

As Introduced

**133rd General Assembly
Regular Session
2019-2020**

S. B. No. 336

Senator Hoagland

A BILL

To amend sections 1509.02 and 1509.22 of the 1
Revised Code to revise the law governing the 2
permitting of oil and gas brine injection wells. 3

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

Section 1. That sections 1509.02 and 1509.22 of the 4
Revised Code be amended to read as follows: 5

Sec. 1509.02. (A) There is hereby created in the 6
department of natural resources the division of oil and gas 7
resources management, which shall be administered by the chief 8
of the division of oil and gas resources management. The 9
division has sole and exclusive authority to regulate the 10
permitting, location, and spacing of oil and gas wells and 11
production operations within the state, excepting only those 12
activities regulated under federal laws for which oversight has 13
been delegated to the environmental protection agency and 14
activities regulated under sections 6111.02 to 6111.028 of the 15
Revised Code. The regulation of oil and gas activities is a 16
matter of general statewide interest that requires uniform 17
statewide regulation, and this chapter and rules adopted under 18
it constitute a comprehensive plan with respect to all aspects 19

of the locating, drilling, well stimulation, completing, and 20
operating of oil and gas wells within this state, including site 21
construction and restoration, permitting related to those 22
activities, and the disposal of wastes from those wells. In 23
order to assist the division in the furtherance of its sole and 24
exclusive authority as established in this section, the chief 25
may enter into cooperative agreements with other state agencies 26
for advice and consultation, including visitations at the 27
surface location of a well on behalf of the division. Such 28
cooperative agreements do not confer on other state agencies any 29
authority to administer or enforce this chapter and rules 30
adopted under it. In addition, such cooperative agreements shall 31
not be construed to dilute or diminish the division's sole and 32
exclusive authority as established in this section. Nothing in 33
this section affects the authority granted to the director of 34
transportation and local authorities in section 723.01 or 35
4513.34 of the Revised Code, provided that the authority granted 36
under those sections shall not be exercised in a manner that 37
discriminates against, unfairly impedes, or obstructs oil and 38
gas activities and operations regulated under this chapter. 39

(B) The chief shall not hold any other public office, nor 40
shall the chief be engaged in any occupation or business that 41
might interfere with or be inconsistent with the duties as 42
chief. 43

(C) All of the following shall be deposited into the state 44
treasury to the credit of the oil and gas well fund, which is 45
hereby created: 46

(1) Money collected by the chief pursuant to sections 47
1509.06, 1509.061, 1509.062, 1509.071, 1509.13, ~~1509.22,~~ 48
1509.222, 1509.28, 1509.34, 1509.50, and 5749.02 of the Revised 49

Code, all;	50
<u>(2) Money collected by the chief pursuant to division (H)</u>	51
<u>of section 1509.22 of the Revised Code;</u>	52
<u>(3) All</u> civil penalties paid under section 1509.33 of the	53
Revised Code, and, notwithstanding;	54
<u>(4) Notwithstanding</u> any section of the Revised Code	55
relating to the distribution or crediting of fines for	56
violations of the Revised Code, all fines imposed under	57
divisions (A) and (B) of section 1509.99 of the Revised Code and	58
fines imposed under divisions (C) and (D) of section 1509.99 of	59
the Revised Code for all violations prosecuted by the attorney	60
general and for violations prosecuted by prosecuting attorneys	61
that do not involve the transportation of brine by vehicle shall	62
be deposited into the state treasury to the credit of the oil	63
and gas well fund, which is hereby created.	64
<u>(D)</u> Fines imposed under divisions (C) and (D) of section	65
1509.99 of the Revised Code for violations prosecuted by	66
prosecuting attorneys that involve the transportation of brine	67
by vehicle and penalties associated with a compliance agreement	68
entered into pursuant to this chapter shall be paid to the	69
county treasury of the county where the violation occurred.	70
<u>(E)</u> The <u>oil and gas well</u> fund shall be used solely and	71
exclusively for the purposes enumerated in division (B) of	72
section 1509.071 of the Revised Code, for the expenses of the	73
division associated with the administration of this chapter and	74
Chapter 1571. of the Revised Code and rules adopted under them,	75
and for expenses that are critical and necessary for the	76
protection of human health and safety and the environment	77
related to oil and gas production in this state. The expenses of	78

the division in excess of the moneys available in the fund shall 79
be paid from general revenue fund appropriations to the 80
department. 81

