenses of the division associated with the administration of this chapter and Chapter 1571. of the Revised Code and rules adopted under them, and for expenses that are critical and necessary for the protection of human health and safety and the environment related to oil and gas production in this state. The expenses of the division in excess of the moneys available in the fund shall be paid from general revenue fund appropriations to the department.

CREDIT(S)

(2010 S 165, eff. 6-30-10; 2004 H 278, eff. 9-16-04; 2000 H 601, eff. 6-14-00; 1999 H 283, eff. 6-30-99; 1994 S 182, eff. 10-20-94; 1985 H 201, eff. 7-1-85; 1984 H 501; 1980 H 264; 1979 H 204; 1973 H 221; 132 v H 310; 131 v H 234)

R.C. § 1509.03

Baldwin's Ohio Revised Code Annotated Currentness
Title XV. Conservation of Natural Resources

Chapter 1509. Oil and Gas (Refs & Annos)

Division of Mineral Resources Management

1509.03 Rules and regulations; enforcement

(A) The chief of the division of mineral resources management shall adopt, rescind, and amend, in accordance with Chapter 119. of the Revised Code, rules for the administration, implementation, and enforcement of this chapter. The rules shall include an identification of the subjects that the chief shall address when attaching terms and conditions to a permit with respect to a well and production facilities of a well that are located within an urbanized area. The subjects shall include all of the following:

(1) Safety concerning the drilling or operation of a well;

(2) Protection of the public and private water supply;

(3) Fencing and screening of surface facilities of a well;

(4) Containment and disposal of drilling and production wastes;

(5) Construction of access roads for purposes of the drilling and operation of a well;

(6) Noise mitigation for purposes of the drilling of a well and the operation of a well, excluding safety and maintenance operations.

No person shall violate any rule of the chief adopted under this chapter.

(B) Any order issuing, denying, or modifying a permit or notices required to be made by the chief pursuant to this chapter shall be made in compliance with Chapter 119. of the Revised Code, except that personal service may be used in lieu of service by mail. Every order issuing, denying, or modifying a permit under this chapter and described as such shall be considered an adjudication order for purposes of Chapter 119. of the Revised Code.

Where notice to the owners is required by this chapter, the notice shall be given as prescribed by a rule adopted by the chief to govern the giving of notices. The rule shall provide for notice by publication except in those cases where other types of notice are necessary in order to meet the requirements of the law.

(C) The chief or the chief's authorized representative may at any time enter upon lands, public or private, for the purpose of administration or enforcement of this chapter, the rules adopted or orders made thereunder, or terms or conditions of permits or registration certificates issued thereunder and may examine and copy records pertaining to the drilling, conversion, or operation of a well for injection of fluids and logs required by division (C) of section 1509.223 of the Revised Code. No person shall prevent or hinder the chief or the chief's authorized representative in the performance of official duties. If entry is prevented or hindered, the chief or the chief's authorized representative may apply for, and the court of common pleas may issue, an appropriate inspection warrant necessary to achieve the purposes of this chapter within the court's territorial jurisdiction.

(D) The chief may issue orders to enforce this chapter, rules adopted thereunder, and terms or conditions of permits issued thereunder. Any such order shall be considered an adjudication order for the purposes of Chapter 119. of the Revised Code. No person shall violate any order of the chief issued under this chapter. No person shall violate a term or condition of a permit or registration certificate issued under this chapter.

(E) Orders of the chief denying, suspending, or revoking a registration certificate; approving or denying approval of an application for revision of a registered transporter's plan for disposal; or to implement, administer, or enforce division (A) of section 1509.224 and sections 1509.22, 1509.222, 1509.223, 1509.225, and 1509.226 of the Revised Code pertaining to the transportation of brine by vehicle and the disposal of brine so transported are not adjudication orders for purposes of Chapter 119. of the Revised Code. The chief shall issue such orders under

division (A) or (B) of section 1509.224 of the Revised Code, as appropriate.

CREDIT(S)

(2010 S 165, eff. 6-30-10; 2004 H 299, § 3, eff. 9-16-04; 2004 H 278, eff. 9-16-04; 2000 H 601, eff. 6-14-00; 1984 H 501, eff. 4-12-85; 1982 H 745; 1980 H 264; 132 v H 310; 131 v H 234)

R.C. § 1509.06

Baldwin's Ohio Revised Code Annotated Currentness
Title XV. Conservation of Natural Resources

Chapter 1509. Oil and Gas (Refs & Annos)

Permits

1509.06 Application for permit; publication; procedures

(A) An application for a permit to drill a new well, drill an existing well deeper, reopen a well, convert a well to any use other than its original purpose, or plug back a well to a different source of supply, including associated production operations, shall be filed with the chief of the division of mineral resources management upon such form as the chief prescribes and shall contain each of the following that is applicable:

(1) The name and address of the owner and, if a corporation, the name and address of the statutory agent;

(2) The signature of the owner or the owner's authorized agent. When an authorized agent signs an application, it shall be accompanied by a certified copy of the appointment as such agent.

(3) The names and addresses of all persons holding the royalty interest in the tract upon which the well is located or is to be drilled or within a proposed drilling unit;

(4) The location of the tract or drilling unit on which the well is located or is to be drilled identified by section or lot number, city, village, township, and county;

(5) Designation of the well by name and number;

(6) The geological formation to be tested or used and the proposed total depth of the well;

(7) The type of drilling equipment to be used;

(8) If the well is for the injection of a liquid, identity of the geological formation to be used as the injection zone and the composition of the liquid to be injected;

(9) For an application for a permit to drill a new well within an urbanized area, a sworn statement that the applicant has provided notice by regular mail of the application to the owner of each parcel of real property that is located within five hundred feet of the surface location of the well and to the executive authority of the municipal corporation or the board of township trustees of the township, as applicable, in which the well is to be located. In addition, the notice shall contain a statement that informs an owner of real property who is required to receive the notice under division (A)(9) of this section that within five days of receipt of the notice, the owner is required to provide notice under section 1509.60 of the Revised Code to each residence in an occupied dwelling that is located on the owner's parcel of real property. The notice shall contain a statement that an application has been filed with the division of mineral resources management, identify the name of the applicant and the proposed well location, include the name and address of the division, and contain a statement that comments regarding the application may be sent to the division. The notice may be provided by hand delivery or regular mail. The identity of the owners of parcels of real property shall be determined using the tax records of the municipal corporation or county in which a parcel of real property is located as of the date of the notice.

(10) A plan for restoration of the land surface disturbed by drilling operations. The plan shall provide for compliance with the restoration requirements of division (A) of section 1509.072 of the Revised Code and any rules adopted by the chief pertaining to that restoration.

(11) A description by name or number of the county, township, and municipal corporation roads, streets, and highways that the applicant anticipates will be used for access to and egress from the well site;

(12) Such other relevant information as the chief prescribes by rule.

Each application shall be accompanied by a map, on a scale not smaller than four hundred feet to the inch, prepared by an Ohio registered surveyor, showing the location of the well and

containing such other data as may be prescribed by the chief. If the well is or is to be located within the excavations and workings of a mine, the map also shall include the location of the mine, the name of the mine, and the name of the person operating the mine.

(B) The chief shall cause a copy of the weekly circular prepared by the division to be provided to the county engineer of each county that contains active or proposed drilling activity. The weekly circular shall contain, in the manner prescribed by the chief, the names of all applicants for permits, the location of each well or proposed well, the information required by division (A)(11) of this section, and any additional information the chief prescribes. In addition, the chief promptly shall transfer an electronic copy or facsimile, or if those methods are not available to a municipal corporation or township, a copy via regular mail, of a drilling permit application to the clerk of the legislative authority of the municipal corporation or to the clerk of the township in which the well or proposed well is or is to be located if the legislative authority of the municipal corporation or the board of township trustees has asked to receive copies of such applications and the appropriate clerk has provided the chief an accurate, current electronic mailing address or facsimile number, as applicable.

(C)(1) Except as provided in division (C)(2) of this section, the chief shall not issue a permit for at least ten days after the date of filing of the application for the permit unless, upon reasonable cause shown, the chief waives that period or a request for expedited review is filed under this section. However, the chief shall issue a permit within twenty-one days of the filing of the application unless the chief denies the application by order.

(2) If the location of a well or proposed well will be or is within an urbanized area, the chief shall not issue a permit for at least eighteen days after the date of filing of the application for the permit unless, upon reasonable cause shown, the chief waives that period or the chief at the chief's discretion grants a request for an expedited review. However, the chief shall issue a permit for a well or proposed well within an urbanized area within thirty days of the filing of the application unless the chief denies the application by order.

(D) An applicant may file a request with the chief for expedited review of a permit application if the well is not or is not to be located in a gas storage reservoir or reservoir protective area, as "reservoir protective area" is defined in section 1571.01 of the Revised Code. If the well is or is to be located in a coal bearing township, the application shall be accompanied by the affidavit of the landowner prescribed in section 1509.08 of the Revised Code.

In addition to a complete application for a permit that meets the requirements of this section and the permit fee prescribed by this section, a request for expedited review shall be accompanied by a separate nonrefundable filing fee of two hundred fifty dollars. Upon the filing of a request for expedited review, the chief shall cause the county engineer of the county in which the well is or is to be located to be notified of the filing of the permit application and the request for expedited review by telephone or other means that in the judgment of the chief will provide timely notice of the application and request. The chief shall issue a permit within seven days of the filing of the request unless the chief denies the application by order. Notwithstanding the provisions of this section governing expedited review of permit applications, the chief may refuse to accept requests for expedited review if, in the chief's judgment, the acceptance of the requests would prevent the issuance, within twenty-one days of their filing, of permits for which applications are pending.

(E) A well shall be drilled and operated in accordance with the plans, sworn statements, and other information submitted in the approved application.

(F) The chief shall issue an order denying a permit if the chief finds that there is a substantial risk that the operation will result in violations of this chapter or rules adopted under it that will present an imminent danger to public health or safety or damage to the environment, provided that where the chief finds that terms or conditions to the permit can reasonably be expected to prevent such violations, the chief shall issue the permit subject to those terms or conditions, including, if applicable, terms and conditions regarding subjects identified in rules adopted under section 1509.03 of the Revised Code. The issuance of a permit shall not be considered an order of the chief.

(G) Each application for a permit required by section 1509.05 of the Revised Code, except an application to plug back an existing well that is required by that section and an application for a well drilled or reopened for purposes of section 1509.22 of the Revised Code, also shall be accompanied by a nonrefundable fee as follows:

(1) Five hundred dollars for a permit to conduct activities in a township with a population of fewer than ten thousand;

(2) Seven hundred fifty dollars for a permit to conduct activities in a township with a population

of ten thousand or more, but fewer than fifteen thousand;

(3) One thousand dollars for a permit to conduct activities in either of the following:

(a) A township with a population of fifteen thousand or more;

(b) A municipal corporation regardless of population.

