

OG Energy Education Series

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Unitization in Appalachia

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Unitization in Ohio

Obtaining a Permit to Drill a Well

- ❖ Ohio Rev. Code § 1509.01(G): No person shall drill a new well, drill an existing well any deeper, reopen a well, convert a well to any use other than its original purpose, or plug back a well to a source of supply different from the existing pool, without having a permit to do so issued by the chief of the division of oil and gas resources management, and until the original permit or a photostatic copy thereof is posted or displayed in a conspicuous and easily accessible place at the well site, with the name, current address, and telephone number of the permit holder and the telephone numbers for fire and emergency medical services maintained on the posted permit or copy. The permit or a copy shall be continuously displayed in that manner at all times during the work authorized by the permit.

Statutory Framework

- ❖ Ohio Rev. Code § 1509.01(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.
- ❖ Chief of ODNR may adopt, amend or rescind rules relating minimum acreage requirements for drilling units and minimum distances from which a new well may be drilled.
 - Ohio Rev. Code § 1509.24(A).
- ❖ The rules relative to minimum acreage requirements for drilling units shall require a drilling unit to be compact and composed of contiguous land. Ohio Rev. Code § 1509.24(A).

Voluntary Formation of Drilling Unit

- ❖ “The owners of adjoining tracts may agree to pool the tracts to form a drilling unit that conforms to the minimum acreage and distance requirements of the division of oil and gas resources management under section 1509.24 or 1509.25 of the Revised Code. The agreement shall be in writing, a copy of which shall be submitted to the division with the application for a permit required by section 1509.05 of the Revised Code. Parties to the agreement shall designate one of their number as the applicant for the permit.”
 - Ohio Rev. Code § 1509.26.

“Unitization Statute”

- ❖ Ohio Rev. Code § 1509.28(A): The Chief of ODNR, upon the Chief's own motion or upon application by the owners of sixty-five per cent of the land area overlying the pool, shall hold a hearing to consider the need for the operation as a unit of an entire pool or part thereof.
- ❖ The applicant must demonstrate that formation of the unit is reasonably necessary to increase substantially the ultimate recovery of oil and gas, and the value of the estimated additional recovery of oil or gas exceeds the estimated additional cost incident to conducting the operation.

Application for Unit Operation

- ❖ Upon receipt of an application for unitization, the Division will review the proposal and, if properly submitted, will set a time and place for a hearing to determine if the proposed unitization is necessary and meets the statutory requirements.

Application Requirements

- ❖ A cover letter requesting unitization.
- ❖ An affidavit attesting that the applicant is the owner of at least 65% of the land overlaying the pool.
- ❖ A summary of the request for unitization.
- ❖ Exhibits A-1 through A-6 (as applicable) including name of each mineral owner, current address of each mineral owner, parcel number of the mineral owner's tract, and respective acreage of the tract.
 - A-1 = plat of the lands subject to the unit operating agreement
 - A-2 = mineral owners in the unit
 - A-3 = unleased mineral owners in the unit
 - A-4 = committed working interest owners in the unit
 - A-5 = uncommitted working interest owners in the unit
 - A-6 = parcels subject to pending ownership litigation
- ❖ A mailing list in Excel format containing only the names and addresses of all mineral owners (leased and unleased) and all working interest owners (committed and uncommitted).

Application Requirements (Cont.)

- ❖ A map of the proposed unit area.
- ❖ An aerial photograph of the proposed unit area.
- ❖ A gamma ray-density or gamma-ray resistivity geophysical type log identifying the proposed geological formations to be produced.
- ❖ A cross-section showing the applicable formations that the applicant is proposing to drill into and produce from in the unit area.
- ❖ A map showing all existing units adjacent to the unit proposed in the application with an identification of any permitted, drilled, and/or producing wells in the existing units.
- ❖ An exhibit showing unitized and non-unitized scenarios for each well proposed to be drilled in the proposed unit area.

Application Requirements (Cont.)

- ❖ An exhibit showing the locations and distances of the well(s).
- ❖ An affidavit attesting to attempts to lease the unleased mineral owners and attempts to commit working interest owners.
- ❖ An affidavit attesting that the applicant acted with due diligence to identify all mineral interest owners and their current addresses.
- ❖ A copy of a JOA for working interest partners (if applicable).
- ❖ An affidavit attesting to a valid JV or other agreements for the unit that discloses all JV partners.
- ❖ Prefiled testimony of a geologist, engineer, and a landman.