Sec. 1509.22. (A) Except when acting in accordance with 82
section 1509.226 of the Revised Code, no person shall place or 83
cause to be placed in ground water or in or on the land or 84
discharge or cause to be discharged in surface water brine, 85
crude oil, natural gas, or other fluids associated with the 86
exploration, development, well stimulation, production 87
operations, or plugging of oil and gas resources that causes or 88
could reasonably be anticipated to cause damage or injury to 89
public health or safety or the environment. 90

(B) (1) No person shall store or dispose of brine in 91
violation of a plan approved under division (A) of section 92
1509.222 or section 1509.226 of the Revised Code, in violation 93
of a resolution submitted under section 1509.226 of the Revised 94
Code, or in violation of rules or orders applicable to those 95
plans or resolutions. 96

(2) (a) On and after January 1, 2014, no person shall 97
store, recycle, treat, process, or dispose of in this state 98
brine or other waste substances associated with the exploration, 99
development, well stimulation, production operations, or 100
plugging of oil and gas resources without an order or a permit 101
issued under this section or section 1509.06 or 1509.21 of the 102
Revised Code or rules adopted under any of those sections. For 103
purposes of division (B) (2) (a) of this section, a permit or 104
other form of authorization issued by another agency of the 105
state or a political subdivision of the state shall not be 106
considered a permit or order issued by the chief of the division 107
of oil and gas resources management under this chapter. 108

(b) Division (B) (2) (a) of this section does not apply to a person that disposes of such waste substances other than brine in accordance with Chapter 3734. of the Revised Code and rules adopted under it.

(C) The chief shall adopt rules regarding storage, recycling, treatment, processing, and disposal of brine and other waste substances. The rules shall establish procedures and requirements in accordance with which a person shall apply for a permit or order for the storage, recycling, treatment, processing, or disposal of brine and other waste substances that are not subject to a permit issued under section 1509.06 or 1509.21 of the Revised Code and in accordance with which the chief may issue such a permit or order. An application for such a permit shall be accompanied by a nonrefundable fee of two thousand five hundred dollars.

The storage, recycling, treatment, processing, and disposal of brine and other waste substances and the chief's rules relating to storage, recycling, treatment, processing, and disposal are subject to all of the following standards:

(1) Brine from any well except an exempt Mississippian well shall be disposed of only as follows:

(a) By injection into an underground formation, including annular disposal if approved by rule of the chief, which injection shall be subject to division (D) of this section;

(b) By surface application in accordance with section 1509.226 of the Revised Code;

(c) In association with a method of enhanced recovery as provided in section 1509.21 of the Revised Code;

(d) In any other manner not specified in divisions (C) (1)

(a) to (c) of this section that is approved by a permit or order issued by the chief.	138 139
(2) Brine from exempt Mississippian wells shall not be discharged directly into the waters of the state.	140 141
(3) Muds, cuttings, and other waste substances shall not be disposed of in violation of this chapter or any rule adopted under it.	142 143 144
(4) Pits or steel tanks shall be used as authorized by the chief for containing brine and other waste substances resulting from, obtained from, or produced in connection with drilling, well stimulation, reworking, reconditioning, plugging back, or plugging operations. The pits and steel tanks shall be constructed and maintained to prevent the escape of brine and other waste substances.	145 146 147 148 149 150 151
(5) A dike or pit may be used for spill prevention and control. A dike or pit so used shall be constructed and maintained to prevent the escape of brine and crude oil, and the reservoir within such a dike or pit shall be kept reasonably free of brine, crude oil, and other waste substances.	152 153 154 155 156
(6) Impoundments constructed utilizing a synthetic liner pursuant to the division's specifications may be used for the temporary storage of waste substances used in the construction, stimulation, or plugging of a well.	157 158 159 160
(7) No pit or dike shall be used for the temporary storage of brine or other waste substances except in accordance with divisions (C) (4) and (5) of this section.	161 162 163
(8) No pit or dike shall be used for the ultimate disposal of brine or other liquid waste substances.	164 165