(4) If the application is for a permit that requires mandatory pooling, an additional five thousand dollars.

For purposes of calculating fee amounts, populations shall be determined using the most recent federal decennial census.

Each application for the revision or reissuance of a permit shall be accompanied by a nonrefundable fee of two hundred fifty dollars.

(H) Prior to the issuance of a permit to drill a proposed well that is to be located in an urbanized area, the division shall conduct a site review to identify and evaluate any site-specific terms and conditions that may be attached to the permit. At the site review, a representative of the division shall consider fencing, screening, and landscaping requirements, if any, for similar structures in the community in which the well is proposed to be located. The terms and conditions that are attached to the permit shall include the establishment of fencing, screening, and landscaping requirements for the surface facilities of the proposed well, including a tank battery of the well.

(I) A permit shall be issued by the chief in accordance with this chapter. A permit issued under this section for a well that is or is to be located in an urbanized area shall be valid for twelve months, and all other permits issued under this section shall be valid for twenty-four months.

(J) A permittee or a permittee's authorized representative shall notify an inspector from the division of mineral resources management at least twenty-four hours, or another time period

agreed to by the chief's authorized representative, prior to the commencement of drilling, reopening, converting, well stimulation, or plugback operations.

CREDIT(S)

(2010 S 165, eff. 6-30-10; 2005 H 66, eff. 9-29-05; 2004 H 299, § 3, eff. 9-16-04; 2004 H 278, eff. 9-16-04; 2001 H 94, eff. 9-5-01; 2000 H 601, eff. 6-14-00; 1998 S 187, eff. 3-18-99; 1995 S 162, eff. 10-29-95; 1994 S 182, eff. 10-20-94; 1988 S 254, eff. 3-17-89; 1984 H 501; 1980 H 264; 1976 S 404; 1974 H 216; 132 v S 226; 131 v H 234)

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XV CONSERVATION OF NATURAL RESOURCES
CHAPTER 1509 OIL AND GAS
MISCELLANEOUS PROVISIONS

1509.39 LOCAL REGULATIONS; LIMITATIONS

Chapter 1509. of the Revised Code or rules promulgated thereunder shall not be construed to prevent any municipal corporation, county, or township from enacting and enforcing health and safety standards for the drilling and exploration for oil and gas, provided that such standards are not less restrictive than the provisions of this chapter or the rules adopted thereunder by the division of oil and gas, and provided further that no county, or township may adopt or enforce any ordinances, resolutions, rules, or requirements relative to the minimum acreage requirements for drilling units, and minimum distances from which a new well may be drilled or an existing well deepened, plugged back, or reopened to a source of supply different from the existing pool from boundaries of tracts, drilling units, other wells, and from streets, roads, highways, railroad tracks, or the restoration or plugging of an oil and gas well. No county, or township may require any permit or license for the drilling, operation, production, plugging, or abandonment of any oil or gas well, nor any fee, bond or other security, or insurance for any activity associated with the drilling, operation, production, plugging, or abandonment of a well, except for the permit provided for in section 4513.34 of the Revised Code, and any bond or other security associated therewith.

HISTORY: 1980 H 264, eff. 7-25-80

Baldwin's Ohio Revised Code Annotated Currentness
Title XXXVII. Health--Safety--Morals
Chapter 3734. Solid and Hazardous Wastes (Refs & Annos)
Preliminary Provisions
3734.05 Licenses and permits; notice, meetings, and hearings

(A)(1) Except as provided in divisions (A)(4), (8), and (9) of this section, no person shall operate or maintain a solid waste facility without a license issued under this division by the board of health of the health district in which the facility is located or by the director of environmental protection when the health district in which the facility is located is not on the approved list under section 3734.08 of the Revised Code.

During the month of December, but before the first day of January of the next year, every person proposing to continue to operate an existing solid waste facility shall procure a license under this division to operate the facility for that year from the board of health of the health district in which the facility is located or, if the health district is not on the approved list under section 3734.08 of the Revised Code, from the director. The application for such a license shall be submitted to the board of health or to the director, as appropriate, on or before the last day of September of the year preceding that for which the license is sought. In addition to the application fee prescribed in division (A)(2) of this section, a person who submits an application after that date shall pay an additional ten per cent of the amount of the application fee for each week that the application is late. Late payment fees accompanying an application submitted to the board of health shall be credited to the special fund of the health district created in division (B) of section 3734.06 of the Revised Code, and late payment fees accompanying an application submitted to the director shall be credited to the general revenue fund. A person who has received a license, upon sale or disposition of a solid waste facility, and upon consent of the board of health and the director, may have the license transferred to another person. The board of health or the director may include such terms and conditions in a license or revision to a license as are appropriate to ensure compliance with this chapter and rules adopted under it. The terms and conditions may establish the authorized maximum daily waste receipts for the facility. Limitations on maximum daily waste receipts shall be specified in cubic yards of volume for the purpose of regulating the design, construction, and operation of solid waste facilities. Terms and conditions included in a license or revision to a license by a board of health shall be consistent with, and pertain only to the subjects addressed in, the rules adopted under division (A) of section 3734.02 and division (D) of section 3734.12 of the Revised Code.

(2)(a) Except as provided in divisions (A)(2)(b), (8), and (9) of this section, each person proposing to open a new solid waste facility or to modify an existing solid waste facility shall submit an application for a permit with accompanying detail plans and specifications to the environmental protection agency for required approval under the rules adopted by the director pursuant to division (A) of section 3734.02 of the Revised Code and applicable rules adopted under division (D) of section 3734.12 of the Revised Code at least two hundred seventy days

before proposed operation of the facility and shall concurrently make application for the issuance of a license under division (A)(1) of this section with the board of health of the health district in which the proposed facility is to be located.

(b) On and after the effective date of the rules adopted under division (A) of section 3734.02 of the Revised Code and division (D) of section 3734.12 of the Revised Code governing solid waste transfer facilities, each person proposing to open a new solid waste transfer facility or to modify an existing solid waste transfer facility shall submit an application for a permit with accompanying engineering detail plans, specifications, and information regarding the facility and its method of operation to the environmental protection agency for required approval under those rules at least two hundred seventy days before commencing proposed operation of the facility and concurrently shall make application for the issuance of a license under division (A)(1) of this section with the board of health of the health district in which the facility is located or proposed.

(c) Each application for a permit under division (A)(2)(a) or (b) of this section shall be accompanied by a nonrefundable application fee of four hundred dollars that shall be credited to the general revenue fund. Each application for an annual license under division (A)(1) or (2) of this section shall be accompanied by a nonrefundable application fee of one hundred dollars. If the application for an annual license is submitted to a board of health on the approved list under section 3734.08 of the Revised Code, the application fee shall be credited to the special fund of the health district created in division (B) of section 3734.06 of the Revised Code. If the application for an annual license is submitted to the director, the application fee shall be credited to the general revenue fund. If a permit or license is issued, the amount of the application fee paid shall be deducted from the amount of the permit fee due under division (Q) of section 3745.11 of the Revised Code or the amount of the license fee due under division (A)(1), (2), (3), (4), or (5) of section 3734.06 of the Revised Code.

(d) As used in divisions (A)(2)(d), (e), and (f) of this section, "modify" means any of the following:

(i) Any increase of more than ten per cent in the total capacity of a solid waste facility;

(ii) Any expansion of the limits of solid waste placement at a solid waste facility;

(iii) Any increase in the depth of excavation at a solid waste facility;

(iv) Any change in the technique of waste receipt or type of waste received at a solid waste facility that may endanger human health, as determined by the director by rules adopted in accordance with Chapter 119. of the Revised Code.

Not later than forty-five days after submitting an application under division (A)(2)(a) or (b) of this section for a permit to open a new or modify an existing solid waste facility, the applicant, in conjunction with an officer or employee of the environmental protection agency, shall hold a public meeting on the application within the county in which the new or modified solid waste facility is or is proposed to be located or within a contiguous county. Not less than thirty days before holding the public meeting on the application, the applicant shall publish notice of the

meeting in each newspaper of general circulation that is published in the county in which the facility is or is proposed to be located. If no newspaper of general circulation is published in the county, the applicant shall publish the notice in a newspaper of general circulation in the county. The notice shall contain the date, time, and location of the public meeting and a general description of the proposed new or modified facility. Not later than five days after publishing the notice, the applicant shall send by certified mail a copy of the notice and the date the notice was published to the director and the legislative authority of each municipal corporation, township, and county, and to the chief executive officer of each municipal corporation, in which the facility is or is proposed to be located. At the public meeting, the applicant shall provide information and describe the application and respond to comments or questions concerning the application, and the officer or employee of the agency shall describe the permit application process. At the public meeting, any person may submit written or oral comments on or objections to the application. Not more than thirty days after the public meeting, the applicant shall provide the director with a copy of a transcript of the full meeting, copies of any exhibits, displays, or other materials presented by the applicant at the meeting, and the original copy of any written comments submitted at the meeting.

(e) Except as provided in division (A)(2)(f) of this section, prior to taking an action, other than a proposed or final denial, upon an application submitted under division (A)(2)(a) of this section for a permit to open a new or modify an existing solid waste facility, the director shall hold a public information session and a public hearing on the application within the county in which the new or modified solid waste facility is or is proposed to be located or within a contiguous county. If the application is for a permit to open a new solid waste facility, the director shall hold the hearing not less than fourteen days after the information session. If the application is for a permit to modify an existing solid waste facility, the director may hold both the information session and the hearing on the same day unless any individual affected by the application requests in writing that the information session and the hearing not be held on the same day, in which case the director shall hold the hearing not less than fourteen days after the information session. The director shall publish notice of the public information session or public hearing not less than thirty days before holding the information session or hearing, as applicable. The notice shall be published in each newspaper of general circulation that is published in the county in which the facility is or is proposed to be located. If no newspaper of general circulation is published in the county, the director shall publish the notice in a newspaper of general circulation in the county. The notice shall contain the date, time, and location of the information session or hearing, as applicable, and a general description of the proposed new or modified facility. At the public information session, an officer or employee of the environmental protection agency shall describe the status of the permit application and be available to respond to comments or questions concerning the application. At the public hearing, any person may submit written or oral comments on or objections to the approval of the application. The applicant, or a representative of the applicant who has knowledge of the location, construction, and operation of the facility, shall attend the information session and public hearing to respond to comments or questions concerning the facility directed to the applicant or representative by the officer or employee of the environmental protection agency presiding at the information session and hearing.

