

*Before the*

**132<sup>nd</sup> General Assembly  
The Ohio Senate**

**Energy and Natural Resources Committee  
The Honorable Troy Balderson  
Chair**

Proponent Testimony Regarding

**House Bill 225  
Idle and Orphan Oil and Gas Wells**

**Presented By:**

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**February 28, 2018**

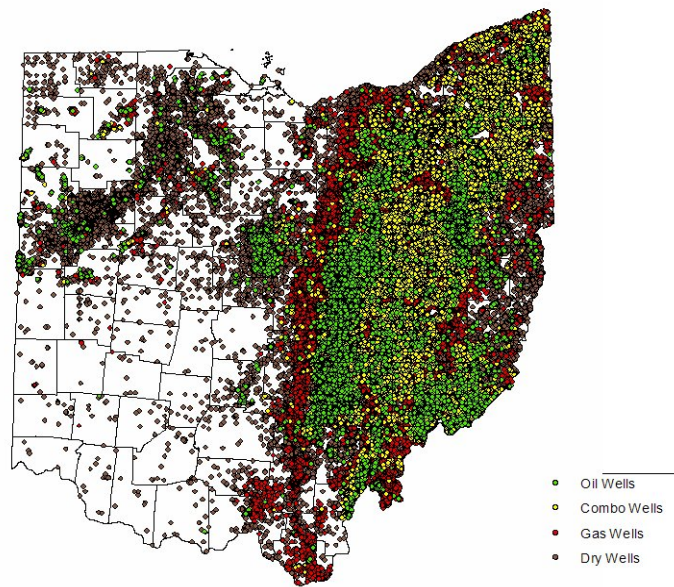


Chairman Balderson, Vice Chairman Jordan, Ranking Member O'Brien and members of the Senate Energy and Natural Resources Committee, thank you for the opportunity to offer proponent testimony in support of House Bill 225. My name is Tom Stewart. While I have been retired for some time after leading the Ohio Oil & Gas Association since 1991; I have returned on an interim basis and welcome the opportunity to testify before you today on this particular legislation.

The issue before you today is focused on the protection of state natural resources. HB 225 is much-needed legislation to rejuvenate the existing orphan well plugging program into a more robust process, necessary to effectively address historic issues. The legislation will:

- Distribute 45% of funds already flowing into the oil and gas account to the Well Plugging Fund, thus providing sufficient resources to the ODNR to actually execute their mission.
- Build on ODNR/DOGRM's existing ranking matrix by requiring that all identified orphan wells are ranked/scored as to threat levels they present and addressed in appropriate time periods.
- Repairing the "Landowner Grant Program" to avoid creating a taxable event for landowners who choose to use the program to plug their well. This will encourage participation.
- Requires the ODNR/DOGRM to provide quarterly reports to the Technical Advisory Council (TAC) and annual reports to the General Assembly as to program activity and expenditures. The more transparency and accountability, the better.

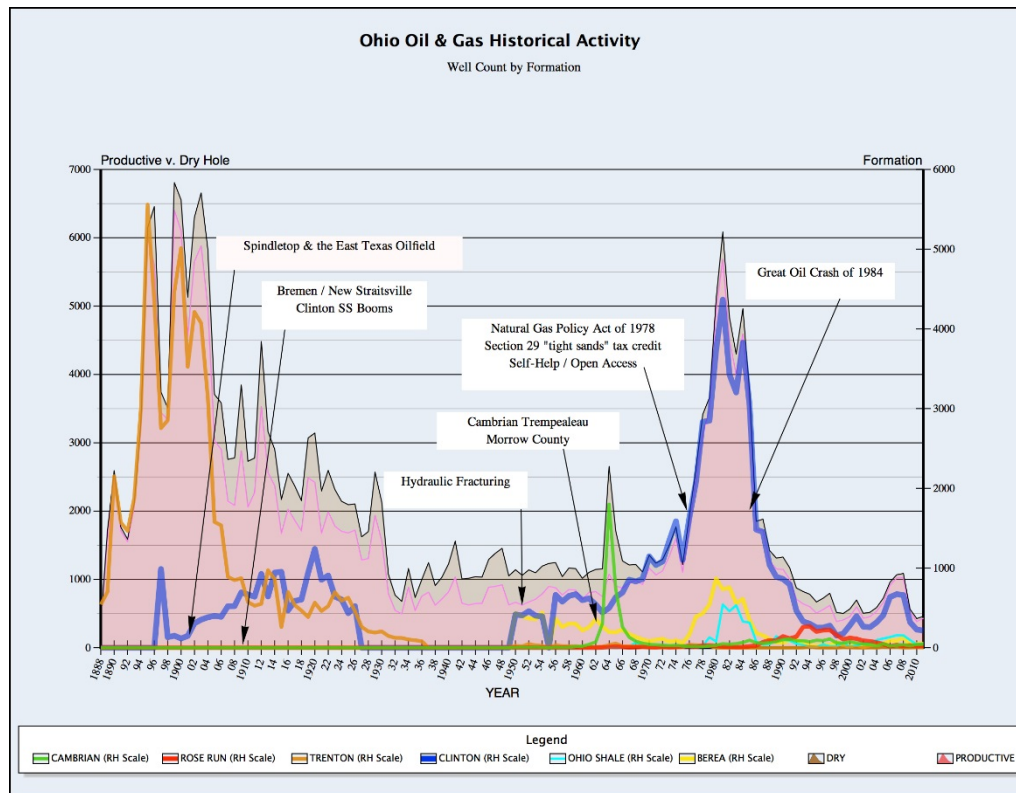
Within surrounding states, Ohio holds a prominent place in the Appalachian Basin. Nowhere in the world has oil and gas been commercially produced and widely distributed for as long as here. Prior to 2010 and the advent of highly sophisticated horizontal development, there have been over 264,000 wells drilled in Ohio.



