

OIL AND GAS WELLS

Better Environmental Coordination For
Drilling in Your Community



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Recent state legislation has largely exempted the drilling and production of oil and gas from local regulations. With the passage of this new legislation, the Ohio Department of Natural Resources - Division of Mineral Resources (ODNR-DMRM) has the exclusive and sole authority in permitting, locating, and spacing oil and gas wells.

Historically, Ohio ranks fourth in the nation for the number of gas wells drilled. A recent increase in well drilling throughout the state has caught the attention of residents and local governments and raised concerns about environmental impacts that may occur during the drilling process and the implications of lease language agreements. As more oil and gas well leases are signed, government officials and agencies need to work together to ensure that landowners' rights and local natural resources are protected.

CURRENT PROCESS

Proactive involvement in the oil and gas well drilling process requires a better understanding of how the permitting process works and the urgency required for adequate responses.

Landowners regularly contact, and are contacted by, oil and gas well producers to drill wells on their property. The enticement incentives such as free gas or royalty payments appeal to many landowners. The landowner agrees to a lease agreement from the producer (a registered, insured and bonded company) and an application is sent to ODNR-DMRM.

Once an application is received by ODNR-DMRM, a permit must be issued within 21 days in accordance with state law, (unless the Chief determines the application is incomplete or otherwise not in order), which allows the permittee to commence drilling activities. At this point, timing is of the essence.

Well drilling operations are classified into two areas, "Urbanized" and "Non-Urbanized." "Urbanized Areas" include all incorporated areas or townships with an unincorporated population of more than 5,000 based on the most recent U.S. decennial census. Conversely, a "Non-Urbanized" area is everything that is not an "Urbanized Area." Some rules and requirements vary in each of these areas.

SITE CLASSIFICATIONS

“Urbanized Areas”

If a local community has registered with the ODNR-DMRM for notification, the ODNR-DMRM will notify the local community when a drilling application has been filed. At this point, in the process, communities may contact the DMRM inspector to participate in the pre-permit site review. The pre-permitting review process involves the use of maps, aerial photographs, and plat maps to determine the lay of the land and well drilling location as well as other existing natural features that should be protected as part of the permit conditions. Site-specific permit conditions within the rules will be required by ODNR-DMRM. A valid mineral lease must be in place, which is a private agreement between the oil and gas company and mineral owner. This Lease Agreement is also reviewed for similar purposes as the pre-permit review; however, ODNR-DMRM does not enforce the Lease Agreement, due to the fact that this is a private contract.

ODNR-DMRM encourages all mineral owners to contact an attorney familiar with oil and gas leases before entering into a lease agreement. After the pre-permit process is completed and all permit criteria are met, a permit is issued.

If there are more than 15 homes that are included in the drilling unit and are within a 500-foot radius of the wellhead, the permittee is obligated to notify residents before applying for the permit. This radius can be extended by ODNR-DMRM through specific permit conditions within the permit if existing hydrology or geology dictates.



Prior to drilling, the permittee must also sample and test the quality of all water wells within a 300-foot radius of the well location. The permittee, driller and other contractors then proceed with the site construction, drilling and other related operations.

The permittee, driller and other contractors must follow the ODNR-DMRM *Best Management Practices for Oil and Gas Well Site Construction Manual* per ORC 1501:9-1-07(B)) and follow any permit conditions listed. This manual is available on-line at the website listed on the back page of this booklet. Pit closure must occur within 30 days. Permanent seeding and site stabilization must occur within 5 months from the date drilling ceases.

“Non-Urbanized Areas”

Currently, no pre-permitting process exists, nor is there a pre-construction meeting for “Non-Urbanized Areas.” In most instances, ODNR-DMRM inspectors do not become part of the process until a permit is issued. The county engineer is sent a weekly report of all applications pertinent to road ingress/egress routes.

After all permit criteria are met, a permit is issued. Inspectors receive completed permits and associated conditions. At this point, well drilling may begin.

The permittee, driller and other contractors must follow permit requirements. Best Management Practices may be implemented on location, but are not set in permit conditions. Pit closure must occur within 5 months and permanent seeding and site stabilization must occur within 9 months from the date drilling ceases.