(f) The solid waste management policy committee of a county or joint solid waste management district may adopt a resolution requesting expeditious consideration of a specific application submitted under division (A)(2)(a) of this section for a permit to modify an existing solid waste facility within the district. The resolution shall make the finding that expedited consideration of the application without the public information session and public hearing under division (A)(2)(e) of this section is in the public interest and will not endanger human health, as determined by the director by rules adopted in accordance with Chapter 119. of the Revised Code. Upon receiving such a resolution, the director, at the director's discretion, may issue a final action upon the application without holding a public information session or public hearing pursuant to division (A)(2)(e) of this section.

(3) Except as provided in division (A)(10) of this section, and unless the owner or operator of any solid waste facility, other than a solid waste transfer facility or a compost facility that accepts exclusively source separated yard wastes, that commenced operation on or before July 1, 1968, has obtained an exemption from the requirements of division (A)(3) of this section in accordance with division (G) of section 3734.02 of the Revised Code, the owner or operator shall submit to the director an application for a permit with accompanying engineering detail plans, specifications, and information regarding the facility and its method of operation for approval under rules adopted under division (A) of section 3734.02 of the Revised Code and applicable rules adopted under division (D) of section 3734.12 of the Revised Code in accordance with the following schedule:

(a) Not later than September 24, 1988, if the facility is located in the city of Garfield Heights or Parma in Cuyahoga county;

(b) Not later than December 24, 1988, if the facility is located in Delaware, Greene, Guernsey, Hamilton, Madison, Mahoning, Ottawa, or Vinton county;

(c) Not later than March 24, 1989, if the facility is located in Champaign, Clinton, Columbiana, Huron, Paulding, Stark, or Washington county, or is located in the city of Brooklyn or Cuyahoga Heights in Cuyahoga county;

(d) Not later than June 24, 1989, if the facility is located in Adams, Auglaize, Coshocton, Darke, Harrison, Lorain, Lucas, or Summit county or is located in Cuyahoga county outside the cities of Garfield Heights, Parma, Brooklyn, and Cuyahoga Heights;

(e) Not later than September 24, 1989, if the facility is located in Butler, Carroll, Erie, Lake, Portage, Putnam, or Ross county;

(f) Not later than December 24, 1989, if the facility is located in a county not listed in divisions (A)(3)(a) to (e) of this section;

(g) Notwithstanding divisions (A)(3)(a) to (f) of this section, not later than December 31, 1990, if the facility is a solid waste facility owned by a generator of solid wastes when the solid waste facility exclusively disposes of solid wastes generated at one or more premises owned by the generator regardless of whether the facility is located on a premises where the wastes are

generated and if the facility disposes of more than one hundred thousand tons of solid wastes per year, provided that any such facility shall be subject to division (A)(5) of this section.

(4) Except as provided in divisions (A)(8), (9), and (10) of this section, unless the owner or operator of any solid waste facility for which a permit was issued after July 1, 1968, but before January 1, 1980, has obtained an exemption from the requirements of division (A)(4) of this section under division (G) of section 3734.02 of the Revised Code, the owner or operator shall submit to the director an application for a permit with accompanying engineering detail plans, specifications, and information regarding the facility and its method of operation for approval under those rules.

(5) The director may issue an order in accordance with Chapter 3745. of the Revised Code to the owner or operator of a solid waste facility requiring the person to submit to the director updated engineering detail plans, specifications, and information regarding the facility and its method of operation for approval under rules adopted under division (A) of section 3734.02 of the Revised Code and applicable rules adopted under division (D) of section 3734.12 of the Revised Code if, in the director's judgment, conditions at the facility constitute a substantial threat to public health or safety or are causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination. Any person who receives such an order shall submit the updated engineering detail plans, specifications, and information to the director within one hundred eighty days after the effective date of the order.

(6) The director shall act upon an application submitted under division (A)(3) or (4) of this section and any updated engineering plans, specifications, and information submitted under division (A)(5) of this section within one hundred eighty days after receiving them. If the director denies any such permit application, the order denying the application or disapproving the plans shall include the requirements that the owner or operator submit a plan for closure and post-closure care of the facility to the director for approval within six months after issuance of the order, cease accepting solid wastes for disposal or transfer at the facility, and commence closure of the facility not later than one year after issuance of the order. If the director determines that closure of the facility within that one-year period would result in the unavailability of sufficient solid waste management facility capacity within the county or joint solid waste management district in which the facility is located to dispose of or transfer the solid waste generated within the district, the director in the order of denial or disapproval may postpone commencement of closure of the facility for such period of time as the director finds necessary for the board of county commissioners or directors of the district to secure access to or for there to be constructed within the district sufficient solid waste management facility capacity to meet the needs of the district, provided that the director shall certify in the director's order that postponing the date for commencement of closure will not endanger ground water or any property surrounding the facility, allow methane gas migration to occur, or cause or contribute to any other type of environmental damage.

If an emergency need for disposal capacity that may affect public health and safety exists as a result of closure of a facility under division (A)(6) of this section, the director may issue an order designating another solid waste facility to accept the wastes that would have been disposed of at the facility to be closed.

(7) If the director determines that standards more stringent than those applicable in rules adopted under division (A) of section 3734.02 of the Revised Code and division (D) of section 3734.12 of the Revised Code, or standards pertaining to subjects not specifically addressed by those rules, are necessary to ensure that a solid waste facility constructed at the proposed location will not cause a nuisance, cause or contribute to water pollution, or endanger public health or safety, the director may issue a permit for the facility with such terms and conditions as the director finds necessary to protect public health and safety and the environment. If a permit is issued, the director shall state in the order issuing it the specific findings supporting each such term or condition.

(8) Divisions (A)(1), (2)(a), (3), and (4) of this section do not apply to a solid waste compost facility that accepts exclusively source separated yard wastes and that is registered under division (C) of section 3734.02 of the Revised Code or, unless otherwise provided in rules adopted under division (N)(3) of section 3734.02 of the Revised Code, to a solid waste compost facility if the director has adopted rules establishing an alternative system for authorizing the establishment, operation, or modification of a solid waste compost facility under that division.

(9) Divisions (A)(1) to (7) of this section do not apply to scrap tire collection, storage, monocell, monofill, and recovery facilities. The approval of plans and specifications, as applicable, and the issuance of registration certificates, permits, and licenses for those facilities are subject to sections 3734.75 to 3734.78 of the Revised Code, as applicable, and section 3734.81 of the Revised Code.

(10) Divisions (A)(3) and (4) of this section do not apply to a solid waste incinerator that was placed into operation on or before October 12, 1994, and that is not authorized to accept and treat infectious wastes pursuant to division (B) of this section.

(B)(1) No person shall operate or maintain an infectious waste treatment facility without a license issued by the board of health of the health district in which the facility is located or by the director when the health district in which the facility is located is not on the approved list under section 3734.08 of the Revised Code.

(2)(a) During the month of December, but before the first day of January of the next year, every person proposing to continue to operate an existing infectious waste treatment facility shall procure a license to operate the facility for that year from the board of health of the health district in which the facility is located or, if the health district is not on the approved list under section 3734.08 of the Revised Code, from the director. The application for such a license shall be submitted to the board of health or to the director, as appropriate, on or before the last day of September of the year preceding that for which the license is sought. In addition to the application fee prescribed in division (B)(2)(c) of this section, a person who submits an application after that date shall pay an additional ten per cent of the amount of the application fee for each week that the application is late. Late payment fees accompanying an application submitted to the board of health shall be credited to the special infectious waste fund of the health district created in division (C) of section 3734.06 of the Revised Code, and late payment fees accompanying an application submitted to the director shall be credited to the general

revenue fund. A person who has received a license, upon sale or disposition of an infectious waste treatment facility and upon consent of the board of health and the director, may have the license transferred to another person. The board of health or the director may include such terms and conditions in a license or revision to a license as are appropriate to ensure compliance with the infectious waste provisions of this chapter and rules adopted under them.

(b) Each person proposing to open a new infectious waste treatment facility or to modify an existing infectious waste treatment facility shall submit an application for a permit with accompanying detail plans and specifications to the environmental protection agency for required approval under the rules adopted by the director pursuant to section 3734.021 of the Revised Code two hundred seventy days before proposed operation of the facility and concurrently shall make application for a license with the board of health of the health district in which the facility is or is proposed to be located. Not later than ninety days after receiving a complete application under division (B)(2)(b) of this section for a permit to open a new infectious waste treatment facility or modify an existing infectious waste treatment facility to expand its treatment capacity, or receiving a complete application under division (A)(2)(a) of this section for a permit to open a new solid waste incineration facility, or modify an existing solid waste incineration facility to also treat infectious wastes or to increase its infectious waste treatment capacity, that pertains to a facility for which a notation authorizing infectious waste treatment is included or proposed to be included in the solid waste incineration facility's license pursuant to division (B)(3) of this section, the director shall hold a public hearing on the application within the county in which the new or modified infectious waste or solid waste facility is or is proposed to be located or within a contiguous county. Not less than thirty days before holding the public hearing on the application, the director shall publish notice of the hearing in each newspaper that has general circulation and that is published in the county in which the facility is or is proposed to be located. If there is no newspaper that has general circulation and that is published in the county, the director shall publish the notice in a newspaper of general circulation in the county. The notice shall contain the date, time, and location of the public hearing and a general description of the proposed new or modified facility. At the public hearing, any person may submit written or oral comments on or objections to the approval or disapproval of the application. The applicant, or a representative of the applicant who has knowledge of the location, construction, and operation of the facility, shall attend the public hearing to respond to comments or questions concerning the facility directed to the applicant or representative by the officer or employee of the environmental protection agency presiding at the hearing.

(c) Each application for a permit under division (B)(2)(b) of this section shall be accompanied by a nonrefundable application fee of four hundred dollars that shall be credited to the general revenue fund. Each application for an annual license under division (B)(2)(a) of this section shall be accompanied by a nonrefundable application fee of one hundred dollars. If the application for an annual license is submitted to a board of health on the approved list under section 3734.08 of the Revised Code, the application fee shall be credited to the special infectious waste fund of the health district created in division (C) of section 3734.06 of the Revised Code. If the application for an annual license is submitted to the director, the application fee shall be credited to the general revenue fund. If a permit or license is issued, the amount of the application fee paid shall be deducted from the amount of the permit fee due under division (Q) of section 3745.11 of the

Revised Code or the amount of the license fee due under division (C) of section 3734.06 of the Revised Code.