(D) (1) No person, without first having obtained a permit 166
from the chief, shall inject brine or other waste substances 167
resulting from, obtained from, or produced in connection with 168
oil or gas drilling, exploration, or production into an 169
underground formation ~~unless a rule of the chief expressly~~ 170
~~authorizes the injection without a permit.~~ The permit ~~shall be~~ 171
is in addition to any permit required by section 1509.05 of the 172
Revised Code, and the permit application shall be accompanied by 173
a permit fee of one thousand dollars. 174

(2) The chief shall adopt rules in accordance with Chapter 175
119. of the Revised Code regarding the injection into wells of 176
brine and other waste substances resulting from, obtained from, 177
or produced in connection with oil or gas drilling, exploration, 178
or production. The rules shall include provisions regarding all 179
of the following: 180

(a) Applications for and issuance of the permits required 181
by this division; 182

(b) Entry to conduct inspections and to examine and copy 183
records to ascertain compliance with this division and rules, 184
orders, and terms and conditions of permits adopted or issued 185
under it; 186

(c) The provision and maintenance of information through 187
monitoring, recordkeeping, and reporting. In addition, the rules 188
shall require the owner of an injection well who has been issued 189
a permit under division (D) of this section to quarterly submit 190
electronically to the chief information concerning each shipment 191
of brine or other waste substances received by the owner for 192
injection into the well. 193

(d) The provision and electronic reporting quarterly of 194

information concerning brine and other waste substances from a 195
transporter that is registered under section 1509.222 of the 196
Revised Code prior to the injection of the transported brine or 197
other waste substances; 198

(e) Any other provisions in furtherance of the goals of 199
this section and the Safe Drinking Water Act. 200

~~(2)~~(3) (a) For a thirty-day period following the receipt 201
of an application for a permit to inject brine and other waste 202
substances, the chief shall cause notice of the application to 203
be published in a newspaper of general circulation in the area 204
in which the injection well is proposed to be located. The chief 205
also shall provide written notice of the permit application by 206
certified mail to all of the following: 207

(i) The department of transportation; 208

(ii) The board of county commissioners of each county in 209
which the injection well is proposed to be located; 210

(iii) The legislative authority of each municipal 211
corporation and township within one mile of the proposed 212
location of the injection well; 213

(iv) Each owner of real property located within a one-mile 214
radius of the proposed location of the injection well. 215

(b) Not later than thirty days after receipt of the 216
written notice, each owner of real property notified under 217
division (D) (3) (a) (iv) of this section shall respond in writing 218
to the chief as to whether or not the real property owner 219
consents to the proposed location of the injection well. If less 220
than fifty per cent of the real property owners located within a 221
one-mile radius of the proposed location of the injection well 222
consent to the proposed location, the chief shall deny the 223

injection well permit application. For purposes of this 224
division, failure to respond to the chief is not consent. 225

(4) Upon issuing a permit to inject brine and other waste 226
substances, the chief shall notify all persons and entities 227
required to be notified under division (D)(3)(a) of this section 228
of the the issuance of the permit. For a thirty-day period 229
following the issuance of the permit, the chief shall cause 230
notice of the issuance of the permit to be published in a 231
newspaper of general circulation in the area in which the 232
injection well will be located. 233