Responding to Notices ("Urbanized Areas" only)

All townships and municipalities are encouraged to register for notification and designate a representative to be the contact for ODNR-DMRM. According to the rules for registration, a legislative authority of the municipal corporation or the board of township trustees should ask to receive copies of such applications and the appropriate clerk should provide the Chief of ODNR-DMRM, an accurate, current electronic mailing address or facsimile number. Township and municipal representatives will then be notified of all drilling applications.

The notification request needs to be in writing to ODNR-DMRM. Additionally, the township or municipality can also register a Fire/EMS representative. Local SWCDs are able to register for notification of all activities occurring within "Urbanized Areas" of their county if the townships or municipalities so desire. For information on who to contact for notification, contact your local SWCD or ODNR-DMRM.

Notification Policy ("Urbanized Areas" only)

All townships and municipalities should also have a policy in place which designates a community representative and requires that representative to immediately notify both the local SWCD and the Fire\EMS representative to assist with the pre-permitting site review and subsequent pre-permitting site meetings. Time is of essence – within 21 working days, a permit will be issued with or without township or municipality input.

Limit of Township Authority

ODNR-DMRM regulates from the public right of way onto private property within the 20 or 40-acre property drilling unit or



boundary but not within the public right of way. Townships may continue to use local authorities to enforce hazardous issues or noncompliance issues within the road right of way such as driveway permits and hazardous road conditions via the zoning inspector, road department, and/or the local police/sheriff.

Limit of SWCD Authority

If sediment is leaving the site, the local SWCD may enforce compliance through County adopted Erosion and Sediment Control Regulations, or equivalent. Periodic inspections may then be conducted to evaluate compliance.

Know the Inspector for Your Area

If you are in an "urbanized" area, contact your inspector and make him/her aware of your desire to be involved and that you have requested to be on the pre-permitting notification list. There are also backup inspectors and supervisors for each county. If you are in a "non-urbanized" area and you see a problem, contact the inspector, backup inspector, or supervisor immediately. This is your only line of "defense" to ensure the natural resources are protected. A list of inspectors/supervisors can be found at the ODNR-DMRM website listed on the back of this booklet.

IMPROVE COORDINATION CONTINUED

Pre-permitting Meetings ("Urbanized Areas" only)

Interested individuals are encouraged to attend the pre-site review meetings and discuss all possible issues that may arise throughout the drilling process. Local SWCDs may be available, upon request, to attend these meetings and review site-specific conditions. The ODNR-DMRM requires that inspectors are notified 48-hours prior to the commencement of construction activity on site.

BMP Manual

Become familiar with ODNR-DMRM BMP (Best Management Practices) *Manual for Oil and Gas Well Site Construction* and/or the specific permit terms for the particular site.



Silt fence installed to protect adjacent property from sediment runoff.

BETTER LEASE LANGUAGE

While ODNR-DMRM cannot enforce all terms of the lease language, they will review and enforce terms as they relate to on the ground features such as streams, wetlands, etc. Other terms of the lease agreement can be enforced through the court system, as any other contract would be; therefore, tight lease language is imperative. Issues to consider addressing in the lease are listed below:

Specific Site Conditions and Restrictions

- ~ Site ingress and egress locations
- ~ Access road construction standards and placement
- ~ Removal of topsoil from roadbed and proper storage for this topsoil
- ~ Location and management of brine pits
- ~ Road gate specification and style
- ~ Culvert size and type (if applicable)
- ~ Vegetative screening including type, species, location, and number
- ~ Facility fencing including standard, style, and location
- ~ Transmission line and storage tank placement
- ~ Electric line placement (buried or overhead – how high)
- ~ Use of an electric pumping unit to minimize noise
- ~ Keys to road and fence gates should be kept at the local fire department or in a fire lock box on site



A brine pit collecting fluids pumped from well drilling activities.



Local Regulations

Leases should include language requiring the leaseholder to comply with all local requirements or recommendations of the most recent version of any of the following (or their equivalent):

- ~ County Erosion and Sediment Control Regulations
- ~ Riparian and Wetland Setbacks as required by Subdivision Regulations or Local Zoning Requirements
- ~ Floodplain setbacks through local building codes
- ~ Noise Control through local Zoning Requirements

It is strongly encouraged that a copy of these above regulations be inserted into the lease agreement or incorporated by reference.