(d) The director may issue an order in accordance with Chapter 3745. of the Revised Code to the owner or operator of an infectious waste treatment facility requiring the person to submit to the director updated engineering detail plans, specifications, and information regarding the facility and its method of operation for approval under rules adopted under section 3734.021 of the Revised Code if, in the director's judgment, conditions at the facility constitute a substantial threat to public health or safety or are causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination. Any person who receives such an order shall submit the updated engineering detail plans, specifications, and information to the director within one hundred eighty days after the effective date of the order.

(e) The director shall act on any updated engineering plans, specifications, and information submitted under division (B)(2)(d) of this section within one hundred eighty days after receiving them. If the director disapproves any such updated engineering plans, specifications, and information, the director shall include in the order disapproving the plans the requirement that the owner or operator cease accepting infectious wastes for treatment at the facility.

(3) Division (B) of this section does not apply to a generator of infectious wastes that meets any of the following conditions:

(a) Treats, by methods, techniques, and practices established by rules adopted under division (B)(2)(a) of section 3734.021 of the Revised Code, any of the following wastes:

(i) Infectious wastes that are generated on any premises that are owned or operated by the generator;

(ii) Infectious wastes that are generated by a generator who has staff privileges at a hospital as defined in section 3727.01 of the Revised Code;

(iii) Infectious wastes that are generated in providing care to a patient by an emergency medical services organization as defined in section 4765.01 of the Revised Code.

(b) Holds a license or renewal of a license to operate a crematory facility issued under Chapter 4717. and a permit issued under Chapter 3704. of the Revised Code;

(c) Treats or disposes of dead animals or parts thereof, or the blood of animals, and is subject to any of the following:

(i) Inspection under the "Federal Meat Inspection Act," 81 Stat. 584 (1967), 21 U.S.C.A. 603, as amended;

(ii) Chapter 918. of the Revised Code;

(iii) Chapter 953. of the Revised Code.

Nothing in division (B) of this section requires a facility that holds a license issued under division (A) of this section as a solid waste facility and that also treats infectious wastes by the same method, technique, or process to obtain a license under division (B) of this section as an infectious waste treatment facility. However, the solid waste facility license for the facility shall include the notation that the facility also treats infectious wastes.

The director shall not issue a permit to open a new solid waste incineration facility unless the proposed facility complies with the requirements for the location of new infectious waste incineration facilities established in rules adopted under division (B)(2)(b) of section 3734.021 of the Revised Code.

(C) Except for a facility or activity described in division (E)(3) of section 3734.02 of the Revised Code, a person who proposes to establish or operate a hazardous waste facility shall submit a complete application for a hazardous waste facility installation and operation permit and accompanying detail plans, specifications, and such information as the director may require to the environmental protection agency at least one hundred eighty days before the proposed beginning of operation of the facility. The applicant shall notify by certified mail the legislative authority of each municipal corporation, township, and county in which the facility is proposed to be located of the submission of the application within ten days after the submission or at such earlier time as the director may establish by rule. If the application is for a proposed new hazardous waste disposal or thermal treatment facility, the applicant also shall give actual notice of the general design and purpose of the facility to the legislative authority of each municipal corporation, township, and county in which the facility is proposed to be located at least ninety days before the permit application is submitted to the environmental protection agency.

In accordance with rules adopted under section 3734.12 of the Revised Code, prior to the submission of a complete application for a hazardous waste facility installation and operation permit, the applicant shall hold at least one meeting in the township or municipal corporation in which the facility is proposed to be located, whichever is geographically closer to the proposed location of the facility. The meeting shall be open to the public and shall be held to inform the community of the proposed hazardous waste management activities and to solicit questions from the community concerning the activities.

(D)(1) Except as provided in section 3734.123 of the Revised Code, upon receipt of a complete application for a hazardous waste facility installation and operation permit under division (C) of this section, the director shall consider the application and accompanying information to determine whether the application complies with agency rules and the requirements of division (D)(2) of this section. After making a determination, the director shall issue either a draft permit or a notice of intent to deny the permit. The director, in accordance with rules adopted under section 3734.12 of the Revised Code or with rules adopted to implement Chapter 3745. of the Revised Code, shall provide public notice of the application and the draft permit or the notice of intent to deny the permit, provide an opportunity for public comments, and, if significant interest is shown, schedule a public meeting in the county in which the facility is proposed to be located and give public notice of the date, time, and location of the public meeting in a newspaper of general circulation in that county.

(2) The director shall not approve an application for a hazardous waste facility installation and operation permit or an application for a modification under division (I)(3) of this section unless the director finds and determines as follows:

(a) The nature and volume of the waste to be treated, stored, or disposed of at the facility;

(b) That the facility complies with the director's hazardous waste standards adopted pursuant to section 3734.12 of the Revised Code;

(c) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of various alternatives, and other pertinent considerations;

(d) That the facility represents the minimum risk of all of the following:

(i) Fires or explosions from treatment, storage, or disposal methods;

(ii) Release of hazardous waste during transportation of hazardous waste to or from the facility;

(iii) Adverse impact on the public health and safety.

(e) That the facility will comply with this chapter and Chapters 3704. and 6111. of the Revised Code and all rules and standards adopted under them;

(f) That if the owner of the facility, the operator of the facility, or any other person in a position with the facility from which the person may influence the installation and operation of the facility has been involved in any prior activity involving transportation, treatment, storage, or disposal of hazardous waste, that person has a history of compliance with this chapter and Chapters 3704. and 6111. of the Revised Code and all rules and standards adopted under them, the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921, as amended, and all regulations adopted under it, and similar laws and rules of other states if any such prior operation was located in another state that demonstrates sufficient reliability, expertise, and competency to operate a hazardous waste facility under the applicable provisions of this chapter and Chapters 3704. and 6111. of the Revised Code, the applicable rules and standards adopted under them, and terms and conditions of a hazardous waste facility installation and operation permit, given the potential for harm to the public health and safety and the environment that could result from the irresponsible operation of the facility. For off-site facilities, as defined in section 3734.41 of the Revised Code, the director may use the investigative reports of the attorney general prepared pursuant to section 3734.42 of the Revised Code as a basis for making a finding and determination under division (D)(2)(f) of this section.

(g) That the active areas within a new hazardous waste facility where acute hazardous waste as listed in 40 C.F.R. 261.33 (e), as amended, or organic waste that is toxic and is listed under 40 C.F.R. 261, as amended, is being stored, treated, or disposed of and where the aggregate of the storage design capacity and the disposal design capacity of all hazardous waste in those areas is

greater than two hundred fifty thousand gallons, are not located or operated within any of the following:

(i) Two thousand feet of any residence, school, hospital, jail, or prison;

(ii) Any naturally occurring wetland;

(iii) Any flood hazard area if the applicant cannot show that the facility will be designed, constructed, operated, and maintained to prevent washout by a one-hundred-year flood.

Division (D)(2)(g) of this section does not apply to the facility of any applicant who demonstrates to the director that the limitations specified in that division are not necessary because of the nature or volume of the waste and the manner of management applied, the facility will impose no substantial danger to the health and safety of persons occupying the structures listed in division (D)(2)(g)(i) of this section, and the facility is to be located or operated in an area where the proposed hazardous waste activities will not be incompatible with existing land uses in the area.

(h) That the facility will not be located within the boundaries of a state park established or dedicated under Chapter 1541. of the Revised Code, a state park purchase area established under section 1541.02 of the Revised Code, any unit of the national park system, or any property that lies within the boundaries of a national park or recreation area, but that has not been acquired or is not administered by the secretary of the United States department of the interior, located in this state, or any candidate area located in this state identified for potential inclusion in the national park system in the edition of the "national park system plan" submitted under paragraph (b) of section 8 of "The Act of August 18, 1970," 84 Stat. 825, 16 U.S.C.A. 1a-5, as amended, current at the time of filing of the application for the permit, unless the facility will be used exclusively for the storage of hazardous waste generated within the park or recreation area in conjunction with the operation of the park or recreation area. Division (D)(2)(h) of this section does not apply to the facility of any applicant for modification of a permit unless the modification application proposes to increase the land area included in the facility or to increase the quantity of hazardous waste that will be treated, stored, or disposed of at the facility.

(3) Not later than one hundred eighty days after the end of the public comment period, the director, without prior hearing, shall issue or deny the permit in accordance with Chapter 3745. of the Revised Code. If the director approves an application for a hazardous waste facility installation and operation permit, the director shall issue the permit, upon such terms and conditions as the director finds are necessary to ensure the construction and operation of the hazardous waste facility in accordance with the standards of this section.

(E) No political subdivision of this state shall require any additional zoning or other approval, consent, permit, certificate, or condition for the construction or operation of a hazardous waste facility authorized by a hazardous waste facility installation and operation permit issued pursuant to this chapter, nor shall any political subdivision adopt or enforce any law, ordinance, or rule that in any way alters, impairs, or limits the authority granted in the permit.

(F) The director may issue a single hazardous waste facility installation and operation permit to a person who operates two or more adjoining facilities where hazardous waste is stored, treated, or disposed of if the application includes detail plans, specifications, and information on all facilities. For the purposes of this section, "adjoining" means sharing a common boundary, separated only by a public road, or in such proximity that the director determines that the issuance of a single permit will not create a hazard to the public health or safety or the environment.

(G) No person shall falsify or fail to keep or submit any plans, specifications, data, reports, records, manifests, or other information required to be kept or submitted to the director by this chapter or the rules adopted under it.

(H)(1) Each person who holds an installation and operation permit issued under this section and who wishes to obtain a permit renewal shall submit a completed application for an installation and operation permit renewal and any necessary accompanying general plans, detail plans, specifications, and such information as the director may require to the director no later than one hundred eighty days prior to the expiration date of the existing permit or upon a later date prior to the expiration of the existing permit if the permittee can demonstrate good cause for the late submittal. The director shall consider the application and accompanying information, inspection reports of the facility, results of performance tests, a report regarding the facility's compliance or noncompliance with the terms and conditions of its permit and rules adopted by the director under this chapter, and such other information as is relevant to the operation of the facility and shall issue a draft renewal permit or a notice of intent to deny the renewal permit. The director, in accordance with rules adopted under this section or with rules adopted to implement Chapter 3745. of the Revised Code, shall give public notice of the application and draft renewal permit or notice of intent to deny the renewal permit, provide for the opportunity for public comments within a specified time period, schedule a public meeting in the county in which the facility is located if significant interest is shown, and give public notice of the public meeting.