(5) The chief may adopt rules in accordance with Chapter 234
119. of the Revised Code authorizing tests to evaluate whether 235
fluids or carbon dioxide may be injected in a reservoir and to 236
determine the maximum allowable injection pressure, which shall 237
be conducted in accordance with methods prescribed in the rules 238
or in accordance with conditions of the permit. In addition, the 239
chief may adopt rules that do both of the following: 240

(a) Establish the total depth of a well for which a permit 241
has been applied for or issued under this division; 242

(b) Establish requirements and procedures to protect 243
public health and safety. 244

~~(3)~~(6) To implement the goals of the Safe Drinking Water 245
Act, the chief shall not issue a permit for the injection of 246
brine or other waste substances resulting from, obtained from, 247
or produced in connection with oil or gas drilling, exploration, 248
or production unless the chief concludes that the applicant has 249
demonstrated that the injection will not result in the presence 250
of any contaminant in ground water that supplies or can 251
reasonably be expected to supply any public water system, such 252

that the presence of the contaminant may result in the system's 253
not complying with any national primary drinking water 254
regulation or may otherwise adversely affect the health of 255
persons. 256

~~(4)~~ (7) The chief may issue an order to the owner of a 257
well in existence on September 10, 2012, to make changes in the 258
operation of the well in order to correct problems or to address 259
safety concerns. 260

~~(5)~~ (8) This division and rules, orders, and terms and 261
conditions of permits adopted or issued under it shall be 262
construed to be no more stringent than required for compliance 263
with the Safe Drinking Water Act unless essential to ensure that 264
underground sources of drinking water will not be endangered. 265

(E) The owner holding a permit, or an assignee or 266
transferee who has assumed the obligations and liabilities 267
imposed by this chapter and any rules adopted or orders issued 268
under it pursuant to section 1509.31 of the Revised Code, and 269
the operator of a well shall be liable for a violation of this 270
section or any rules adopted or orders or terms or conditions of 271
a permit issued under it. 272

(F) An owner shall replace the water supply of the holder 273
of an interest in real property who obtains all or part of the 274
holder's supply of water for domestic, agricultural, industrial, 275
or other legitimate use from an underground or surface source 276
where the supply has been substantially disrupted by 277
contamination, diminution, or interruption proximately resulting 278
from the owner's oil or gas operation, or the owner may elect to 279
compensate the holder of the interest in real property for the 280
difference between the fair market value of the interest before 281
the damage occurred to the water supply and the fair market 282

value after the damage occurred if the cost of replacing the 283
water supply exceeds this difference in fair market values. 284
However, during the pendency of any order issued under this 285
division, the owner shall obtain for the holder or shall 286
reimburse the holder for the reasonable cost of obtaining a 287
water supply from the time of the contamination, diminution, or 288
interruption by the operation until the owner has complied with 289
an order of the chief for compliance with this division or such 290
an order has been revoked or otherwise becomes not effective. If 291
the owner elects to pay the difference in fair market values, 292
but the owner and the holder have not agreed on the difference 293
within thirty days after the chief issues an order for 294
compliance with this division, within ten days after the 295
expiration of that thirty-day period, the owner and the chief 296
each shall appoint an appraiser to determine the difference in 297
fair market values, except that the holder of the interest in 298
real property may elect to appoint and compensate the holder's 299
own appraiser, in which case the chief shall not appoint an 300
appraiser. The two appraisers appointed shall appoint a third 301
appraiser, and within thirty days after the appointment of the 302
third appraiser, the three appraisers shall hold a hearing to 303
determine the difference in fair market values. Within ten days 304
after the hearing, the appraisers shall make their determination 305
by majority vote and issue their final determination of the 306
difference in fair market values. The chief shall accept a 307
determination of the difference in fair market values made by 308
agreement of the owner and holder or by appraisers under this 309
division and shall make and dissolve orders accordingly. This 310
division does not affect in any way the right of any person to 311
enforce or protect, under applicable law, the person's interest 312
in water resources affected by an oil or gas operation. 313

