

BEFORE THE OHIO HOUSE OF REPRESENTATIVES
FINANCE AND APPROPRIATION COMMITTEE
AGRICULTURE AND DEVELOPMENT SUBCOMMITTEE

TESTIMONY OF BRIAN P. BARGER
RE: HB 59
ON BEHALF OF PATRIOT WATER TREATMENT, LLC

Chairman Derickson, Ranking Member Ashford and members of the committee, my name is Brian Barger, and I am before you today testifying with respect to HB 59 as it relates to certain changes proposed by the Ohio Department of Natural Resources which changes effectively prohibit the treatment of certain water used in the oil and gas exploration and development process.

Patriot Water Treatment is a privately owned, Ohio-based family business located in Warren, Ohio that has been in business since 2009. Patriot has 25 direct employees and numerous indirect employees, including municipal water personnel, truck drivers, oil and gas operators and service providers.

Patriot has developed a proprietary process to treat what is known as “light salinity” water that results from the initial top hole and flowback water associated with oil and gas production operations. This water, which accounts for approximately 5% of the overall produced water, does not contain the heavy levels of brine and other chemicals that are used in other aspects of the fracking process. Basically, the light water is trucked to Patriot’s plant where any hazardous components are removed and sent to appropriate disposal sites. The water is then treated again and metals and other constituents are removed.

Once that process is completed, the water is sent to the city of Warren’s Water Treatment Plant where further treatment takes place, just like with many other industrial dischargers. The water treatment plant operates pursuant to a National Pollution Discharge Elimination Permit or “NPDES” permit issued by Ohio EPA under authority of the Clean Water Act. That permit sets the limits on the amount and concentration of effluent, including salt, that is allowed to be discharged into the Mahoning River.

Patriot operates pursuant to permits issued by OEPA and approvals given by ODNR that allow it to treat 100,000 gallons of light water per day which cannot exceed 50,000 mg/l of salt. By comparison, the heavier oil and gas waters have ten times this amount of salt. It is worth noting that many industrial users along the Mahoning River discharge directly into the River pursuant to individual NPDES permits. These discharges contain much higher concentrations of pollutants, including salt, than what Patriot introduces to the Warren water treatment plant.

Since its doors opened, Patriot has never been cited for any water violations by either OEPA or ODNR. In fact, to the contrary, U.S. EPA performed a comprehensive inspection at Patriot and issued a 900 page report in the Fall of 2012 deeming Patriot's operations to be compliant with applicable law.

Allowing light water to be treated results in less untreated water being pumped into the ground for perpetuity. Additionally, pumping light water into underground wells requires increased injection pressure which data suggests can contribute to seismic events, like what happened during the holidays in Youngstown at Northstar Well #1. It is also worth noting that ODNR gets a fee for water put into underground injection wells.

For your ease, here is the exact language proposed by ODNR:

Sec. 1509.22. (A) Except when acting in accordance with section 1509.226 of the Revised Code or in accordance with an order issued by the chief of the division of oil and gas resources management under division (C) of this section, no person shall place or cause to be placed in ground water or in or on the land or discharge or cause to be discharged in surface water brine, crude oil, natural gas, or other fluids associated with the exploration or development, production, or plugging of oil and gas resources in surface or ground water or in or on the land in such quantities or in such manner as actually causes or could reasonably be anticipated to cause either of the following:

(1) Water used for consumption by humans or domestic animals to exceed the standards of the Safe Drinking Water Act;

(2) Damage or injury to public health or safety or the environment.

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

(2) No person who treats mechanically, chemically, or by another process brine or other waste fluids or substances associated with the exploration, development, production, or plugging of oil and gas resources shall transfer the brine or other waste fluids or substances that were so treated to another person for disposal in ground water or surface water or in or on the land unless the person receiving the brine or other waste fluids or substances for disposal has been issued an order or a permit under this section or section 1509.06 or 1509.21 of the Revised Code.

(C) The chief of the division of oil and gas resources management shall adopt rules and issue orders regarding storage and disposal of brine and other waste substances; however, the storage and disposal of brine and other waste substances and the chief's rules relating to storage and disposal are subject to all of the following standards:

(1) Brine Except as provided in division (C)(2) of this section, brine from any well except an exempt Mississippian well shall be disposed of only by injection 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; by

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

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

(d) By any other ~~methods~~ method not specified in divisions (C)(1)(a) to (c) of this section that is approved by an order of the chief for testing or implementing a new technology or method of disposal. ~~Brine~~

(2) Brine from exempt Mississippian wells shall not be discharged directly into the waters of the state.

(~~2~~)(3) Muds, cuttings, and other waste substances shall not be disposed of in violation of this chapter or any rule adopted under it.

(~~3~~)(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 liquid tight and constructed and maintained to prevent the escape of brine and other waste substances.

As you can see, the proposed language does two things. First, it removes the objective criteria of compliance with the Safe Drinking Water Act and protection of health and safety. Second, it effectively prohibits treatment of light water and forces all water to be injected into underground wells.

