

As Introduced

132nd General Assembly

Regular Session

2017-2018

S. B. No. 236

Senator Huffman

Cosponsors: Senators Uecker, Hottinger, O'Brien, Balderson

A BILL

To amend sections 1509.01 and 1509.08 and to enact 1
sections 1509.082 and 1509.083 of the Revised 2
Code to create the Affected Mine Commission, to 3
require the Affected Mine Commission to hear 4
appeals related to oil and gas operations and 5
affected coal mines in lieu of the Reclamation 6
Commission, and to define "affected mine" for 7
purposes of the law. 8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1509.01 and 1509.08 be amended 9
and sections 1509.082 and 1509.083 of the Revised Code be 10
enacted to read as follows: 11

Sec. 1509.01. As used in this chapter: 12

(A) "Well" means any borehole, whether drilled or bored, 13
within the state for production, extraction, or injection of any 14
gas or liquid mineral, excluding potable water to be used as 15
such, but including natural or artificial brines and oil field 16
waters. 17

(B) "Oil" means crude petroleum oil and all other 18

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 separated at or near the well pad or along the gas production or gathering system prior to gas processing.

(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 46
and proper operations from the pool into which it is drilled or 47
that causes or tends to cause unnecessary or excessive surface 48
loss or destruction of oil or gas; 49

(5) Other underground or surface waste in the production 50
or storage of oil, gas, or condensate, however caused. 51

(I) "Correlative rights" means the reasonable opportunity 52
to every person entitled thereto to recover and receive the oil 53
and gas in and under the person's tract or tracts, or the 54
equivalent thereof, without having to drill unnecessary wells or 55
incur other unnecessary expense. 56

(J) "Tract" means a single, individual parcel of land or a 57
portion of a single, individual parcel of land. 58

(K) "Owner," unless referring to a mine, means the person 59
who has the right to drill on a tract or drilling unit, to drill 60
into and produce from a pool, and to appropriate the oil or gas 61
produced therefrom either for the person or for others, except 62
that a person ceases to be an owner with respect to a well when 63
the well has been plugged in accordance with applicable rules 64
adopted and orders issued under this chapter. "Owner" does not 65
include a person who obtains a lease of the mineral rights for 66
oil and gas on a parcel of land if the person does not attempt 67
to produce or produce oil or gas from a well or obtain a permit 68
under this chapter for a well or if the entire interest of a 69
well is transferred to the person in accordance with division 70
(B) of section 1509.31 of the Revised Code. 71

(L) "Royalty interest" means the fee holder's share in the 72
production from a well. 73

(M) "Discovery well" means the first well capable of 74

producing oil or gas in commercial quantities from a pool. 75

(N) "Prepared clay" means a clay that is plastic and is 76
thoroughly saturated with fresh water to a weight and 77
consistency great enough to settle through saltwater in the well 78
in which it is to be used, except as otherwise approved by the 79
chief of the division of oil and gas resources management. 80

(O) "Rock sediment" means the combined cutting and residue 81
from drilling sedimentary rocks and formation. 82

(P) "Excavations and workings," "mine," and "pillar" have 83
the same meanings as in section 1561.01 of the Revised Code. 84

(Q) "Coal bearing township" means a township designated as 85
such by the chief of the division of mineral resources 86
management under section 1561.06 of the Revised Code. 87

(R) "Gas storage reservoir" means a continuous area of a 88
subterranean porous sand or rock stratum or strata into which 89
gas is or may be injected for the purpose of storing it therein 90
and removing it therefrom and includes a gas storage reservoir 91
as defined in section 1571.01 of the Revised Code. 92

(S) "Safe Drinking Water Act" means the "Safe Drinking 93
Water Act," 88 Stat. 1661 (1974), 42 U.S.C.A. 300(f), as amended 94
by the "Safe Drinking Water Amendments of 1977," 91 Stat. 1393, 95
42 U.S.C.A. 300(f), the "Safe Drinking Water Act Amendments of 96
1986," 100 Stat. 642, 42 U.S.C.A. 300(f), and the "Safe Drinking 97
Water Act Amendments of 1996," 110 Stat. 1613, 42 U.S.C.A. 98
300(f), and regulations adopted under those acts. 99

(T) "Person" includes any political subdivision, 100
department, agency, or instrumentality of this state; the United 101
States and any department, agency, or instrumentality thereof; 102
any legal entity defined as a person under section 1.59 of the 103

