

OG ENERGY EDUCATION SERIES



**OLIVA
GIBBS** LLP

POOLING AND UNITIZATION IN OHIO

WEDNESDAY, JULY 26, 2023

12:00 PM TO 1:00 PM CT



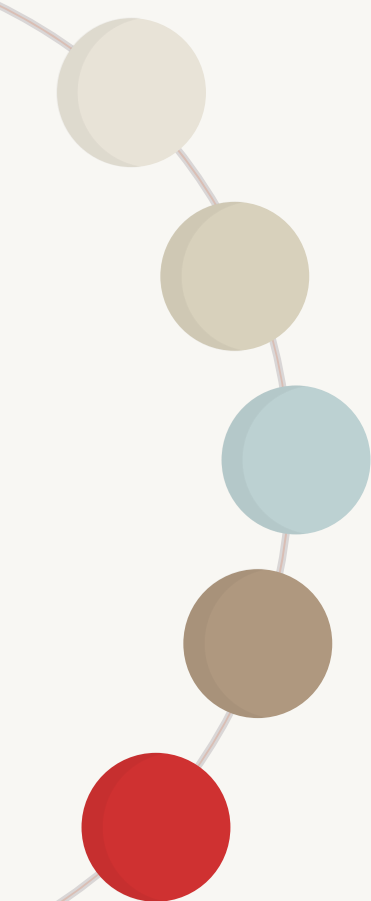
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Overview

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- I. Historical Context
 - II. 1965 Regulation Package
 - III. R.C. 1509.26 and 1509.27
 - IV. Context of R.C. 1509.28
 - V. Evolution of R.C. 1509.28
 - VI. The process of R.C. 1509.28

Ohio has a long history of oil and gas production



Ohio's first oil and gas well put into production in 1860.



More than 280,000 wells have been drilled in Ohio since the first well in 1814.



Northwest Ohio's Trenton formation lead US oil production in the 1880s into early 1900s.