(G) In any action brought by the state for a violation of 314
division (A) of this section involving any well at which annular 315
disposal is used, there shall be a rebuttable presumption 316
available to the state that the annular disposal caused the 317
violation if the well is located within a one-quarter-mile 318
radius of the site of the violation. 319

(H) ~~(1)~~ There is levied on the owner of an injection well 320
who has been issued a permit under division (D) of this section 321
~~the following fees:~~ 322

~~(a) Five a fee of fifteen cents per barrel of each 323
substance that is delivered to a well to be injected in the well 324
when the substance is produced within the division of oil and 325
gas resources management regulatory district in which the well 326
is located or within an adjoining oil and gas resources 327
management regulatory district;~~ 328

~~(b) Twenty cents per barrel of each substance that is 329
delivered to a well to be injected in the well when the 330
substance is not produced within the division of oil and gas 331
resources management regulatory district in which the well is 332
located or within an adjoining oil and gas resources management 333
regulatory district.~~ 334

~~(2) The maximum number of barrels of substance per 335
injection well in a calendar year on which a fee may be levied 336
under division (H) of this section is five hundred thousand. If 337
in a calendar year the owner of an injection well receives more 338
than five hundred thousand barrels of substance to be injected 339
in the owner's well and if the owner receives at least one 340
substance that is produced within the division's regulatory 341
district in which the well is located or within an adjoining 342
regulatory district and at least one substance that is not 343~~

~~produced within the division's regulatory district in which the~~ 344
~~well is located or within an adjoining regulatory district, the~~ 345
~~fee shall be calculated first on all of the barrels of substance~~ 346
~~that are not produced within the division's regulatory district~~ 347
~~in which the well is located or within an adjoining district at~~ 348
~~the rate established in division (H) (2) of this section. The fee~~ 349
~~then shall be calculated on the barrels of substance that are~~ 350
~~produced within the division's regulatory district in which the~~ 351
~~well is located or within an adjoining district at the rate~~ 352
~~established in division (H) (1) of this section until the maximum~~ 353
~~number of barrels established in division (H) (2) of this section~~ 354
~~has been attained.~~ 355

~~(3)~~ The owner of an injection well who is issued a permit 356
under division (D) of this section shall collect the fee levied 357
by this division ~~(H) of this section~~ on behalf of the division 358
of oil and gas resources management and forward the fee to the 359
division. The chief shall transmit all money received under this 360
division ~~(H) of this section~~ to the treasurer of state who shall 361
deposit the money in the state treasury to the credit of the oil 362
and gas well fund created in section 1509.02 of the Revised 363
Code. The owner of an injection well who collects the fee levied 364
by this division may retain up to three per cent of the amount 365
that is collected. 366

~~(4)~~ The chief shall adopt rules in accordance with Chapter 367
119. of the Revised Code establishing requirements and 368
procedures for collection of the fee levied by this division ~~(H)~~ 369
~~of this section.~~ 370

(E) A municipal corporation or a township in which an 371
injection well is located may levy a fee of five cents per 372
barrel of each substance that is delivered to the well for 373

injection. The purpose of the fee is to defray the added costs 374
to the municipal corporation or township for both of the 375
following: 376

(1) Maintaining roads and other public facilities; 377

(2) Providing emergency and other public services. 378

A municipal corporation or township shall levy the fee by 379
adopting a resolution or enacting an ordinance, as applicable, 380
authorizing the collection of the fee. 381

The owner of the injection well shall pay the fee to the 382
municipal corporation or township as required by the ordinance 383
or resolution. Moneys received by the treasurer or other officer 384
of the municipal corporation under this division shall be paid 385
into the general fund of the municipal corporation. Moneys 386
received by the fiscal officer of the township under this 387
division shall be paid into the general fund of the township. 388

Section 2. That existing sections 1509.02 and 1509.22 of 389
the Revised Code are hereby repealed. 390