Revised Code; and any other form of business organization or 104
entity recognized by the laws of this state. 105

(U) "Brine" means all saline geological formation water 106
resulting from, obtained from, or produced in connection with 107
exploration, drilling, well stimulation, production of oil or 108
gas, or plugging of a well. 109

(V) "Waters of the state" means all streams, lakes, ponds, 110
marshes, watercourses, waterways, springs, irrigation systems, 111
drainage systems, and other bodies of water, surface or 112
underground, natural or artificial, that are situated wholly or 113
partially within this state or within its jurisdiction, except 114
those private waters that do not combine or effect a junction 115
with natural surface or underground waters. 116

(W) "Exempt Mississippian well" means a well that meets 117
all of the following criteria: 118

(1) Was drilled and completed before January 1, 1980; 119

(2) Is located in an unglaciated part of the state; 120

(3) Was completed in a reservoir no deeper than the 121
Mississippian Big Injun sandstone in areas underlain by 122
Pennsylvanian or Permian stratigraphy, or the Mississippian 123
Berea sandstone in areas directly underlain by Permian 124
stratigraphy; 125

(4) Is used primarily to provide oil or gas for domestic 126
use. 127

(X) "Exempt domestic well" means a well that meets all of 128
the following criteria: 129

(1) Is owned by the owner of the surface estate of the 130
tract on which the well is located; 131

(2) Is used primarily to provide gas for the owner's domestic use;	132 133
(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;	134 135 136 137
(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.	138 139 140 141 142
(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.	143 144 145 146 147 148
(Z) "Well stimulation" or "stimulation of a well" means the process of enhancing well productivity, including hydraulic fracturing operations.	149 150 151
(AA) "Production operation" means all operations and activities and all related equipment, facilities, and other structures that may be used in or associated with the exploration and production of oil, gas, or other mineral resources that are regulated under this chapter, including operations and activities associated with site preparation, site construction, access road construction, well drilling, well completion, well stimulation, well site activities, reclamation, and plugging. "Production operation" also includes all of the	152 153 154 155 156 157 158 159 160

following:	161
(1) The piping, equipment, and facilities used for the production and preparation of hydrocarbon gas or liquids for transportation or delivery;	162 163 164
(2) The processes of extraction and recovery, lifting, stabilization, treatment, separation, production processing, storage, waste disposal, and measurement of hydrocarbon gas and liquids, including related equipment and facilities;	165 166 167 168
(3) The processes and related equipment and facilities associated with production compression, gas lift, gas injection, fuel gas supply, well drilling, well stimulation, and well completion activities, including dikes, pits, and earthen and other impoundments used for the temporary storage of fluids and waste substances associated with well drilling, well stimulation, and well completion activities;	169 170 171 172 173 174 175
(4) Equipment and facilities at a wellpad or other location that are used for the transportation, handling, recycling, temporary storage, management, processing, or treatment of any equipment, material, and by-products or other substances from an operation at a wellpad that may be used or reused at the same or another operation at a wellpad or that will be disposed of in accordance with applicable laws and rules adopted under them.	176 177 178 179 180 181 182 183
(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.	184 185 186 187
(CC) "Idle and orphaned well" means a well for which a bond has been forfeited or an abandoned well for which no money	188 189

is available to plug the well in accordance with this chapter	190
and rules adopted under it.	191
(DD) "Temporarily inactive well" means a well that has	192
been granted temporary inactive status under section 1509.062 of	193
the Revised Code.	194
(EE) "Material and substantial violation" means any of the	195
following:	196
(1) Failure to obtain a permit to drill, reopen, convert,	197
plugback, or plug a well under this chapter;	198
(2) Failure to obtain, maintain, update, or submit proof	199
of insurance coverage that is required under this chapter;	200
(3) Failure to obtain, maintain, update, or submit proof	201
of a surety bond that is required under this chapter;	202
(4) Failure to plug an abandoned well or idle and orphaned	203
well unless the well has been granted temporary inactive status	204
under section 1509.062 of the Revised Code or the chief of the	205
division of oil and gas resources management has approved	206
another option concerning the abandoned well or idle and	207
orphaned well;	208
(5) Failure to restore a disturbed land surface as	209
required by section 1509.072 of the Revised Code;	210
(6) Failure to reimburse the oil and gas well fund	211
pursuant to a final order issued under section 1509.071 of the	212
Revised Code;	213
(7) Failure to comply with a final nonappealable order of	214
the chief issued under section 1509.04 of the Revised Code;	215
(8) Failure to submit a report, test result, fee, or	216

document that is required in this chapter or rules adopted under 217
it. 218

(FF) "Severer" has the same meaning as in section 5749.01 219
of the Revised Code. 220