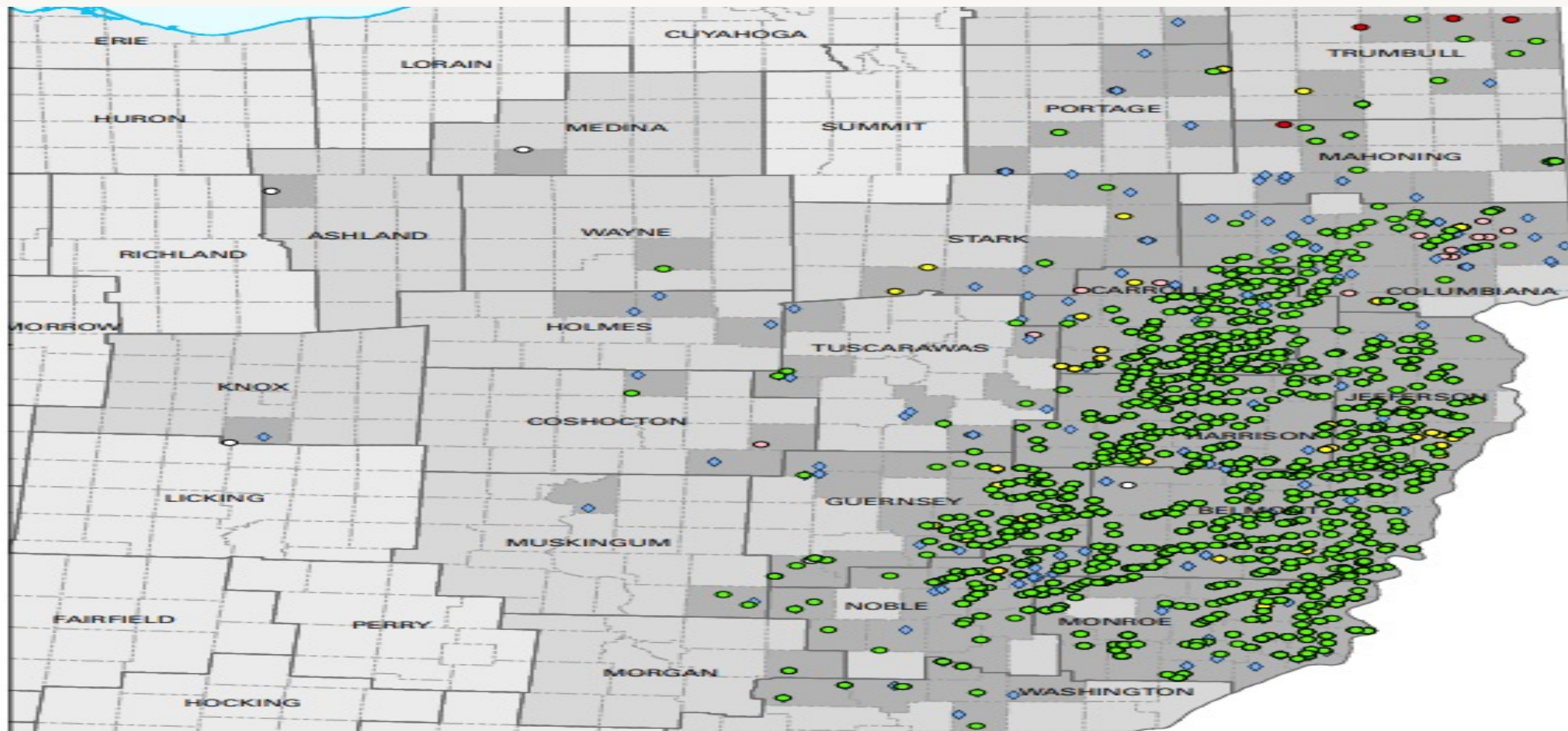


Morrow County Boom

Discovery well drilled in 1962 in the Trempealeau formation.

In 1964, Morrow County produced more than 10 million barrels of oil.

Utica Shale Activity Map



Rule of Capture

- ❖ Ohio courts have followed the rule of capture. See *Kelly v. Ohio Oil Co.*, 57 Ohio St. 317 (Ohio 1897).
- ❖ Limited the rights of adjoining landowners.
- ❖ The unmodified application of the rule of capture led to indiscriminate town lot drilling when prolific resources were discovered in Morrow County.

The Result: Town Lot Drilling



The Reaction: the 1965 Legislative Package

- ❖ Legislation package effective in 1965 passed to regulate drilling and preserve resources by preventing undue loss of reservoir pressure.
- ❖ Established Revised Code Chapter 1509 and the Ohio Department of Natural Resources Division of Oil and Gas Resources Management (the “Division”).
- ❖ R.C. 1509.24 created authority of Division to regulate well spacing.
- ❖ Chapter 1509 also established mechanisms allowing for drilling units made up of multiple adjoining tracts.

Vertical Well Spacing Rules:

- ❖ Well depth 0-1,000 feet; on ≥ 1 acre tract; ≥ 200 feet from well; ≥ 100 feet from the boundary of tract or drilling unit.
- ❖ Well depth 1,000-2,000 feet; on ≥ 5 acre tract; ≥ 460 feet from well; ≥ 230 feet from the boundary of tract or drilling unit.
- ❖ Well depth 2,000-4,000 feet; on ≥ 10 acre tract; ≥ 600 feet from well; ≥ 300 feet from the boundary of tract or drilling unit.
- ❖ Well depth greater than 4,000 feet; on > 20 acre tract; $> 1,000$ feet from well; ≥ 500 feet from the boundary of tract or drilling unit.

Horizontal Well Spacing Rule

- ❖ Spacing is determined from take points along wellbores.
- ❖ Perpendicular wellbore distance from not less than 400 feet from any drilling unit or subject tract boundary.
- ❖ The first and last take points are not less than 150 feet from the drilling unit or subject tract boundary.
- ❖ Distance from an “as drilled horizontal well” can deviate up to ten percent from spacing set by rule.