(2) Within sixty days after the public meeting or close of the public comment period, the director, without prior hearing, shall issue or deny the renewal permit in accordance with Chapter 3745. of the Revised Code. The director shall not issue a renewal permit unless the director determines that the facility under the existing permit has a history of compliance with this chapter, rules adopted under it, the existing permit, or orders entered to enforce such requirements that demonstrates sufficient reliability, expertise, and competency to operate the facility henceforth under this chapter, rules adopted under it, and the renewal permit. If the director approves an application for a renewal permit, the director shall issue the permit subject to the payment of the annual permit fee required under division (E) of section 3734.02 of the Revised Code and upon such terms and conditions as the director finds are reasonable to ensure that continued operation, maintenance, closure, and post-closure care of the hazardous waste facility are in accordance with the rules adopted under section 3734.12 of the Revised Code.

(3) An installation and operation permit renewal application submitted to the director that also contains or would constitute an application for a modification shall be acted upon by the director in accordance with division (I) of this section in the same manner as an application for a modification. In approving or disapproving the renewal portion of a permit renewal application

containing an application for a modification, the director shall apply the criteria established under division (H)(2) of this section.

(4) An application for renewal or modification of a permit that does not contain an application for a modification as described in divisions (I)(3)(a) to (d) of this section shall not be subject to division (D)(2) of this section.

(I)(1) As used in this section, "modification" means a change or alteration to a hazardous waste facility or its operations that is inconsistent with or not authorized by its existing permit or authorization to operate. Modifications shall be classified as Class 1, 2, or 3 modifications in accordance with rules adopted under division (K) of this section. Modifications classified as Class 3 modifications, in accordance with rules adopted under that division, shall be further classified by the director as either Class 3 modifications that are to be approved or disapproved by the director under divisions (I)(3)(a) to (d) of this section or as Class 3 modifications that are to be approved or disapproved by the director under division (I)(5) of this section. Not later than thirty days after receiving a request for a modification under division (I)(4) of this section that is not listed in Appendix I to 40 C.F.R. 270.42 or in rules adopted under division (K) of this section, the director shall classify the modification and shall notify the owner or operator of the facility requesting the modification of the classification. Notwithstanding any other law to the contrary, a modification that involves the transfer of a hazardous waste facility installation and operation permit to a new owner or operator for any off-site facility as defined in section 3734.41 of the Revised Code shall be classified as a Class 3 modification. The transfer of a hazardous waste facility installation and operation permit to a new owner or operator for a facility that is not an off-site facility shall be classified as a Class 1 modification requiring prior approval of the director.

(2) Except as provided in section 3734.123 of the Revised Code, a hazardous waste facility installation and operation permit may be modified at the request of the director or upon the written request of the permittee only if any of the following applies:

(a) The permittee desires to accomplish alterations, additions, or deletions to the permitted facility or to undertake alterations, additions, deletions, or activities that are inconsistent with or not authorized by the existing permit;

(b) New information or data justify permit conditions in addition to or different from those in the existing permit;

(c) The standards, criteria, or rules upon which the existing permit is based have been changed by new, amended, or rescinded standards, criteria, or rules, or by judicial decision after the existing permit was issued, and the change justifies permit conditions in addition to or different from those in the existing permit;

(d) The permittee proposes to transfer the permit to another person.

(3) The director shall approve or disapprove an application for a modification in accordance with division (D)(2) of this section and rules adopted under division (K) of this section for all of the following categories of Class 3 modifications:

(a) Authority to conduct treatment, storage, or disposal at a site, location, or tract of land that has not been authorized for the proposed category of treatment, storage, or disposal activity by the facility's permit;

(b) Modification or addition of a hazardous waste management unit, as defined in rules adopted under section 3734.12 of the Revised Code, that results in an increase in a facility's storage capacity of more than twenty-five per cent over the capacity authorized by the facility's permit, an increase in a facility's treatment rate of more than twenty-five per cent over the rate so authorized, or an increase in a facility's disposal capacity over the capacity so authorized. The authorized disposal capacity for a facility shall be calculated from the approved design plans for the disposal units at that facility. In no case during a five-year period shall a facility's storage capacity or treatment rate be modified to increase by more than twenty-five per cent in the aggregate without the director's approval in accordance with division (D)(2) of this section. Notwithstanding any provision of division (I) of this section to the contrary, a request for modification of a facility's annual total waste receipt limit shall be classified and approved or disapproved by the director under division (I)(5) of this section.

(c) Authority to add any of the following categories of regulated activities not previously authorized at a facility by the facility's permit: storage at a facility not previously authorized to store hazardous waste, treatment at a facility not previously authorized to treat hazardous waste, or disposal at a facility not previously authorized to dispose of hazardous waste; or authority to add a category of hazardous waste management unit not previously authorized at the facility by the facility's permit. Notwithstanding any provision of division (I) of this section to the contrary, a request for authority to add or to modify an activity or a hazardous waste management unit for the purposes of performing a corrective action shall be classified and approved or disapproved by the director under division (I)(5) of this section.

(d) Authority to treat, store, or dispose of waste types listed or characterized as reactive or explosive, in rules adopted under section 3734.12 of the Revised Code, or any acute hazardous waste listed in 40 C.F.R. 261.33(e), as amended, at a facility not previously authorized to treat, store, or dispose of those types of wastes by the facility's permit unless the requested authority is limited to wastes that no longer exhibit characteristics meeting the criteria for listing or characterization as reactive or explosive wastes, or for listing as acute hazardous waste, but still are required to carry those waste codes as established in rules adopted under section 3734.12 of the Revised Code because of the requirements established in 40 C.F.R. 261(a) and (e), as amended, that is, the "mixture," "derived-from," or "contained-in" regulations.

(4) A written request for a modification from the permittee shall be submitted to the director and shall contain such information as is necessary to support the request. Requests for modifications shall be acted upon by the director in accordance with this section and rules adopted under it.

(5) Class 1 modification applications that require prior approval of the director, as provided in division (I)(1) of this section or as determined in accordance with rules adopted under division (K) of this section, Class 2 modification applications, and Class 3 modification applications that are not described in divisions (I)(3)(a) to (d) of this section shall be approved or disapproved by the director in accordance with rules adopted under division (K) of this section. The board of county commissioners of the county, the board of township trustees of the township, and the city manager or mayor of the municipal corporation in which a hazardous waste facility is located shall receive notification of any application for a modification for that facility and shall be considered as interested persons with respect to the director's consideration of the application.

As used in division (I) of this section:

(a) "Owner" means the person who owns a majority or controlling interest in a facility.

(b) "Operator" means the person who is responsible for the overall operation of a facility.

The director shall approve or disapprove an application for a Class 1 modification that requires the director's approval within sixty days after receiving the request for modification. The director shall approve or disapprove an application for a Class 2 modification within three hundred days after receiving the request for modification. The director shall approve or disapprove an application for a Class 3 modification within three hundred sixty-five days after receiving the request for modification.

(6) The approval or disapproval by the director of a Class 1 modification application is not a final action that is appealable under Chapter 3745. of the Revised Code. The approval or disapproval by the director of a Class 2 modification or a Class 3 modification is a final action that is appealable under that chapter. In approving or disapproving a request for a modification, the director shall consider all comments pertaining to the request that are received during the public comment period and the public meetings. The administrative record for appeal of a final action by the director in approving or disapproving a request for a modification shall include all comments received during the public comment period relating to the request for modification, written materials submitted at the public meetings relating to the request, and any other documents related to the director's action.

(7) Notwithstanding any other provision of law to the contrary, a change or alteration to a hazardous waste facility described in division (E)(3)(a) or (b) of section 3734.02 of the Revised Code, or its operations, is a modification for the purposes of this section. An application for a modification at such a facility shall be submitted, classified, and approved or disapproved in accordance with divisions (I)(1) to (6) of this section in the same manner as a modification to a hazardous waste facility installation and operation permit.

(J)(1) Except as provided in division (J)(2) of this section, an owner or operator of a hazardous waste facility that is operating in accordance with a permit by rule under rules adopted by the director under division (E)(3)(b) of section 3734.02 of the Revised Code shall submit either a hazardous waste facility installation and operation permit application for the facility or a modification application, whichever is required under division (J)(1)(a) or (b) of this section,

within one hundred eighty days after the director has requested the application or upon a later date if the owner or operator demonstrates to the director good cause for the late submittal.

(a) If the owner or operator does not have a hazardous waste facility installation and operation permit for any hazardous waste treatment, storage, or disposal activities at the facility, the owner or operator shall submit an application for such a permit to the director for the activities authorized by the permit by rule. Notwithstanding any other provision of law to the contrary, the director shall approve or disapprove the application for the permit in accordance with the procedures governing the approval or disapproval of permit renewals under division (H) of this section.

(b) If the owner or operator has a hazardous waste facility installation and operation permit for hazardous waste treatment, storage, or disposal activities at the facility other than those authorized by the permit by rule, the owner or operator shall submit to the director a request for modification in accordance with division (I) of this section. Notwithstanding any other provision of law to the contrary, the director shall approve or disapprove the modification application in accordance with division (I)(5) of this section.

(2) The owner or operator of a boiler or industrial furnace that is conducting thermal treatment activities in accordance with a permit by rule under rules adopted by the director under division (E)(3)(b) of section 3734. 02 of the Revised Code shall submit a hazardous waste facility installation and operation permit application if the owner or operator does not have such a permit for any hazardous waste treatment, storage, or disposal activities at the facility or, if the owner or operator has such a permit for hazardous waste treatment, storage, or disposal activities at the facility other than thermal treatment activities authorized by the permit by rule, a modification application to add those activities authorized by the permit by rule, whichever is applicable, within one hundred eighty days after the director has requested the submission of the application or upon a later date if the owner or operator demonstrates to the director good cause for the late submittal. The application shall be accompanied by information necessary to support the request. The director shall approve or disapprove an application for a hazardous waste facility installation and operation permit in accordance with division (D) of this section and approve or disapprove an application for a modification in accordance with division (I)(3) of this section, except that the director shall not disapprove an application for the thermal treatment activities on the basis of the criteria set forth in division (D)(2)(g) or (h) of this section.

(3) As used in division (J) of this section:

(a) "Modification application" means a request for a modification submitted in accordance with division (I) of this section.

(b) "Thermal treatment," "boiler," and "industrial furnace" have the same meanings as in rules adopted under section 3734.12 of the Revised Code.

(K) The director shall adopt, and may amend, suspend, or rescind, rules in accordance with Chapter 119. of the Revised Code in order to implement divisions (H) and (I) of this section. Except when in actual conflict with this section, rules governing the classification of and

procedures for the modification of hazardous waste facility installation and operation permits shall be substantively and procedurally identical to the regulations governing hazardous waste facility permitting and permit modifications adopted under the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921, as amended.