(GG) "Horizontal well" means a well that is drilled for 221
the production of oil or gas in which the wellbore reaches a 222
horizontal or near horizontal position in the Point Pleasant, 223
Utica, or Marcellus formation and the well is stimulated. 224

(HH) "Well pad" means the area that is cleared or prepared 225
for the drilling of one or more horizontal wells. 226

(II) "Affected mine" means a coal mining operation, 227
whether surface or underground, to which all of the following 228
apply: 229

(1) The chief of the division of mineral resources 230
management has issued a permit for the coal mining operation 231
pursuant to Chapter 1513. of the Revised Code. 232

(2) An application for a permit for a well has been filed 233
under Chapter 1509. of the Revised Code and the well is proposed 234
to be located within the permitted limits of the coal mining 235
operation. 236

(3) The operator of the coal mining operation has acquired 237
the right to mine coal at the proposed well location from one 238
hundred per cent of the owners of the coal to be mined; 239

(4) Active mining is occurring at the coal mining 240
operation within two thousand five hundred feet of, and 241
progressing towards, the proposed well location. 242

Sec. 1509.08. (A) Upon receipt of an application for a 243
permit required by section 1509.05 of the Revised Code, or upon 244

receipt of an application for a permit to plug and abandon under 245
section 1509.13 of the Revised Code, the chief of the division 246
of oil and gas resources management shall determine whether the 247
well is or is to be located in a coal bearing township. 248

(B) Whether or not the well is or is to be located in a 249
coal bearing township, the chief, by order, may refuse to issue 250
a permit required by section 1509.05 of the Revised Code to any 251
applicant who at the time of applying for the permit is in 252
material or substantial violation of this chapter or rules 253
adopted or orders issued under it. The chief shall refuse to 254
issue a permit to any applicant who at the time of applying for 255
the permit has been found liable by a final nonappealable order 256
of a court of competent jurisdiction for damage to streets, 257
roads, highways, bridges, culverts, or drainways pursuant to 258
section 4513.34 or 5577.12 of the Revised Code until the 259
applicant provides the chief with evidence of compliance with 260
the order. No applicant shall attempt to circumvent this 261
provision by applying for a permit under a different name or 262
business organization name, by transferring responsibility to 263
another person or entity, by abandoning the well or lease, or by 264
any other similar act. 265

(C) If the well is not or is not to be located in a coal 266
bearing township, or if it is to be located in a coal bearing 267
township, but the landowner submits an affidavit attesting to 268
ownership of the property in fee simple, including the coal, and 269
has no objection to the well, the chief shall issue the permit. 270

(D) If the application to drill, reopen, or convert 271
concerns a well that is or is to be located in a coal bearing 272
township, the chief shall transmit to the chief of the division 273
of mineral resources management two copies of the application 274

and three copies of the map required in section 1509.06 of the Revised Code, except that, when the affidavit with the waiver of objection described above is submitted, the chief of the division of oil and gas resources management shall not transmit the copies.

(E) The chief of the division of mineral resources management immediately shall notify the owner or lessee of any affected mine that the application has been filed and send to the owner or lessee two copies of the map accompanying the application setting forth the location of the well.

(1) If the owner or lessee objects to the location of the well or objects to any location within fifty feet of the original location as a possible site for relocation of the well, the owner or lessee shall notify the chief of the division of mineral resources management of the objection, giving the reasons for the objection and, if applicable, indicating on a copy of the map the particular location or locations within fifty feet of the original location to which the owner or lessee objects as a site for possible relocation of the well, within six days after the receipt of the notice. If the chief receives no objections from the owner or lessee of the mine within ten days after the receipt of the notice by the owner or lessee, or if in the opinion of the chief the objections offered by the owner or lessee are not sufficiently well founded, the chief immediately shall notify the owner or lessee of those findings.
~~The~~