Division Authority to Regulate Oil and Gas Preempts

- ❖ R.C. 1509.02 grants the Division “sole and exclusive authority to regulate the permitting, location and spacing of oil and gas wells and production operations within the state.”
- ❖ There has been significant litigation around the issue.
- ❖ Resulted in *State of Ohio ex rel. Morrison v. Beck Energy Corp.*, Feb. 17, 2015, Ohio Supreme Court.
- ❖ Court upheld the sole and exclusive authority of the Division to regulate production operations in the state over attempts to regulate by a local zoning authority.

Chapter 1509's Options to Form Drilling Units:

R.C. 1509.26
Voluntary
Pooling

R.C. 1509.27
Mandatory
Pooling Orders

R.C. 1509.28
Unitization

Voluntary Pooling R.C. 1509.26

- ❖ Owners of adjoining tracts may agree to pool tracts to form a drilling unit that conforms to the minimum acreage requirements established under R.C. 1509.24.
- ❖ Owners means the owners of the right to drill on tracts by statutory definition in R.C. 1509.01(K).

Mandatory Pooling R.C. 1509.27



APPLICATION
ADDRESSES A
SINGLE WELL AND
MUST INCLUDE A
PERMIT
APPLICATION.



A \$5,000 FILING
FEE.



HEARING IS
OPTIONAL AND
MAY BE REQUESTED
BY ANY INTEREST
OWNER.



LIMIT OF 5 PER
APPLICANT PER
YEAR.



IS NOT BEING USED
FOR HORIZONTAL
SHAPE WELLS.

Unitization R.C. 1509.28

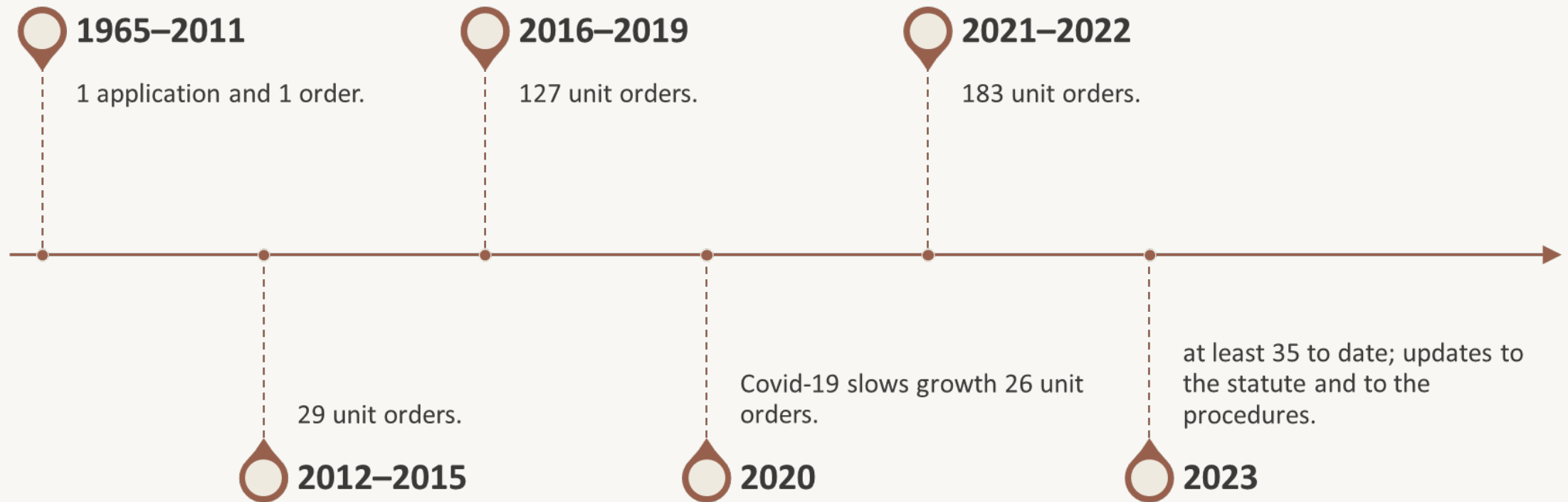
Seldom used in Ohio from 1965 through 2012.