CREDIT(S)

(2012 S 294, eff. 9-5-12; 2011 H 153, eff. 9-29-11; 2009 H 1, eff. 10-16-09; 2003 H 95, eff. 9-26-03; 1999 H 283, eff. 9-29-99; 1998 S 117, eff. 8-5-98; 1996 H 435, eff. 8-20-96; 1994 H 685, eff. 3-30-95; 1994 H 98, eff. 3-30-95; 1994 H 7, eff. 10-12-94; 1993 S 153, eff. 10-29-93; 1993 S 165, H 152; 1992 H 391, H 723, H 604, H 149; 1990 H 656; 1988 S 76, H 592, S 243; 1986 H 412, H 428; 1984 H 576, H 506; 1980 S 269; 1978 S 266; 1972 S 397; 132 v H 623)

UNCODIFIED LAW

R.C. § 3772.26

Baldwin's Ohio Revised Code Annotated Currentness
Title XXXVII. Health--Safety--Morals
Chapter 3772. Ohio Casino Control Commission (Refs & Annos)
3772.26 Local laws and regulations

(A) Each of the four casino facilities shall be subject to all applicable state laws and local ordinances related to health and building codes, or any related requirements and provisions. Notwithstanding the foregoing, no local zoning, land use laws, subdivision regulations or similar provisions shall prohibit the development or operation of the four casino facilities, or casino gaming set forth herein, provided that no casino facility shall be located in a district zoned exclusively residential as of January 1, 2009.

(B) No municipal corporation or other political subdivision in which a casino facility is located shall be required to provide or improve infrastructure, appropriate property, or otherwise take any affirmative legislative or administrative action to assist development or operation of a casino facility, regardless of the source of funding but if such action is essential to the development or operation of a casino facility, the municipal corporation or other political subdivision may charge the casino operator for any costs incurred for such action.

CREDIT(S)

(2010 H 519, eff. 9-10-10)

R.C. § 3772.26, OH ST § 3772.26

Current through 2013 Files 24 and 26 to 38 of the 130th GA (2013-2014).

END OF DOCUMENT

Baldwin's Ohio Revised Code Annotated Currentness
Title XXXVII. Health--Safety--Morals
Chapter 3781. Building Standards--General Provisions (Refs & Annos)
Procedural and Miscellaneous Provisions
3781.184 Manufactured home construction standards

(A) Every manufactured home, as defined in division (C)(4) of section 3781.06 of the Revised Code, shall be constructed in accordance with the federal construction and safety standards established by the secretary of housing and urban development pursuant to the "Manufactured Housing Construction and Safety Standards Act of 1974," 88 Stat. 700, 42 U.S.C.A. 5401, 5403. The federal standards shall be the exclusive construction and safety standards in this state and neither the state nor any political subdivision of the state may establish any other standard governing the construction of manufactured homes.

(B) Every manufactured home constructed in accordance with the federal standards specified in division (A) of this section, shall have a permanent label or tag affixed to it, as specified in 42 U.S.C.A. 5415, certifying compliance with the federal construction and safety standards.

(C)(1) Every manufactured home that is constructed in accordance with the federal standards specified in division (A) of this section and is a permanently sited manufactured home as defined in division (C)(6) of section 3781.06 of the Revised Code shall be a permitted use in any district or zone in which a political subdivision permits single-family homes, and no political subdivision may prohibit or restrict the location of a permanently sited manufactured home in any zone or district in which a single-family home is permitted.

(2) This division does not limit the authority of a political subdivision to do either of the following:

(a) Require that a permanently sited manufactured home comply with all zoning requirements that are uniformly imposed on all single-family residences within the district or zone in which the permanently sited manufactured home is or is to be located, except requirements that specify a minimum roof pitch and requirements that do not comply with the standards established pursuant to the "Manufactured Housing Construction and Safety Standards Act of 1974," 88 Stat. 700, 42 U.S.C.A. 5401;

(b) Prohibit from any residential district or zone, travel trailers, park trailers, and mobile homes, as these terms are defined in section 4501.01 of the Revised Code, and manufactured homes that do not qualify as permanently sited manufactured homes.

(D) This section does not prohibit a private landowner from incorporating a restrictive covenant in a deed, prohibiting the inclusion on the conveyed land of manufactured homes, as defined in division (C)(4) or (6) of section 3781.06 of the Revised Code, or of travel trailers, park trailers,

and mobile homes, as defined in section 4501.01 of the Revised Code. This division does not create a new cause of action or substantive legal right for a private landowner to incorporate such a restrictive covenant in a deed.

CREDIT(S)

(1998 S 142, eff. 3-30-99)

R.C. § 5103.0318

Baldwin's Ohio Revised Code Annotated Currentness
Title LI. Public Welfare
Chapter 5103. Placement of Children (Refs & Annos)
Foster Caregivers and Foster Home Certificates
5103.0318 Foster homes considered residential property use

Any certified foster home shall be considered to be a residential use of property for purposes of municipal, county, and township zoning and shall be a permitted use in all zoning districts in which residential uses are permitted. No municipal, county, or township zoning regulation shall require a conditional permit or any other special exception certification for any certified foster home.

CREDIT(S)

(2000 H 332, eff. 1-1-01)

R.C. § 5104.054

Baldwin's Ohio Revised Code Annotated Currentness
Title LI. Public Welfare
Chapter 5104. Child Day Care (Refs & Annos)
Miscellaneous Provisions
⇔5104.054 Certified and uncertified homes considered residential use of property for zoning purposes

<Note: See also version(s) of this section with earlier effective date(s).>

Any type B family day-care home, whether licensed or not licensed by the director of job and family services, shall be considered to be a residential use of property for purposes of municipal, county, and township zoning and shall be a permitted use in all zoning districts in which residential uses are permitted. No municipal, county, or township zoning regulations shall require a conditional use permit or any other special exception certification for any such type B family day-care home.

CREDIT(S)

(2012 S 316, § 120.01, eff. 1-1-14; 1985 H 435, eff. 9-1-86)

Baldwin's Ohio Revised Code Annotated Currentness
Title LI. Public Welfare
Chapter 5123. Department of Developmental Disabilities (Refs & Annos)
Care Outside Hospital; Residential Facilities
5123.19 Licensing of residential facilities

(A) As used in sections 5123.19 to 5123.20 of the Revised Code:

(1) "Independent living arrangement" means an arrangement in which a mentally retarded or developmentally disabled person resides in an individualized setting chosen by the person or the person's guardian, which is not dedicated principally to the provision of residential services for mentally retarded or developmentally disabled persons, and for which no financial support is received for rendering such service from any governmental agency by a provider of residential services.

(2) "Intermediate care facility for the mentally retarded" has the same meaning as in section 1905(d) of the "Social Security Act," 101 Stat. 1330-204 (1987), 42 U.S.C. 1396d(d), as amended.

(3) "Licensee" means the person or government agency that has applied for a license to operate a residential facility and to which the license was issued under this section.

(4) "Political subdivision" means a municipal corporation, county, or township.

(5) "Related party" has the same meaning as in section 5123.16 of the Revised Code except that "provider" as used in the definition of "related party" means a person or government entity that held or applied for a license to operate a residential facility, rather than a person or government entity certified to provide supported living.

(6)(a) Except as provided in division (A)(6)(b) of this section, "residential facility" means a home or facility, including a facility certified as an intermediate care facility for the mentally retarded, in which an individual with mental retardation or a developmental disability resides.

(b) "Residential facility" does not mean any of the following:

(i) The home of a relative or legal guardian in which an individual with mental retardation or a developmental disability resides;

(ii) A respite care home certified under section 5126.05 of the Revised Code;

(iii) A county home or district home operated pursuant to Chapter 5155. of the Revised Code;

(iv) A dwelling in which the only residents with mental retardation or developmental disabilities are in independent living arrangements or are being provided supported living.

(B) Every person or government agency desiring to operate a residential facility shall apply for licensure of the facility to the director of developmental disabilities unless the residential facility is subject to section 3721.02, 5103.03, 5119.20, or division (A)(9)(b) of section 5119.22 of the Revised Code.

(C) Subject to section 5123.196 of the Revised Code, the director of developmental disabilities shall license the operation of residential facilities. An initial license shall be issued for a period that does not exceed one year, unless the director denies the license under division (D) of this section. A license shall be renewed for a period that does not exceed three years, unless the director refuses to renew the license under division (D) of this section. The director, when issuing or renewing a license, shall specify the period for which the license is being issued or renewed. A license remains valid for the length of the licensing period specified by the director, unless the license is terminated, revoked, or voluntarily surrendered.

(D) If it is determined that an applicant or licensee is not in compliance with a provision of this chapter that applies to residential facilities or the rules adopted under such a provision, the director may deny issuance of a license, refuse to renew a license, terminate a license, revoke a license, issue an order for the suspension of admissions to a facility, issue an order for the placement of a monitor at a facility, issue an order for the immediate removal of residents, or take any other action the director considers necessary consistent with the director's authority under this chapter regarding residential facilities. In the director's selection and administration of the sanction to be imposed, all of the following apply:

(1) The director may deny, refuse to renew, or revoke a license, if the director determines that the applicant or licensee has demonstrated a pattern of serious noncompliance or that a violation creates a substantial risk to the health and safety of residents of a residential facility.

(2) The director may terminate a license if more than twelve consecutive months have elapsed since the residential facility was last occupied by a resident or a notice required by division (K) of this section is not given.

(3) The director may issue an order for the suspension of admissions to a facility for any violation that may result in sanctions under division (D)(1) of this section and for any other violation specified in rules adopted under division (H)(2) of this section. If the suspension of admissions is imposed for a violation that may result in sanctions under division (D)(1) of this section, the director may impose the suspension before providing an opportunity for an adjudication under Chapter 119. of the Revised Code. The director shall lift an order for the suspension of admissions when the director determines that the violation that formed the basis for the order has been corrected.

(4) The director may order the placement of a monitor at a residential facility for any violation specified in rules adopted under division (H)(2) of this section. The director shall lift the order

when the director determines that the violation that formed the basis for the order has been corrected.

(5) If the director determines that two or more residential facilities owned or operated by the same person or government entity are not being operated in compliance with a provision of this chapter that applies to residential facilities or the rules adopted under such a provision, and the director's findings are based on the same or a substantially similar action, practice, circumstance, or incident that creates a substantial risk to the health and safety of the residents, the director shall conduct a survey as soon as practicable at each residential facility owned or operated by that person or government entity. The director may take any action authorized by this section with respect to any facility found to be operating in violation of a provision of this chapter that applies to residential facilities or the rules adopted under such a provision.