Well Productivity and Plugging

Require that wells stay commercially and economically productive. Near the end of a well's life, gas companies may operate the well only one day per year to meet ODNR requirements for active wells so that they do not have to cap the well and reclaim the site. Require that the Lessee provide an annual financial statement indicating production and net operating expenses.

The lease should stipulate that the agreement becomes null and void if the well is not economically productive in any 2 consecutive years. Once the lease is void, the driller may be ordered by the ODNR-DMRM to plug the well and reclaim the site.

Long Term Maintenance

The lease should include language addressing public safety, landowners liability, and long-term maintenance such as the following:

Fencing and gate maintenance:

For public safety and aesthetics, stipulate when fences and gates are to be repaired or replaced. The following conditions are recommended:

- ~ Fences and gates are to be kept in good working order.
- ~ Insert community fence regulations if applicable.
- ~ Gaps in fencing or ground clearance shall be repaired.

Access Road Maintenance:

These roads will deteriorate. It is important that access roads be maintained so public safety vehicles can reach the site. Clauses that require this maintenance may include provisions such as:

- ~ Erosion rills, gullies and tire ruts deeper than 4 inches shall be immediately repaired at the direction of the landowner or the community.
- ~ Roadside drainage, including culverts shall be maintained, cleaned, and repaired when 1/3 of their capacity is lost or at the direction of the landowner or community.
- ~ Roads shall be top dressed with gravel at the direction of the landowner or community.

Site Restoration

The lease should also include language specifying standards for site reclamation after the well has been installed and plugged.

OIL AND GAS WELL TERMINOLOGY

A basic understanding of oil and gas well terminology will help landowners and local governments negotiate the best possible lease agreement. Words and phrases commonly used in oil and gas well drilling agreements are defined below.

Cash Bonus – An up-front, one time payment paid upon signing the lease or prior to commencement of well drilling.

Primary Term – The number of years that a lease is in effect before drilling occurs. This is usually no more than two (2) years.

Secondary Term – The length of a lease after a well is drilled, usually lasts as long as the well produces a commercial quantity.

Pooling or Unification – A provision that allows the lessor's land to be combined with adjoining lands to form a drilling unit.

Delay Rental – Annual rental payments paid to the lessor after the first year of the primary term, usually on a per acre basis.

Royalty – The share of production from your property. In a lease, this will be referred to as a fraction, usually 1/8 of the value of the oil and/or gas produced and sold.

Shut in Royalty - Payment in lieu of a production royalty. Paid when a well is capable of production, but not producing, for maintenance or other reasons.

Termination – Occurs when the primary term expires or when economic production ceases during the secondary term.

Free Gas – An annual allocation of gas to the lessor for domestic heating purposes. This is commonly 200,000 cubic feet or more per year and allocated to the person upon whose land the well is located.

Directional Drilling – Drilling that is not directly vertical. The drilling direction changes to horizontal drilling to better locate the oil and/or gas product.



OIL AND GAS Q AND A

Q: How close can a well be drilled to my property line?

A: A vertical well cannot be drilled closer than 100 feet from any property not in the drilling unit. A directional well can conceivably be drilled right next to a property line.

Q: Are oil and gas well drilling concerns different for local governments on public property versus private landowners on private property?

A: All the recommendations for private landowners apply to local government's publicly owned property; however, local governments should carefully prepare bid documents to outline specifics of the lease language agreement.

Q: How close can a well be to a road?

A: A well cannot be closer than 50 feet to traveled portion of a road which is considered to be the berm of the roadway.

OHIO DEPARTMENT OF NATURAL RESOURCES DIVISION OF SOIL AND WATER CONSERVATION

To contact your local soil and water conservation district, please refer to the following resources:

- The government section of your local phone book
- Online at www.dnr.state.oh.us/soilandwater/swcds.htm
- ODNR - Division of Soil and Water Conservation District
614.265.6610

For more information on oil and gas wells, go to <http://www.dnr.state.oh.us/mineral/oil/index.html> or contact to ODNR-DMRM at 614.265.6633



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