



Ohio Legislative Service Commission

Bill Analysis

Helena Traner

Sub. S.B. 46

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(As Proposed)

Sens. LaRose, Schiavoni

BILL SUMMARY

Improper disposal of brine

- Increases the criminal penalties for violations of the Oil and Gas Law relating to the improper disposal of brine.
- Requires the Chief of the Division of Oil and Gas Resources Management to revoke, and deny future applications for, a permit if the holder is convicted of or pleads guilty to the improper disposal of brine.

Administrative, suspension, and revocation orders

- Authorizes the Chief or the Chief's authorized representative to issue administrative orders to and suspend activities of any person, rather than only owners as in current law, for a violation of the Oil and Gas Law or related rules, permits, registration certificates, or orders.
- Authorizes the Chief, in an order finding that an owner or other person has committed a material and substantial violation, to suspend activities in the order that are authorized under a permit or registration certificate issued under that Law or revoke a permit or registration certificate.
- Revises the Chief's authority to suspend certain activities and suspend or revoke an unused permit by doing all of the following:
 - adding injection and brine transportation activities to drilling, operating, and plugging activities;

--removing the requirement that the activities must be related to a material and substantial violation; and

--expanding the scope of one of the findings to be made by the Chief prior to issuing a suspension order.

- Revises the requirements and procedures in accordance with which an owner or other person must be provided an opportunity to be heard and to present evidence requesting that the order be rescinded.
- Authorizes the Chief to issue an order suspending the activities of an owner or other person for a specified period of time or revoking a permit or registration certificate associated with those activities if the Chief determines one of the following:
 - the activities present an imminent danger to a person's health or safety or are likely to result in substantial damage to natural resources; or
 - the condition or activity that is the basis of the material and substantial violation has not been corrected.
- Allows an owner or other person to appeal the order suspending activities or revoking a permit or registration certificate to the Oil and Gas Commission or the applicable court of common pleas.

Registration containing background information

- Requires a person who has not been issued a permit or registration certificate or who has not received an order authorizing activities under the Oil and Gas Law, but who intends to apply or has applied for a permit, registration certificate, or order to register with the Division of Oil and Gas Resources Management and provide specified information, including a listing of all key employees and information regarding consent orders, administrative or civil enforcement orders, civil actions, and criminal actions for violations of the Federal Water Pollution Control Act or related state laws.
- Authorizes the Chief to deny an application if the Chief determines from the submitted information that the applicant or any key employee has a history of noncompliance with the Federal Water Pollution Control Act or related state laws.

Response costs and liability

- Requires that a person who violates the general permit requirements of the Oil and Gas Law and provisions of that Law governing a permit for additional and secondary recovery operations, or any term or condition of a permit or order issued,



is liable for any damage or injury caused by the violation and for the cost of rectifying the violation and conditions caused by it.

- Establishes that a person may be subject to both a civil penalty and a term of imprisonment under the Oil and Gas Law for the same offense.
- Provides that if a person is convicted of or pleads guilty to a violation of any provision of the Oil and Gas Law or the Water Pollution Control Law, the sentencing court may order the person to reimburse the state agency or a political subdivision for any response costs incurred in responding to the violation, including the cost of rectifying the violation and conditions caused by it.

CONTENT AND OPERATION

Improper disposal of brine

The bill increases the criminal penalties for violations of the Oil and Gas Law relating to the improper disposal of brine. First, the bill makes a knowing violation of those provisions a felony.¹ Next, the following table discusses the penalties in the bill and current law:

The Bill	Current Law
1. A knowing violation is punishable by: <ul style="list-style-type: none"> a. A fine of not less than \$10,000 nor more than \$50,000; or b. Imprisonment for three years; or c. Both. 2. A subsequent knowing violation is punishable by: <ul style="list-style-type: none"> a. A fine of not less than \$20,000 nor more than \$100,000; or b. Imprisonment for six years; or c. Both. 	1. A knowing violation is punishable by: <ul style="list-style-type: none"> a. A fine of \$10,000; or b. Imprisonment for six months; or c. Both. 2. A subsequent knowing violation is punishable by: <ul style="list-style-type: none"> a. A fine of \$20,000; or b. Imprisonment for two years; or c. Both.

In addition, the bill requires the Chief of the Division of Oil and Gas Resources Management to permanently revoke a permit if the permit holder has been convicted of or pleaded guilty to the improper disposal of brine or other waste fluids and to deny

¹ R.C. 1509.99(C)(2).



any future applications for permits by the violator.² Current law does not specifically require the Chief to revoke permits or deny future applications for those violations.