From 2012 to present more than 395 orders have been issued pursuant to R.C. 1509.28.

Used for horizontal shale multi-well development projects.

Being used to facilitate development of challenging horizontal shale drilling units.

Unitization in Context



Amendments of R.C. 1509.28

During the Utica Shale era, R.C. 1509.28 has been a political issue. As such, there have been several changes made by the legislature to the statute.

- ❖ **2012** amendment: SB 315 add a filing fee of \$10,000.
- ❖ **2015** amendment: HB 64 specifies that ODOT lands are subject to R.C. 1509.28.
- ❖ **2019** amendment: HB 166 adds clarification that fractional interests can be include in the 65% consenting interest.
- ❖ **2021** amendment: HB 110 clarification of ODOT terms and cross reference.
- ❖ **2022** amendment: HB 397 adds requirement that hearings are within 60 days of application subject to completeness review; order issued within 60 days of hearing (unless application is being denied).

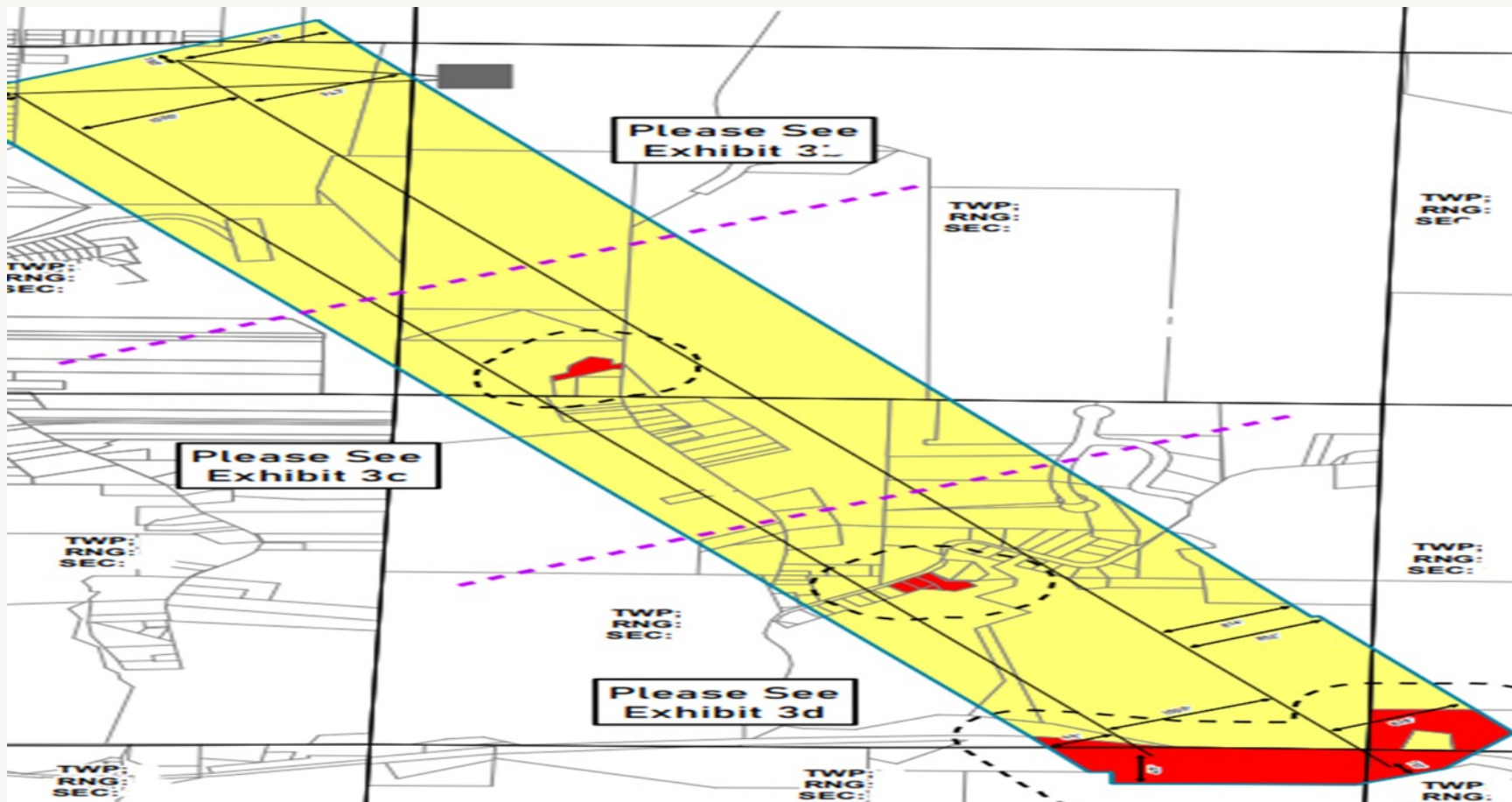
Changes to the Process

- ❖ Spring of 2023, the Division made changes to the procedural guidelines, which created changes to the unitization process:
 - The form for Applications has been standardized
 - Pre-filed testimony no longer required
 - Exhibits to the Applications have been standardized
 - Summary of Economic Calculations
 - Affidavit of leasing efforts
 - Simplified mineral ownership lists
 - Fewer required maps/plats
 - Georeferenced file now required.

Requirements of R.C. 1509.28

- ❖ Applicant must have agreement of 65% or more of unit.
- ❖ \$10,000 non-refundable filing fee.
- ❖ Target formation must be a pool or part of a pool as defined in R.C. 1509.01.
 - “an underground reservoir containing a common accumulation of oil or gas...”
- ❖ Operations must be “reasonably necessary to increase substantially the ultimate recovery of oil and gas, and the value of the estimated additional recovery of oil and gas exceeds the estimated additional costs...”
- ❖ Order must be on terms that are just and reasonable.