Hearing Notification

- ❖ The Division will send certified mail notice of the hearing date to the applicant and to all persons in the proposed unit. The applicant must publish notice of the hearing in a newspaper of general circulation in the county or counties where the proposed unit will be located.
- ❖ The newspaper notice must contain, at a minimum, all of the following information:
 - (1) the name of the proposed unit;
 - (2) each county and township where the proposed unit will be located;
 - (3) the name and contact information of the applicant;
 - (4) the date, time, and location of the hearing;
 - (5) if the application includes an unleased mineral owner for whom no address can be located, the notice must include a statement to that effect with reference to the parcel(s) and known ownership information; and
 - (6) The following statement: “For further information regarding this hearing, please visit the Division of Oil and Gas Resources Management’s website at <http://oilandgas.ohiodnr.gov/unitization>.”

Hearing

- ❖ The applicant, all unleased mineral owners, and all uncommitted working interest owners will be given an opportunity to present testimony in support of, or in opposition to, the application.
- ❖ The applicant must provide a PowerPoint presentation of:
 - (1) A map of the proposed unit area.
 - (2) An aerial photograph of the proposed unit area.
 - (3) A gamma ray-density or gamma-ray resistivity geophysical type log identifying the proposed geological formations to be produced.
 - (4) A cross-section showing the applicable formations that the applicant is proposing to drill into and produce from in the unit area.
 - (5) A map showing all existing units adjacent to the unit proposed in the application with an identification of any permitted, drilled, and/or producing wells in the existing units.
 - (6) An exhibit showing unitized and non-unitized scenarios for each well proposed to be drilled in the proposed unit area.

Chief's Determination

- ❖ The applicant must provide any updated information to the Division as soon as practicable and must provide the Division with any necessary updates to the application materials.
 - After the hearing, the Chief will determine whether the application satisfies the requirements of Ohio Rev. Code § 1509.28.
 - If the Chief approves the application, the order will be upon terms and conditions that are just and reasonable and will prescribe a plan for unit operations pursuant to Ohio Rev. Code § 1509.28.

Order Granted

- ❖ The order becomes effective on the date the applicant provides the Chief with final written approval of the unit operations as prescribed in the order by the applicant and consenting working interest owners, and also by the royalty interest owners or, with respect to unleased acreage, unleased mineral owners of 65% of the acreage to be included in the unit.
- ❖ Unit operations may commence as set forth in the order. If the applicant fails to provide all required approvals within the prescribed period, the order is revoked, and the Chief shall provide notice of the revocation to the applicant and to all persons listed in the order.

Appeal of Order

- ❖ The Oil & Gas Commission receives and hears appeals.
- ❖ The Commission is a five-member advisory council consisting of five individuals appointed by the governor to a five-year term. Pursuant to Ohio Rev. Code § 1509.35, one of the appointees must be a representative of a major petroleum company, one must represent independent petroleum producers, one must represent the public, one must be classed as learned and experienced in oil and gas law, and one must be learned and experienced in geology.
- ❖ Not more than three members shall be members of the same political party.
- ❖ The decision of the Commission is final unless vacated or otherwise amended by the courts in an appeal as provided in Ohio Rev. Code § 1509.37.

Unitization in Pennsylvania

Statutory Framework

❖ Pennsylvania Oil and Gas Act

- Applies to wells drilled below the Onondaga Horizon
- Onondaga Horizon “means the top of the Onondaga formation, except in those areas in which the Onondaga formation is not present, and in such areas the term shall be understood to mean either the top of the stratigraphic horizon first appearing in the interval of the missing Onondaga formation, or where strata older than the top of the Onondaga are exposed at the surface, then the term “ONONDAGA HORIZON” shall mean the surface.” 58 P.S. § 402(6).

❖ Drilling Permits

- “Before drilling any well which is to penetrate the Onondaga or deeper horizons or a depth of [3,800] feet, whichever is deeper, the well operator shall obtain a permit.” 58 P.S. § 406(a).
- 25 Pa. Code § 79.11(a) provides “No person may drill a well subject to the act unless a permit under the Oil and Gas Act (58 P.S. §§ 601.101 – 601.605) is obtained and the requirements of the act and this section are met.”