Administrative, suspension, and revocation orders

The bill authorizes the Chief or the Chief's authorized representative to issue administrative orders to and suspend the activities of any person, rather than only an owner as in current law, for a violation of the Oil and Gas Law or rules adopted under it, terms and conditions of a permit issued under it, a registration certificate required under it, or orders issued under it. It then makes necessary conforming changes to reflect the extension of the Chief's authority.³

The bill authorizes the Chief, in an order finding that an owner or other person has committed a material and substantial violation, to suspend activities that are authorized under a permit or registration certificate issued under that Law or revoke a permit or registration certificate.⁴ It also authorizes the Chief to immediately suspend, by order, injection and brine transportation activities, in addition to drilling, operating, and plugging activities as in current law, and suspend or revoke an unused permit if the Chief makes one of two findings as in current law. The bill removes the requirement that the activities must be in relation to a material and substantial violation. It retains the first finding in current law that the owner or person has failed to comply with an order. It revises the second finding by specifying that the owner or person is causing, engaging in, or maintaining a condition or activity that the Chief determines presents an imminent danger to the health or safety of a person, rather than the public as in current law, or results in or is likely to result in substantial damage to the natural resources of the state rather than immediate substantial damage as in current law.⁵

The bill requires the Chief or Chief's designee to provide an owner or other person an opportunity to be heard not later than five business days after the issuance of an order and to present evidence that either the condition or activity does not present an imminent danger to the health or safety of a person or is not likely to result in substantial damage to natural resources or that the condition or activity that is the basis of a material and substantial violation has been corrected. Current law instead requires the Chief to provide an owner an opportunity to be heard and present evidence not later than five days after the issuance of an order. The evidence must demonstrate that

² R.C. 1509.22(A) and (D), not in the bill; R.C. 1509.16.

³ R.C. 1509.04(B), (C), and (D).

⁴ R.C. 1509.04(B)(3).

⁵ R.C. 1509.04(C)(1) and (2).



either the condition or activity does not present an imminent danger to the public health or safety or is not likely to result in immediate substantial damage to natural resources or that required records, reports, or logs have been submitted.⁶ The bill revises current law requiring the Chief to rescind the order under specified circumstances to reflect the above changes.

Under the bill, the Chief may issue an order suspending the drilling, operating, plugging, injection, or brine transportation activities of the owner or other person for a specified period of time or revoking the permit or registration certificate associated with those activities that are the basis of the suspension order if the Chief determines from the evidence presented that either the activities present a threat to the health or safety of a person or are likely to result in substantial damage to natural resources or that the condition or activity that is the basis of a material and substantial violation has not been corrected.⁷

The bill allows the owner or other person to appeal the order suspending activities or revoking a permit or registration certificate to the Oil and Gas Commission or to the court of common pleas of the county in which the activity that is the subject of the order is located. Current law allows an owner to appeal an original suspension order to the applicable court of common pleas.⁸

Under current law retained by the bill, if an owner fails to comply with a prior enforcement action by the Chief, the Chief may issue a suspension order without prior notification, but the Chief must give notice as soon thereafter as practical. The bill requires that not later than five business days, rather than calendar days, after the issuance of such an order, the Chief provide an opportunity to be heard. In addition, the bill allows the owner to appeal such a suspension order to the Oil and Gas Commission or to the applicable court of common pleas as in current law.⁹

Finally, the bill relocates and slightly expands the Chief's existing authority to refuse to issue a permit for drilling or plugging to an applicant who has failed to comply with an order for a material and substantial violation or caused road damage.

⁶ R.C. 1509.04(D)(2).

⁷ R.C. 1509.04(D)(3)(b).

⁸ R.C. 1509.04(D)(3)(c).

⁹ R.C. 1509.04(F).

The bill includes in that provision an applicant for an injection permit or a permit for secondary or additional recovery operations.¹⁰

Registration containing background

The bill requires a person who has not been issued a permit or registration certificate or who has not received an order authorizing activities under the Oil and Gas Law, but who intends to apply or has applied for a permit, registration certificate, or order to register with the Division of Oil and Gas Resources Management on a form and in the manner prescribed by the Chief.¹¹ The registration must include all of the following information:

(1) The name, address, and telephone number of the applicant's principal place of business;

(2) The address and telephone number of the applicant's principal place of business in Ohio if different from above;

(3) A listing of all key employees of the applicant (see below); and

(4) A listing of all of the following during the five years immediately preceding the submission of the registration:

(a) All consent orders entered into by the applicant or a key employee of the applicant in connection with any violation of the Federal Water Pollution Control Act by the applicant or a key employee or in connection with any violation of Ohio's or any other state's laws implementing that Act pursuant to delegation by the U.S. Environmental Protection Agency (USEPA) by the applicant or a key employee;

(b) All administrative or civil enforcement orders issued to the applicant or a key employee in connection with any violation of the Federal Water Pollution Control Act by the applicant or a key employee or in connection with any violation of Ohio's or any other state's laws implementing that Act pursuant to delegation by the USEPA by the applicant or a key employee;

(c) All civil actions in which the applicant or a key employee was determined by the trier of fact to be liable in damages or was the subject of injunctive relief or another type of civil relief in connection with any violation of the Federal Water Pollution Control Act by the applicant or a key employee or in connection with any violation of

¹⁰ R.C. 1509.05(B) and 1509.08.

¹¹ R.C. 1509.051(A).



Ohio's or any other state's laws implementing that Act pursuant to delegation by the USEPA by the applicant or a key employee; and

(d) All criminal actions in which the applicant or a key employee pleaded guilty to or was convicted of any violation of the Federal Water Pollution Control Act or any violation of Ohio's or any other state's laws implementing that Act pursuant to delegation by the USEPA.¹²

The bill then authorizes the Chief to issue an order denying an application if the Chief determines from the submitted information that the applicant or any key employee of the applicant has a history of noncompliance with the Federal Water Pollution Control Act or with Ohio's or any other state's laws implementing that Act that indicates that the applicant lacks sufficient reliability, expertise, and competence to operate a proposed new well, brine transportation business, or other facility or operation in substantial compliance with the Oil and Gas Law and rules adopted under it.¹³ The bill also authorizes the Chief to issue an order denying an application submitted under that Law if the Chief finds that the submitted information is false or materially incomplete.¹⁴

Finally, under the bill, a key employee is an individual who is employed by an applicant in a supervisory capacity or who is empowered to make discretionary decisions with respect to the applicant's operations or another person who has supervisory capacity or who is empowered to make discretionary decisions with respect to the applicant's operations. If the applicant has entered into a contract with another person to operate a well that is the subject of the application, a key employee also is an employee of the contractor who acts in a supervisory capacity or is empowered to make discretionary decisions with respect to the operation of the well. However, a key employee is not an employee who is exclusively engaged in any of the following: the physical or mechanical construction or operation of a well, physical or mechanical duties related to the transportation of brine, or the physical or mechanical duties related to other activities authorized under the Oil and Gas Law.¹⁵

Response costs and liability

Under the bill, anyone who violates the general permit requirements of the Oil and Gas Law or the provisions of that Law requiring a permit for additional and

¹² R.C. 1509.051(A)(1) to (4).

¹³ R.C. 1509.051(B).

¹⁴ R.C. 1509.051(C).

¹⁵ R.C. 1509.051(D)(3).



secondary recovery operations, or any term or condition of a permit or order issued by the Chief, is liable for any damage or injury caused by the violation and for the cost of rectifying the violation and conditions caused by it. The bill retains current law that imposes such liability on anyone who violates the provisions of that Law governing brine storage and brine transportation.¹⁶

The bill also states that a person cannot be subject to both a civil penalty and a fine imposed as part of a criminal penalty under the Oil and Gas Law for the same offense, thus providing that a person may be subject to a civil penalty and a term of imprisonment for the same offense. Current law instead provides that a person cannot be subject to both a civil penalty and a criminal penalty, including both a fine and a term of imprisonment, under the Oil and Gas Law for the same offense.¹⁷

Finally, under the bill, if a person is convicted of or pleads guilty to a violation of any provision of the Oil and Gas Law, the court imposing the sentence may order the person to reimburse the state agency or a political subdivision for any response costs incurred in responding to the violation, including the cost of rectifying the violation and conditions caused by it.¹⁸ Similarly, under the bill, if a person is convicted of or pleads guilty to a violation of any provision of the Water Pollution Control Law, the court imposing the sentence may order the person to reimburse the state agency or a political subdivision for any response costs incurred in responding to the violation, including the cost of rectifying the violation and conditions caused by it.¹⁹

HISTORY

ACTION	DATE
Introduced	02-19-13

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¹⁶ R.C. 1509.33(G).

¹⁷ R.C. 1509.33(H).

¹⁸ R.C. 1509.99(E).

¹⁹ R.C. 6111.99(G).