It is important to understand that Patriot's treatment process in conjunction with the Warren water treatment plant meets the objective standards currently in Ohio and federal law, including the Clean Water Act. However, under ODNR's proposed language, these objective standards are removed and replaced with permitting approval based solely on the Chief's discretion without any reference to applicable water law or any health and safety requirements.

ODNR's proposal appears to violate Ohio's delegated Safe Drinking Water Act program which places Ohio's entire injection well program—both regulated by ODNR and OEPA—in jeopardy. In addition, the proposal violates the constitutional rights of not only Patriot, but many other Ohio businesses, including oil and gas, trucking/hauling, landfills, mining companies, financial institutions and local government.

For the foregoing reasons, as well as the details contained in the White Paper attached to my testimony, we are respectfully requesting that ODNR's proposed language for RC 1509.22 be deleted in total from H.B. 59.

I am available to answer any questions that you might have and look forward to meeting with you on this important issue.

INDUSTRY WHITE PAPER—NO CHANGES NEEDED TO R.C. 1509.22

OVERVIEW

Position of Industry:

Proposed changes to R.C. 1509.22 do nothing to protect the environment (including land, water and drinking water). Instead, ODNR's proposed language will result only in additional and unnecessary regulatory steps that will increase costs, time and uncertainty to several industries. Such language also appears to violate two federal environmental statutes, a delegated primacy agreement with USEPA and the constitutional rights of operators, transporters and other associated businesses.

Request of Industry:

Do not change the current version of R.C. 1509.22.

Industries Impacted:

Oil and gas, trucking/hauling, injection well owners, landfills, mining companies, financial institutions, local government.

DETAILED EXPLANATION OF PROBLEMS

Proposed Change:

- Removes any "objective criteria" for determining when brine, crude oil, natural gas, or other fluids associated with the exploration, development, production, or plugging of oil and gas resources can be placed/discharged in water or on land and replaces it with a blanket prohibition against such placement/dischARGE absent Order of the Chief of the Division of Oil and Gas Resources Management("DOGRM"). *Proposed 1509.22(A)*.

Problems with Proposed Change :

- Adds an unnecessary additional regulatory step (i.e. Order of Chief), which will be time-consuming, costly and have arbitrary results.
- Chief's determination is no longer based on objective criteria (i.e. Safe Drinking Water Act or damage/injury to public health or safety of environment). Thus, industry will have no objective guidelines as to what ODNR will use as the basis for the grant/denial of an Order.
- Appears to violate USEPA's delegation of primacy to Ohio for an injection well program—Ohio could lose its primacy to regulate Class II Underground Injection Wells.
- Will significantly jeopardize existing operations and current placement/dischARGE contracts (O&G companies, hauling companies, mining companies, landfills, municipalities and townships).
- Creates an effective monopoly for ODNR and Class II well injection—even for substances that can create environmental problems in wells (i.e. radioactive material, low-salinity materials that require higher injection pressures and can cause seismic activity).

Proposed Change :

- Prohibits any treatment of brine or other waste fluids or substances associated with the exploration, development, production, or plugging of oil and gas resources and then subsequent transfer of such treated material unless the water discharger has an Order or Permit from the Chief. *Proposed 1509.22(B)(2)*

Problems with Proposed Change :

- Adds an unnecessary additional regulatory step (i.e. Order of Chief), which can be time-consuming, costly and have arbitrary results. Such process must already be regulated by Ohio EPA under the Clean Water Act/NPDES program, so there is no need for this new language in ODNR's statute.
- Appears to violate the Clean Water Act and USEPA's delegation of the NPDES program to Ohio.
- Chief/DOGRM does not have the requisite water experience to make such determination.
- Chief has no required objective criteria by which to make determinations (i.e. no rules or established process in place for obtaining such a permit).
- Will significantly jeopardize existing operations and current contracts (O&G companies, hauling companies, mining companies, landfills, municipalities and townships).
- Creates an effective monopoly for ODNR and Class II well injection—even for substances that can create environmental problems in wells (i.e. radioactive material, low-salinity materials that require higher injection pressures and can cause seismic activity).

Proposed Change:

- States that "brine" can only be disposed of in Class II injection wells, by enhanced recovery or by open dumping on roadways, unless the Chief issues an Order allowing another method. *Proposed 1509.22(C)*.

Problems with Proposed Change :

- Adds an unnecessary additional regulatory step (i.e. Order of Chief), which can be time-consuming, costly and have arbitrary results. Such "method of disposal" already requires "approval" by the Chief, so this new language is unnecessary.
- Will significantly jeopardize existing operations and current contracts (O&G companies, hauling companies, mining companies, landfills, municipalities and townships).
- Creates an effective monopoly for ODNR and Class II well injection—even for substances that can create environmental problems in wells (i.e. radioactive material, low-salinity materials that require higher injection pressures and can cause seismic activity).