The vast majority of those wells (approximately 183,000) were drilled prior to 1965 and the creation of modern oil and gas law and regulation.<sup>1</sup> During that period, numerous waves of non-regulated drilling activity occurred throughout Ohio. State maps record the approximate location of many (but not all) of these wells.

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<sup>1</sup> O.R.C. 1509: Originally enacted 1965, Amended Substitute House Bill 234



To provide perspective, consider this example. Beginning during 1884 in northwestern Ohio, a drilling boom established the largest U.S. oilfield at the time, known as the Lima Findlay Trenton Field. Over time 71,000 wells were drilled. Of those, nearly 60,000 wells were drilled between the discovery well and 1910. For two years during that period over 5,000 wells were drilled per year - using wooden rigs. At that time, there was no stable understanding of petroleum engineering, well construction or proper production methods - as evidenced by the field's rapid production decline. Certainly, little consideration was given to proper abandonment or plugging procedures. It is a problem that is still with us today and similarly exists in three of the four quadrants of Ohio.

Chatham Oilfield in Medina County was first drilled in 1919. On one leasehold, 125 wells were drilled that in 1940 was successfully put on rudimentary secondary water flood recovery. However, Chatham is an example of a great idea that was poorly executed. The field was plagued by poor completion and operating practices and, for the most part, remains an abandoned mess. These are several notable reasons Ohio needs a robust, ongoing plugging program and the Chatham Field is the poster child.

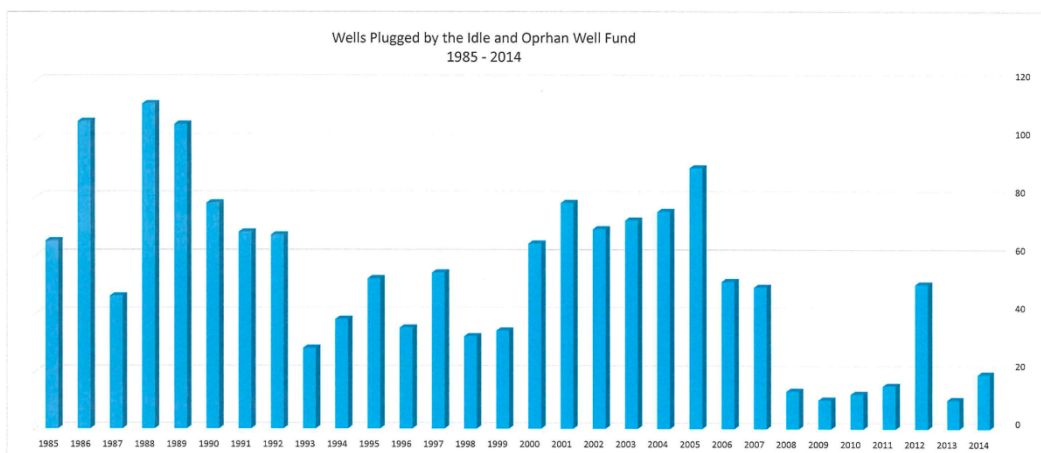
Ohio's Idle & Orphan Well Plugging Program (The Orphan Well Program) was created in 1976 (by enactment of Amended House Bill 28) to plug improperly abandoned oil and gas wells where no responsible owner exists. The legislation set aside part of the mineral severance tax to fund the program. A key objective was to rectify the plight of landowners who had abandoned wells on their property and had no means to address the problem. Ohio was the first state in the Appalachian Basin to set up such a program.