(2) ~~The~~ owner or lessee may appeal the decision of the chief to the ~~reclamation-affected mine~~ commission ~~created~~ under section ~~1513.13~~ 1509.082 of the Revised Code. The appeal shall be filed within fifteen days, ~~notwithstanding provisions in~~

~~divisions (A) (1) of section 1513.13 of the Revised Code to the~~ 305
~~contrary,~~ from the date on which the owner or lessee receives 306
the notice. If the appeal is not filed within that time, the 307
chief immediately shall approve the application, retain a copy 308
of the application and map, and return a copy of the application 309
to the chief of the division of oil and gas resources management 310
with the approval noted on it. The chief of the division of oil 311
and gas resources management then shall issue the permit if the 312
provisions of this chapter pertaining to the issuance of such a 313
permit have been complied with. 314

(3) If the chief of the division of mineral resources 315
management receives an objection from the owner or lessee of the 316
affected mine as to the location of the well within ten days 317
after receipt of the notice by the owner or lessee, and if in 318
the opinion of the chief the objection is well founded, the 319
chief shall disapprove the application and immediately return it 320
to the chief of the division of oil and gas resources management 321
together with the reasons for disapproval and a suggestion for a 322
new location for the well, provided that the suggested new 323
location shall not be a location within fifty feet of the 324
original location to which the owner or lessee has objected as a 325
site for possible relocation of the well if the chief of the 326
division of mineral resources management has determined that the 327
objection is well founded. The chief of the division of oil and 328
gas resources management immediately shall notify the applicant 329
for the permit of the disapproval and any suggestion made by the 330
chief of the division of mineral resources management as to a 331
new location for the well. The applicant may withdraw the 332
application or amend the application to drill the well at the 333
location suggested by the chief, or the applicant may appeal the 334
disapproval of the application by the chief to the ~~reclamation~~ 335

affected mine commission. 336

(4) If the chief of the division of mineral resources 337
management receives no objection from the owner or lessee of a 338
mine as to the location of the well, but does receive an 339
objection from the owner or lessee as to one or more locations 340
within fifty feet of the original location as possible sites for 341
relocation of the well within ten days after receipt of the 342
notice by the owner or lessee, and if in the opinion of the 343
chief the objection is well founded, the chief nevertheless 344
shall approve the application and shall return it immediately to 345
the chief of the division of oil and gas resources management 346
together with the reasons for disapproving any of the locations 347
to which the owner or lessee objects as possible sites for the 348
relocation of the well. The chief of the division of oil and gas 349
resources management then shall issue a permit if the provisions 350
of this chapter pertaining to the issuance of such a permit have 351
been complied with, incorporating as a term or condition of the 352
permit that the applicant is prohibited from commencing drilling 353
at any location within fifty feet of the original location that 354
has been disapproved by the chief of the division of mineral 355
resources management. The applicant may appeal to the 356
~~reclamation~~affected mine commission the terms and conditions of 357
the permit prohibiting the commencement of drilling at any such 358
location disapproved by the chief of the division of mineral 359
resources management. 360

(5) Any such appeal shall be filed within fifteen days, 361
~~notwithstanding provisions in division (A)(1) of section 1513.13~~ 362
~~of the Revised Code to the contrary,~~ from the date the applicant 363
receives notice of the disapproval of the application, any other 364
location within fifty feet of the original location, or terms or 365
conditions of the permit, or the owner or lessee receives notice 366

of the chief's decision. No approval or disapproval of an 367
application shall be delayed by the chief of the division of 368
mineral resources management for more than fifteen days from the 369
date of sending the notice of the application to the mine owner 370
or lessee as required by this section. 371

~~All appeals provided for in this section shall be treated~~ 372
~~as expedited appeals. (6) The reclamation-affected mine~~ 373
commission shall hear any such appeal ~~in accordance with section~~ 374
~~1513.13 of the Revised Code~~ and issue a decision within thirty 375
days of the filing of the notice of appeal. 376

(F) The chief of the division of oil and gas resources 377
management shall not issue a permit to drill a new well or 378
reopen a well that is or is to be located within three hundred 379
feet of any opening of any mine used as a means of ingress, 380
egress, or ventilation for persons employed in the mine, nor 381
within one hundred feet of any building or inflammable structure 382
connected with the mine and actually used as a part of the 383
operating equipment of the mine, unless the chief of the 384
division of mineral resources management determines that life or 385
property will not be endangered by drilling and operating the 386
well in that location. 387