Powers of the Commission

- ❖ “To classify pools as oil or gas pools, or wells as oil or gas wells, for purposes material to the interpretation or administration of this act. . . .” 58 P.S. § 405(c)(2).
- ❖ “The commission shall have the power and the duty to protect correlative rights.”
 - 58 P.S. § 405(d).

Well Spacing Orders

❖ Requirements to obtain well spacing and drilling unit orders:

- A well has been drilled establishing a pool in a horizon covered by the Oil and Gas Act
- Application filed by the operator must contain “a plat indicating latitude and longitude of the pool and such information as the commission may request.” 58 P.S. § 407(1).
- Notice by publication for two successive weeks and mailing to all affected person, which must occur at least 15 days before the date of the hearing. 58 P.S. § 407(2).
- Requirements set forth in 25 Pa. Code § 79.21

Public Hearing

- ❖ At the hearing, the commission shall determine:
 - The area and acreage to be included within the spacing or drilling unit;
 - The shape of the spacing or drilling unit; and
 - The area within which wells may be drilled.
- ❖ The commission may consider the follow facts at the hearing:
 - Surface topography and property lines of the lands underlain by the pool
 - The plan of well spacing employed or proposed in the pool
 - The depth at which production from said pool has been found
 - The nature and character of the producing formation(s) and whether the production will be gas or oil
 - The maximum area which be drained efficiently and economically by one well
 - Any other available geological or scientific data

Integration of Interests

- ❖ “When two or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of a spacing unit, the interested persons may integrate their tracts or interests for the development and operation of the spacing unit.” 58 P.S. § 408(a).
- ❖ “In the absence of voluntary integration, the commission, upon the application of any operator having an interest in the spacing unit, shall make an order integrating all tracts or interests in the spacing unit for the development and operation thereof and for the sharing of production therefrom.” 58 P.S. § 408(a).
- ❖ “The commission as part of the order establishing a spacing unit or units shall prescribe the terms and conditions upon which the royalty interests in the unit or units shall, in the absence of voluntary agreement, be deemed to be integrated without the necessity of a subsequent separate order integrating the royalty interests.”
 - 58 P.S. § 408(a).

Unitization in West Virginia

Statutory Framework

❖ Distinction between shallow and deep wells

- Shallow well “means any well other than a coalbed methane well, drilled no deeper than one hundred feet below the top of the ‘Onondaga Group’: Provided, That in no event may the ‘Onondaga Group’ formation or any formation below the ‘Onondaga Group’ be produced, perforated or stimulated in any manner.” W. Va. Code § 22C-9-2(11).
- Deep well means any well, other than a shallow well or coalbed methane well, drilled to a formation below the top of the uppermost member of the ‘Onondaga Group.’” W. Va. Code § 22C-9-2(12).

❖ Commission regulates the spacing for deep wells

Drilling Units

- ❖ After a deep well has been drilled establishing a pool, an application may be filed to establish a drilling unit
- ❖ Application must comply with the notice requirements of W. Va. Code § 22C-9-5 (published one a week for 2 successive weeks)
- ❖ Factors to be considered by the commission:
 - The surface topography and property lines of the lands underlaid by the pool to be included in such order;
 - The plan of deep well spacing then being employed or proposed in such pool for such lands;
 - The depth at which production from said pool has been found;
 - The nature and character of the producing formation or formations, and whether the substance produced or sought to be produced is gas or oil or both;
 - The maximum area which may be drained efficiently and economically by one deep well; and
 - Any other available geological or scientific data pertaining to said pool which may be of probative value to the commission in determining the proper deep well drilling units therefor

Pooling of Interests

- ❖ “In the absence of voluntary pooling and upon application of any operator having an interest in the drilling unit, the commission shall set a hearing and provide notice to all interested parties.”
 - W. Va. Code § 22C-9-7(b)(1).
- ❖ “After the hearing, the commission shall enter an order pooling all tracts or interests in the drilling unit for the development and operation thereof and for sharing production therefrom. Each such pooling order shall be upon terms and conditions which are just and reasonable and in no event shall drilling be initiated on the tract of an unleased owner without the owner’s written consent.”
 - W. Va. Code § 22C-9-7(b)(1).

Josh Abrams

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I focus my practice on **oil and gas title opinions and transactions.**



LOCATION

Based in Columbus, Ohio



BAR ADMISSIONS

Ohio, Pennsylvania, and West Virginia



EDUCATION

J.D., with Order of the Curia honors, Capital University University Law School (2011)
B.A., DePauw University (2007)

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