Where are these orphan wells? They are hidden beneath houses, schools, churches and other buildings. Orphaned wells have been found in basements; one recently emerged beneath a school's basketball court. Orphan wells line the Lake Erie shoreline. A century ago, landowners commonly drilled natural gas wells for their own supply. Nobody said they couldn't. They are scattered across the woodlands of Southeast Ohio. Farmers, long weary of plowing around an old, dilapidated pipe, have cut the pipe off below plow depth, leaving unresolved the authentic subsurface issues that are a present threat and danger. Because of the historic character of Ohio's industry, orphan wells are found everywhere field development occurred.

What can go wrong? A lot! For starters, surface casing, likely set without sealant, rots and exposes shallow drinking water sources to the oil and gas below. Wellheads rust and fall off. Hillsides slip and separate an old well (now there are two holes). Primitive downhole plugging methods degrade and allow oil, gas or brine to reach the surface. Production tubing set on a rudimentary packer assembly in an uncased hole 100 years ago fails and collapses, again, leading to uncontrolled access to the surface. Homeowners awake one morning and the house is filling with natural gas. Crude oil inexplicably appears on the lawn. There are many bizarre situations that can and do occur because abandoned wells are left unchecked for many decades.

The industry strongly supports the Orphan Well Program and believes it is proper for taxes levied on production to be used to correct problems that have arisen from the early days of the industry. Ensuring that orphaned wells are properly plugged is the responsible thing to do.

Since its inception, the Orphan Well Program has been tasked with one directive: plug these historic wells. In the late 1980's, over 100 wells a year were being plugged. During the 1990's, these totals dropped in half to an average of around 49 wells per year. From 2000-2007, the average number of wells plugged increased to 69 wells per year, with the highest total being 90 wells plugged in 2005. However, between 2008 and 2015, only 129 total orphan wells have been plugged. This number includes 50 wells being plugged in 2012. Outside of 2012, the next highest number of wells plugged annually was 19 in 2014.



Currently, the ODNR Division of Oil and Gas Resources Management (DOGRM) has a list of 700 wells that need addressed. There is no knowledgeable person who would dispute that this list is but the tip of the iceberg. Under current practice, the Chief of DOGRM properly circulates high-threat situations to the top of the list. But, that leaves a growing backlog. That is an issue that frustrates citizens. During recent sponsor testimony before this committee, Representative Andy Thompson spoke of his constituent who has orphaned wells on her property listed with the Program and has been waiting 14 years for her situation to progress up the queue.

Initially, the Orphan Well Program received one million dollars annually from the Oil and Gas Mineral Severance Tax. In 1995, the enactment of Senate Bill 162 changed the funding formula to 20 percent of the severance tax, which at the time effectively lowered the funding level to approximately \$850,000. The industry has traditionally opposed efforts to modify the funding mechanism, fearing a reduction in plugging activity. However, the industry supported S.B. 162 because the legislation included the "landowner grant program", which allowed landowners to apply for grants to plug wells on their lands. The program encouraged individual citizens to take action, injected competition into the process and somewhat streamlined the cumbersome procedures for wells to be plugged.

Despite the good public image of the Orphan Well Program, a lack of mission execution led to a series of serious problems related to funding diversions. During the Celeste Administration, the Division of Oil and Gas allowed a surplus of unused Orphan Well Program funds to build, which the General Assembly confiscated and distributed to the General Revenue Fund. Later, in Fiscal Year 1996, the Division of Oil and Gas budget statements revealed that, of the funds allocated to the plugging program, only 40% was spent on actual plugging operations. The remainder was disbursed to pay for a variety of non-related operational expenses.

Under the Taft Administration, a similar significant transfer of existing plugging funds was proposed to pay for other operational issues, while assigning future plugging operations to be paid out of the General Revenue Fund. If allowed, a serious degradation of the plugging program would have occurred as the program's funding mechanism - paid for by direct producer funds - was proposed to be funded indirectly via the GRF.

However, the Ohio Senate rose to the defense by amending the budget request to reallocate dedicated funds to be used "**exclusively**" for the purpose of plugging wells. Additionally, transfers of plugging funds to any other fund or line item would not be allowed.<sup>2</sup>

In 2010, the Ohio General Assembly enacted Substitute Senate Bill 165, the most comprehensive amendment to Ohio Oil & Gas Law since its original enactment. S.B. 165 did many things to improve Ohio regulatory policy. As a part of the bill, the Strickland Administration worked with the OOGA and the industry to significantly upgrade agency funding for the clear purpose of providing the funds necessary to assure public faith and trust with the regulatory process. The severance tax was effectively doubled and many associated fees were created or upgraded.