(G) The chief of the division of mineral resources 388
management may suspend the drilling or reopening of a well in a 389
coal bearing township after determining that the drilling or 390
reopening activities present an imminent and substantial threat 391
to public health or safety or to miners' health or safety and 392
having been unable to contact the chief of the division of oil 393
and gas resources management to request an order of suspension 394
under section 1509.06 of the Revised Code. Before issuing a 395
suspension order for that purpose, the chief of the division of 396

mineral resources management shall notify the owner in a manner 397
that in the chief's judgment would provide reasonable 398
notification that the chief intends to issue a suspension order. 399
The chief may issue such an order without prior notification if 400
reasonable attempts to notify the owner have failed, but in that 401
event notification shall be given as soon thereafter as 402
practical. Within five calendar days after the issuance of the 403
order, the chief shall provide the owner an opportunity to be 404
heard and to present evidence that the activities do not present 405
an imminent and substantial threat to public health or safety or 406
to miners' health or safety. If, after considering the evidence 407
presented by the owner, the chief determines that the activities 408
do not present such a threat, the chief shall revoke the 409
suspension order. An owner may appeal a suspension order issued 410
by the chief of the division of mineral resources management 411
under this section to the ~~reclamation~~affected mine commission 412
~~in accordance with section 1513.13 of the Revised Code~~ or may 413
appeal the order directly to the court of common pleas of the 414
county in which the well is located. 415

Sec. 1509.082. (A) There is hereby created the affected 416
mine commission consisting of the following members: 417

(1) Two members from the reclamation commission created in 418
section 1513.05 of the Revised Code appointed by the chairperson 419
of the reclamation commission. The chairperson may appoint 420
themselves to serve on the affected mine commission. 421

(2) Two members from the oil and gas commission created in 422
section 1509.35 of the Revised Code appointed by the chairperson 423
of the oil and gas commission. The chairperson may appoint 424
themselves to serve on the affected mine commission. 425

(3) One member appointed by the governor with the advice 426

and consent of the senate who is an owner or operator of a farm 427
at the time of appointment or a retired farmer. 428

(B) All initial appointments to the affected mine 429
commission shall be made within thirty days of the effective 430
date of this section. 431

(C) Terms of office of members are five years. Initial 432
terms of office commence thirty days after the effective date of 433
this section. Each member shall hold office from the date of 434
appointment until the end of the term for which the appointment 435
was made. A vacancy on the commission shall be filled in the 436
same manner as the original appointment within sixty days after 437
the vacancy occurs. Any member appointed to fill a vacancy 438
occurring prior to the expiration of the term for which the 439
member's predecessor was appointed shall hold office for the 440
remainder of such term. Any member shall continue in office 441
subsequent to the expiration date of the member's term until the 442
member's successor takes office, or until a period of sixty days 443
has elapsed, whichever occurs first. 444

(D) Four members constitute a quorum and no action of the 445
commission is valid unless it has the concurrence of at least a 446
majority of the members voting on that action. The commission 447
shall keep a record of its proceedings. 448

(E) Each member shall be paid an amount fixed pursuant to 449
division (J) of section 124.15 of the Revised Code per diem when 450
actually engaged in the performance of work as a member and when 451
engaged in travel necessary in connection with that work. In 452
addition to such compensation, each member shall be reimbursed 453
for all traveling, hotel, and other expenses necessarily 454
incurred in the performance of work as a member. 455

(F) The commission shall select from among its members a chairperson, a vice-chairperson, and a secretary. These officers shall serve for terms of one year. 456
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(G) The governor may remove any member of the commission from office for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance. 459
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(H) Not later than one hundred eighty days after the effective date of this section, the commission, in accordance with Chapter 119. of the Revised Code, shall adopt rules to govern its procedure. 462
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Sec. 1509.083. (A) The affected mine commission created in section 1509.082 of the Revised Code shall conduct a hearing regarding any appeal filed in accordance with section 1509.08 of the Revised Code. The commission shall issue an order of decision within thirty days of the filing of the notice of appeal. In any such appeal, the commission shall first make a determination as to whether the coal mining operation that is the subject of the appeal is an affected mine. 466
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(B) Any party adversely affected by an order of the affected mine commission may appeal the order to the court of common pleas of Franklin county. 474
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Section 2. That existing sections 1509.01 and 1509.08 of the Revised Code are hereby repealed. 477
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