(6) When the director initiates license revocation proceedings, no opportunity for submitting a plan of correction shall be given. The director shall notify the licensee by letter of the initiation of the proceedings. The letter shall list the deficiencies of the residential facility and inform the licensee that no plan of correction will be accepted. The director shall also send a copy of the letter to the county board of developmental disabilities. The county board shall send a copy of the letter to each of the following:

(a) Each resident who receives services from the licensee;

(b) The guardian of each resident who receives services from the licensee if the resident has a guardian;

(c) The parent or guardian of each resident who receives services from the licensee if the resident is a minor.

(7) Pursuant to rules which shall be adopted in accordance with Chapter 119. of the Revised Code, the director may order the immediate removal of residents from a residential facility whenever conditions at the facility present an immediate danger of physical or psychological harm to the residents.

(8) In determining whether a residential facility is being operated in compliance with a provision of this chapter that applies to residential facilities or the rules adopted under such a provision, or whether conditions at a residential facility present an immediate danger of physical or psychological harm to the residents, the director may rely on information obtained by a county board of developmental disabilities or other governmental agencies.

(9) In proceedings initiated to deny, refuse to renew, or revoke licenses, the director may deny, refuse to renew, or revoke a license regardless of whether some or all of the deficiencies that prompted the proceedings have been corrected at the time of the hearing.

(E) The director shall establish a program under which public notification may be made when the director has initiated license revocation proceedings or has issued an order for the suspension of admissions, placement of a monitor, or removal of residents. The director shall adopt rules in

accordance with Chapter 119. of the Revised Code to implement this division. The rules shall establish the procedures by which the public notification will be made and specify the circumstances for which the notification must be made. The rules shall require that public notification be made if the director has taken action against the facility in the eighteen-month period immediately preceding the director's latest action against the facility and the latest action is being taken for the same or a substantially similar violation of a provision of this chapter that applies to residential facilities or the rules adopted under such a provision. The rules shall specify a method for removing or amending the public notification if the director's action is found to have been unjustified or the violation at the residential facility has been corrected.

(F)(1) Except as provided in division (F)(2) of this section, appeals from proceedings initiated to impose a sanction under division (D) of this section shall be conducted in accordance with Chapter 119. of the Revised Code.

(2) Appeals from proceedings initiated to order the suspension of admissions to a facility shall be conducted in accordance with Chapter 119. of the Revised Code, unless the order was issued before providing an opportunity for an adjudication, in which case all of the following apply:

(a) The licensee may request a hearing not later than ten days after receiving the notice specified in section 119.07 of the Revised Code.

(b) If a timely request for a hearing that includes the licensee's current address is made, the hearing shall commence not later than thirty days after the department receives the request.

(c) After commencing, the hearing shall continue uninterrupted, except for Saturdays, Sundays, and legal holidays, unless other interruptions are agreed to by the licensee and the director.

(d) If the hearing is conducted by a hearing examiner, the hearing examiner shall file a report and recommendations not later than ten days after the last of the following:

(i) The close of the hearing;

(ii) If a transcript of the proceedings is ordered, the hearing examiner receives the transcript;

(iii) If post-hearing briefs are timely filed, the hearing examiner receives the briefs.

(e) A copy of the written report and recommendation of the hearing examiner shall be sent, by certified mail, to the licensee and the licensee's attorney, if applicable, not later than five days after the report is filed.

(f) Not later than five days after the hearing examiner files the report and recommendations, the licensee may file objections to the report and recommendations.

(g) Not later than fifteen days after the hearing examiner files the report and recommendations, the director shall issue an order approving, modifying, or disapproving the report and recommendations.

(h) Notwithstanding the pendency of the hearing, the director shall lift the order for the suspension of admissions when the director determines that the violation that formed the basis for the order has been corrected.

(G) Neither a person or government agency whose application for a license to operate a residential facility is denied nor a related party of the person or government agency may apply for a license to operate a residential facility before the date that is one year after the date of the denial. Neither a licensee whose residential facility license is revoked nor a related party of the licensee may apply for a residential facility license before the date that is five years after the date of the revocation.

(H) In accordance with Chapter 119. of the Revised Code, the director shall adopt and may amend and rescind rules for licensing and regulating the operation of residential facilities. The rules for residential facilities that are intermediate care facilities for the mentally retarded may differ from those for other residential facilities. The rules shall establish and specify the following:

(1) Procedures and criteria for issuing and renewing licenses, including procedures and criteria for determining the length of the licensing period that the director must specify for each license when it is issued or renewed;

(2) Procedures and criteria for denying, refusing to renew, terminating, and revoking licenses and for ordering the suspension of admissions to a facility, placement of a monitor at a facility, and the immediate removal of residents from a facility;

(3) Fees for issuing and renewing licenses, which shall be deposited into the program fee fund created under section 5123.033 of the Revised Code;

(4) Procedures for surveying residential facilities;

(5) Requirements for the training of residential facility personnel;

(6) Classifications for the various types of residential facilities;

(7) Certification procedures for licensees and management contractors that the director determines are necessary to ensure that they have the skills and qualifications to properly operate or manage residential facilities;

(8) The maximum number of persons who may be served in a particular type of residential facility;

(9) Uniform procedures for admission of persons to and transfers and discharges of persons from residential facilities;

(10) Other standards for the operation of residential facilities and the services provided at residential facilities;

(11) Procedures for waiving any provision of any rule adopted under this section.

(I) Before issuing a license, the director of the department or the director's designee shall conduct a survey of the residential facility for which application is made. The director or the director's designee shall conduct a survey of each licensed residential facility at least once during the period the license is valid and may conduct additional inspections as needed. A survey includes but is not limited to an on-site examination and evaluation of the residential facility, its personnel, and the services provided there.

In conducting surveys, the director or the director's designee shall be given access to the residential facility; all records, accounts, and any other documents related to the operation of the facility; the licensee; the residents of the facility; and all persons acting on behalf of, under the control of, or in connection with the licensee. The licensee and all persons on behalf of, under the control of, or in connection with the licensee shall cooperate with the director or the director's designee in conducting the survey.

Following each survey, unless the director initiates a license revocation proceeding, the director or the director's designee shall provide the licensee with a report listing any deficiencies, specifying a timetable within which the licensee shall submit a plan of correction describing how the deficiencies will be corrected, and, when appropriate, specifying a timetable within which the licensee must correct the deficiencies. After a plan of correction is submitted, the director or the director's designee shall approve or disapprove the plan. A copy of the report and any approved plan of correction shall be provided to any person who requests it.

The director shall initiate disciplinary action against any department employee who notifies or causes the notification to any unauthorized person of an unannounced survey of a residential facility by an authorized representative of the department.

(J) In addition to any other information which may be required of applicants for a license pursuant to this section, the director shall require each applicant to provide a copy of an approved plan for a proposed residential facility pursuant to section 5123.042 of the Revised Code. This division does not apply to renewal of a license or to an applicant for an initial or modified license who meets the requirements of section 5123.197 of the Revised Code.

(K) A licensee shall notify the owner of the building in which the licensee's residential facility is located of any significant change in the identity of the licensee or management contractor before the effective date of the change if the licensee is not the owner of the building.

Pursuant to rules which shall be adopted in accordance with Chapter 119. of the Revised Code, the director may require notification to the department of any significant change in the ownership of a residential facility or in the identity of the licensee or management contractor. If the director determines that a significant change of ownership is proposed, the director shall consider the proposed change to be an application for development by a new operator pursuant to section

5123.042 of the Revised Code and shall advise the applicant within sixty days of the notification that the current license shall continue in effect or a new license will be required pursuant to this section. If the director requires a new license, the director shall permit the facility to continue to operate under the current license until the new license is issued, unless the current license is revoked, refused to be renewed, or terminated in accordance with Chapter 119. of the Revised Code.

(L) A county board of developmental disabilities and any interested person may file complaints alleging violations of statute or department rule relating to residential facilities with the department. All complaints shall be in writing and shall state the facts constituting the basis of the allegation. The department shall not reveal the source of any complaint unless the complainant agrees in writing to waive the right to confidentiality or until so ordered by a court of competent jurisdiction.

The department shall adopt rules in accordance with Chapter 119. of the Revised Code establishing procedures for the receipt, referral, investigation, and disposition of complaints filed with the department under this division.

(M) The department shall establish procedures for the notification of interested parties of the transfer or interim care of residents from residential facilities that are closing or are losing their license.

(N) Before issuing a license under this section to a residential facility that will accommodate at any time more than one mentally retarded or developmentally disabled individual, the director shall, by first class mail, notify the following:

(1) If the facility will be located in a municipal corporation, the clerk of the legislative authority of the municipal corporation;

(2) If the facility will be located in unincorporated territory, the clerk of the appropriate board of county commissioners and the fiscal officer of the appropriate board of township trustees.

The director shall not issue the license for ten days after mailing the notice, excluding Saturdays, Sundays, and legal holidays, in order to give the notified local officials time in which to comment on the proposed issuance.

Any legislative authority of a municipal corporation, board of county commissioners, or board of township trustees that receives notice under this division of the proposed issuance of a license for a residential facility may comment on it in writing to the director within ten days after the director mailed the notice, excluding Saturdays, Sundays, and legal holidays. If the director receives written comments from any notified officials within the specified time, the director shall make written findings concerning the comments and the director's decision on the issuance of the license. If the director does not receive written comments from any notified local officials within the specified time, the director shall continue the process for issuance of the license.

(O) Any person may operate a licensed residential facility that provides room and board, personal care, habilitation services, and supervision in a family setting for at least six but not more than eight persons with mental retardation or a developmental disability as a permitted use in any residential district or zone, including any single-family residential district or zone, of any political subdivision. These residential facilities may be required to comply with area, height, yard, and architectural compatibility requirements that are uniformly imposed upon all single-family residences within the district or zone.

(P) Any person may operate a licensed residential facility that provides room and board, personal care, habilitation services, and supervision in a family setting for at least nine but not more than sixteen persons with mental retardation or a developmental disability as a permitted use in any multiple-family residential district or zone of any political subdivision, except that a political subdivision that has enacted a zoning ordinance or resolution establishing planned unit development districts may exclude these residential facilities from those districts, and a political subdivision that has enacted a zoning ordinance or resolution may regulate these residential facilities in multiple-family residential districts or zones as a conditionally permitted use or special exception, in either case, under reasonable and specific standards and conditions set out in the zoning ordinance or resolution to:

(1) Require the architectural design and site layout of the residential facility and the location, nature, and height of any walls, screens, and fences to be compatible with adjoining land uses and the residential character of the neighborhood;

(2) Require compliance with yard, parking, and sign regulation;

(3) Limit excessive concentration of these residential facilities.