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<sup>2</sup> Am. Sub. House Bill No, 119, 127<sup>th</sup> General Assembly

The industry fully supported S.B. 165 and the enhanced funding because language was also included in the bill that stated, “The **funds shall be solely and exclusively used for expenses critical and necessary for protections related to oil and gas production.**”

During bill development, interested parties determined the difference between total funds generated under the new tax and fee structure and the amount the DMRM requested as necessary to run an effective agency. The General Assembly directed the surplus to the Idle and Orphan Well Program, mandating that the Chief of the DMRM **shall annually spend not less than fourteen percent of the revenue credited to the (oil and gas) fund** to plug orphan wells and to correct imminent health and safety risks. That is the will of the Ohio General Assembly and the status of the law today, despite recent troubling diversions of these funds.

The DOGRM currently is receiving more than enough resources to fund both its regulatory program and The Orphan Well Program as well as having additional funds in reserve. Increased drilling and production has amplified severance tax revenue to \$36.2 million per year, along with fee revenue of \$15.8 million per year, for a grand total of \$52 million during FY 2017. This is over seven times the amount discussed during Senate Bill 165 deliberations.

While the DOGRM’s operating costs have grown to \$19.4 million per year, this reflects only 37% of the total revenue being collected. The Oil and Gas Well Fund, in turn, has an additional 63% of its total revenue sitting in the account above and beyond the costs to run the Division.

House Bill 225 offers a positive proposal based upon the current statutory authority associated with these funds to use these plentiful severance receipts to aggressively work for the public good. Something needs to be proposed, because, as we have seen over the past two fiscal years, bad ideas happen when these funds lie dormant.

During the last two fiscal years, approximately \$20 million in oil and gas funds have been used for unrelated legal settlements. Ten days into Fiscal Year 2018, the ODNR came before the Controlling Board to request that \$15 million in oil and gas well fund revenue be utilized to settle the Grand Lake Saint Mary’s lawsuit<sup>3</sup>. Additional research via Ohio’s online checkbook showed that this wasn’t the first time ODNR had utilized oil and gas funds to settle unrelated legal proceedings. In November, 2016, the ODNR allocated \$2.66 million from the Oil and Gas Well Fund and \$1.8 million in funds directly from the Well Plugging Fund to settle the Merrill vs. ODNR case regarding the Lake Erie shoreline<sup>4</sup>. (NOTE: During FY 2016, the ODNR spent \$1,137,335 on the Idle and Orphan Well Program) In all, ODNR pilfered \$19.46 million from the oil and gas program over a mere seven and a half months.

It should also be noted that ODNR has spent \$1,137,335 in FY 2016 and \$471,385 in FY 2017 (after taking into account the Merrill settlement) on the plugging program. This amounts to a grand total of \$1,608,720. Therefore, ODNR has spent more on one unrelated legal settlement than they did performing their statutory mission by plugging wells for two fiscal years.

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<sup>3</sup> Controlling Board Item DNR0101364-18, July 10, 2017

<sup>4</sup> [http://ohiotreasurer.gov/Transparency/Ohios-Online-Checkbook#State/2017/Agency-Type-is-Agency/Agency-is-department-of-natural-resources\(DNR\)/Expense-Category-is-judgments-settlements-and-bonds\(590\)/Expense-Class-is-Any/Expense-Type-is-Any/Expense-Code-is-Any/Budget-Line-Item-is-Any/Program-is-Any/Source-of-Money-is-Any/breadcrumbs-is-\(0,1,2,3,4\)/chart-display-is-AccountCategory\(4\)/chart-type-is-pie](http://ohiotreasurer.gov/Transparency/Ohios-Online-Checkbook#State/2017/Agency-Type-is-Agency/Agency-is-department-of-natural-resources(DNR)/Expense-Category-is-judgments-settlements-and-bonds(590)/Expense-Class-is-Any/Expense-Type-is-Any/Expense-Code-is-Any/Budget-Line-Item-is-Any/Program-is-Any/Source-of-Money-is-Any/breadcrumbs-is-(0,1,2,3,4)/chart-display-is-AccountCategory(4)/chart-type-is-pie)

Additionally, OBM Director Keen, during questioning on his HB 225 testimony presented before the House Energy and Natural Resources Committee, stated that an additional \$42.5 million in cash transfers from the Oil and Gas Well Fund were disbursed to the GRF over the last two fiscal years. Director Keen stated that a total of three cash transfers were executed during this time, totaling \$7.5 million in FY 2016 and \$35 million in FY 2017.