(Q) This section does not prohibit a political subdivision from applying to residential facilities nondiscriminatory regulations requiring compliance with health, fire, and safety regulations and building standards and regulations.

(R) Divisions (O) and (P) of this section are not applicable to municipal corporations that had in effect on June 15, 1977, an ordinance specifically permitting in residential zones licensed residential facilities by means of permitted uses, conditional uses, or special exception, so long as such ordinance remains in effect without any substantive modification.

(S)(1) The director may issue an interim license to operate a residential facility to an applicant for a license under this section if either of the following is the case:

(a) The director determines that an emergency exists requiring immediate placement of persons in a residential facility, that insufficient licensed beds are available, and that the residential facility is likely to receive a permanent license under this section within thirty days after issuance of the interim license.

(b) The director determines that the issuance of an interim license is necessary to meet a temporary need for a residential facility.

(2) To be eligible to receive an interim license, an applicant must meet the same criteria that must be met to receive a permanent license under this section, except for any differing procedures and time frames that may apply to issuance of a permanent license.

(3) An interim license shall be valid for thirty days and may be renewed by the director for a period not to exceed one hundred fifty days.

(4) The director shall adopt rules in accordance with Chapter 119. of the Revised Code as the director considers necessary to administer the issuance of interim licenses.

(T) Notwithstanding rules adopted pursuant to this section establishing the maximum number of persons who may be served in a particular type of residential facility, a residential facility shall be permitted to serve the same number of persons being served by the facility on the effective date of the rules or the number of persons for which the facility is authorized pursuant to a current application for a certificate of need with a letter of support from the department of developmental disabilities and which is in the review process prior to April 4, 1986.

(U) The director or the director's designee may enter at any time, for purposes of investigation, any home, facility, or other structure that has been reported to the director or that the director has reasonable cause to believe is being operated as a residential facility without a license issued under this section.

The director may petition the court of common pleas of the county in which an unlicensed residential facility is located for an order enjoining the person or governmental agency operating the facility from continuing to operate without a license. The court may grant the injunction on a showing that the person or governmental agency named in the petition is operating a residential facility without a license. The court may grant the injunction, regardless of whether the residential facility meets the requirements for receiving a license under this section.

CREDIT(S)

(2012 H 487, § 110.20, eff. 10-1-12; 2011 H 153, § 120.20, eff. 10-1-12; 2012 H 487, § 101.01, eff. 9-10-12; 2011 H 153, § 101.01, eff. 7-1-11 (Provisions subject to different effective dates); 2009 S 79, eff. 10-6-09; 2009 H 1, eff. 7-17-09; 2007 H 119, eff. 6-30-07; 2005 S 107, eff. 12-20-05; 2003 H 95, eff. 6-26-03; 2002 S 191, eff. 3-31-03; 2000 H 538, eff. 9-22-00; 1997 H 215, eff. 6-30-97; 1995 H 117, eff. 9-29-95; 1994 H 694, eff. 11-11-94; 1993 S 21, eff. 10-29-93; 1993 H 152; 1992 S 331; 1991 S 233, § 1, 4; 1990 H 569, § 1, 4; 1989 H 253, H 332, § 1, 3, H 257; 1988 S 155; 1987 H 499; 1986 S 322; 1985 H 238; 1983 H 159; 1980 H 900)

1163.02 ZONING CERTIFICATES.

(a) Zoning Certificate Required. No building or other structure, except as provided for in this Zoning Ordinance, shall be erected, constructed, reconstructed, enlarged, moved or structurally altered, nor shall any excavation or site improvements be commenced, until a zoning certificate has been applied for and received by the owner of the property involved or a person having an interest in such property and acting under written authority of the owner, and such certificate has been issued by the Zoning Inspector. A zoning certificate shall be issued only when:

(1) The Zoning Inspector finds that all applicable provisions of the Zoning Ordinance have been complied with.

(2) A site plan as required in this Zoning Ordinance has been approved by Council based upon a recommendation by the Planning Commission according to the procedures set forth in Section 1163.03.

(3) A conditional use has been approved by Council based upon a recommendation by Planning Commission according to the procedures set forth in Section 1163.04. Approval by Council shall authorize the Zoning Inspector to issue a conditional zoning certificate in compliance with said approval. Such conditional zoning certificate shall set forth any conditions, stipulations, and safeguards that have been approved by Planning Commission and Council.

(4) A request for a variance from a numerical standard of the Zoning Ordinance has been approved by the Board of Zoning Appeals in accordance with the limitations, procedures and requirements of Section 1165.03.

(b) Submission of Applications for Zoning Certificates. Application forms for zoning certificates shall be available in the office of the Zoning Inspector. A completed application accompanied by payment of the required fee and all other applicable submission requirements established in this chapter shall be submitted to the Zoning Inspector.

(1) An application for uses not requiring site plan review shall include:

A. A plot plan drawn to scale showing the exact dimensions of the lot to be built upon.

B. The location, dimensions, height and bulk of structures to be erected.

C. The intended use.

D. The proposed number of dwelling units.

E. The yard, open area and parking space dimensions.

F. Any other pertinent data as may be necessary to determine and provide for the enforcement of the Zoning Ordinance.

(2) Uses requiring site plan review shall comply with the application requirements established in Section 1163.03.

(c) Review for Completeness by Zoning Inspector. Upon receipt of an application, the Zoning Inspector shall within a reasonable period review the application and any accompanied proposed plan for completeness with all the applicable submission requirements of the Zoning Ordinance.

(d) Action by Zoning Inspector.

(1) Applications Not Requiring Site Plan Review: For applications not requiring site plan review, the Zoning Inspector shall, within 30 days after determining an application complete, issue a zoning certificate if the application complies with the requirements of the Zoning Ordinance and the application is accompanied by the proper fee.

(2) Transmittal to Planning Commission for Site Plan Review: An application for a zoning certificate for a use requiring site plan review shall be transmitted to the Planning Commission to begin the review process established in Section 1163.03.

(e) Expiration of Zoning Certificates. A zoning certificate shall become void at the expiration of one year after the date of issuance unless construction is begun. If no construction is begun or use changed within one year of the date of the certificate, a new application and certificate shall be required. Construction is deemed to have begun when all necessary excavation and piers or footings of one or more principal building(s) included in the plan shall have been completed.

(Ord. 3-95. Passed 1-17-95.)

Munroe Falls Ordinance §1329.03

1329.03 PERMIT REQUIRED.

(a) No person, corporation or other entity shall commence to drill a well for oil, gas, or other hydrocarbons within the corporate limits of the Municipality until such time as such persons have wholly complied with all provisions of this chapter and a conditional zoning certificate has been granted by Council to such person for a period of one year.

(b) No person, corporation or other entity shall be permitted to drill more than two wells at any one time. Application for the third permit, or any subsequent permits, may be made upon completion of the drilling of the first, second, and each numerically subsequent well.

(Ord. 10-80. Passed 4-15-80.)

1329.04 PERMIT APPLICATION AND FEE.

Any person, corporation or other entity desiring to drill a well for oil and/or gas within the corporate limits of the Municipality shall make application for a conditional zoning certificate to the Planning Commission. All requests for permits must be completed at the time of application. A fee of eight hundred dollars ($800.00) shall be paid at the time such application is filed. No refund of any part of a permit fee shall be made to any permit holder for a dry hole or for failure to exercise the privilege to drill upon the site covered by such permit.

(Ord. 4-93. Passed 2-2-93.)

1329.05 PUBLIC HEARING.

(a) After the first reading, but before the third reading of the legislation granting a conditional zoning certificate, Council shall require the applicant to schedule a public hearing, the date and time of which shall be approved by Council and the permittee shall cause all property owners and residents within the Municipality or neighboring municipalities, including the officials of neighboring municipalities, within 1,000 feet of the well head to be notified of such hearing, in writing, all by regular mail, and notice shall be given of such hearing by publication in a newspaper of general circulation.

(b) The public meeting must occur not less than three weeks prior to the commencement of drilling. The developer shall file a list of addresses with the Municipality for all residents notified and shall thereon note the time and place of the hearing.

(c) In addition thereto, the developer shall cause a final notice to be published by press release, or otherwise, one week prior to the actual drilling, notifying residents of the day drilling operations will commence.

(d) Compliance with the hearing provision of this chapter shall be mandatory conditions precedent to the commencement of drilling under the permit.

(Ord. 10-80. Passed 4-15-80.)

1329.06 PERFORMANCE BOND.

Any applicant, at the time of application, shall deposit with the Clerk-Treasurer, the sum of two thousand dollars ($2,000) to serve as a performance bond conditional upon compliance with this chapter. Such bond shall not only be conditioned upon compliance by the applicant, but also upon compliance with this chapter by any assignee and owner of any permit granted hereunder, or any employee, contractor, subcontractor or other party performing services in connection with any permit issued hereunder. Bond shall be released upon completion of landscaping, painting, fencing, clean-up, vital information signs, etc.

(Ord. 10-80. Passed 4-15-80.)

West's Ann.Cal.Pub.Res.Code § 3690

West's Annotated California Codes Currentness
Public Resources Code (Refs & Annos)
Division 3. Oil and Gas (Refs & Annos)
Chapter 3.5. Unit Operation (Refs & Annos)
Article 6. Preemption (Refs & Annos)
§ 3690. Effect of chapter on existing rights of cities and counties

This chapter shall not be deemed a preemption by the state of any existing right of cities and counties to enact and enforce laws and regulations regulating the conduct and location of oil production activities, including, but not limited to, zoning, fire prevention, public safety, nuisance, appearance, noise, fencing, hours of operation, abandonment, and inspection.

CREDIT(S)

(Added by Stats.1971, c. 1673, p. 3598, § 1.)

CHAPTER 2

GENERAL RULES

Section 1. Effective Scope of Rules and Regulations.

(a) All rules and regulations of a general nature herein promulgated to prevent waste and to conserve oil and gas in the state of Wyoming shall be effective throughout the state of Wyoming and be in force in all pools except as may be amended, modified, altered or enlarged generally or in specific individual pools by orders hereafter issued by the Commission.

(b) These rules are intended to protect human health and the environment through the utilization of proven methods which are designed to avoid contamination of the soils, groundwater, and surface water at a drilling or producing location. Compliance with these rules does not relieve the owner or operator of the obligation to comply with applicable federal, local or other state permits or regulatory requirements.

(c) If any provision of these rules or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are severable.