In short, approximately \$62 million dollars in resources, attributed to the Division solely and exclusively by Ohio oil and gas producers and landowners, were raided to plug various budgetary holes and settle failed lawsuits, and not for the statutorily required purposes of protecting human health, safety, and the environment or the plugging of historic wells.

Meanwhile, the aforementioned requirements prohibiting the transfer of monies from Oil and Gas Well Plugging Fund to any other fund or line item remains in lawful effect and exists within the most recent budget bill, Amended Substitute House Bill 49.<sup>5</sup>

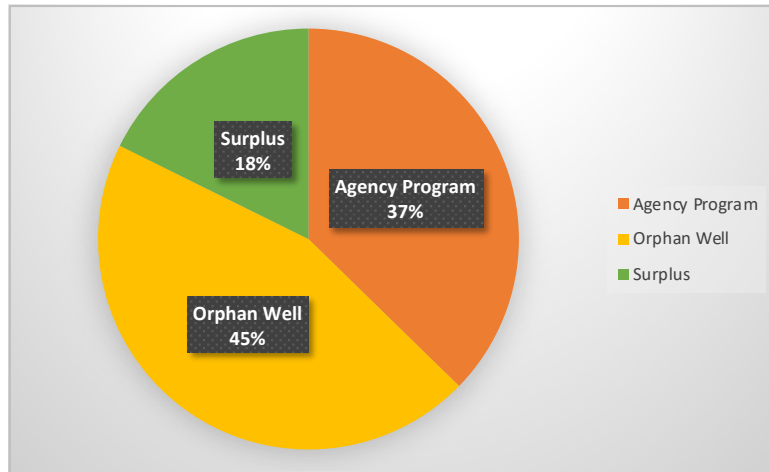
In 2010, during Senate deliberation of Senate Bill 165 Sean Logan, the Director of ODNR, testified on the Orphan Well Plugging Program. He pointed out at that time that current funding was declining and insufficient resources existed to address the backlog of wells needing to be plugged. As a result, Director Logan was concerned about an associated liability of these wells to the state. Director Logan said, "SB 165 will dedicate additional annual resources to this important program to clean up Ohio's orphan well legacy."

Fast forward to today. In a mere eight years, ample resources are available to resolve (or even eradicate) Ohio's orphan well legacy. In my view, no other state besides Ohio and Texas (that has a robust plugging program) are so well situated to effectively address historic orphan wells. However, as opposed to the serious concern raised by ODNR Director Logan, today the ODNR is saying that if this legislation is enacted, the State of Ohio has too much of a good thing and the Department can't find a way to use the money it has collected and execute their mission.

The 45% allocation as currently in the bill is less than half of severance revenues flowing into the ODNR. This percentage causes no harm to the ODNR's core regulatory program. There would still be a significant surplus of unused funds in the oil and gas account which, based upon FY 2017 amounts, we estimate to be approximately \$9.2 million additional dollars.

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<sup>5</sup> Am. Sub HB 49 (As Enrolled), pgs. 3184-3185 read: Am. Sub HB 49 (As Enrolled), pgs. 3184-3185 - SECTION 343.50. OIL AND GAS WELL PLUGGING: The foregoing appropriation item 725677, Oil and Gas Well Plugging, shall be used exclusively for the purposes of plugging wells and to properly restore the land surface of idle and orphan oil and gas wells pursuant to section 1509.071 of the Revised Code. This appropriation item shall not be used for salaries, maintenance, equipment, or other administrative purposes, except for those costs directly attributed to the plugging of an idle or orphan well. This appropriation item shall not be used to transfer cash to any other fund or appropriation item.



Why can't we work towards solving this problem? The deployment of resources for a critical public need, that also conforms with long-standing law and policy, is simply a matter of determined transparent leadership that has the willingness, if not the alacrity, to execute their statutory mission.

Plugging orphan wells that are pathways to pollution using modern day standards is the most responsible use for excess oil and gas severance dollars flowing into the ODNR. In my view, doing so in combination with appropriate support for the state regulatory agency, is the single best way this State should use severance dollars to realistically and effectively protect health, safety and the environment from the effects of historic oil and gas activity.

Thank you once again, Chairman Balderson and members of the Senate Energy and Natural Resources Committee, for allowing me to speak on House Bill 225 today. I respectfully request that this committee favorably report House Bill 225 to the floor of the Ohio Senate.

Respectfully submitted,  
 Ohio Oil & Gas Association  
 Thomas. E. Stewart  
 COS Interim