An Example



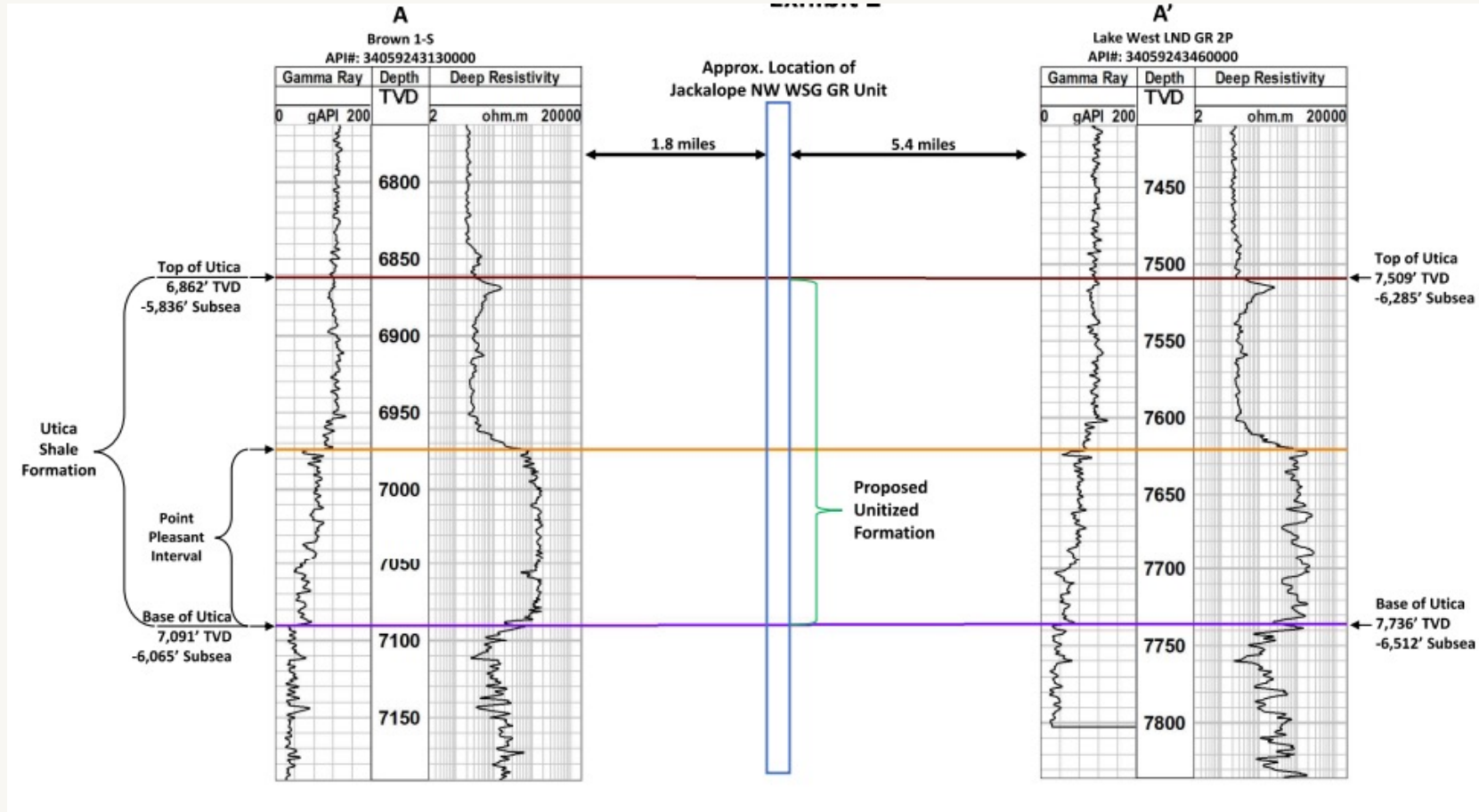
Reservoir Engineering Example

Well Information				
Well Name	Unit Lateral Length (ft)	Unit Dev. Cost (\$M)	Non-Unit Lateral Length (ft)	Non-Unitized Dev. Cost (\$M)
Posey A 1H	9,284	9,312	8,204	8,820
Posey A 3H	9,301	8,406	7,913	7,778
Total	18,585	17,718	16,117	16,598

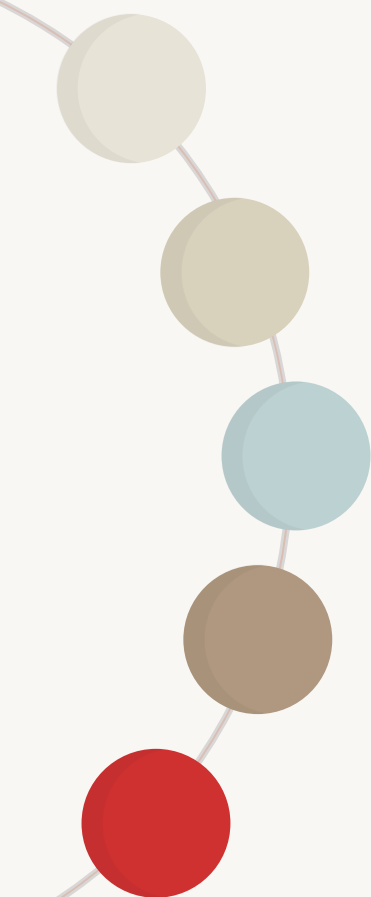
Unitized Posey A						
Well Name	Gas (Bcf)	Oil (Mbbbls)	NGLs (Mbbbls)	Gas Equivalent (Bcfe)	PV(10) (\$M)	Gross Production Value (\$M)
Posey A 1H	5.4	397	478	9.84	9,657	24,787
Posey A 3H	5.4	398	480	9.86	10,527	24,833
Total	10.8	795	958	19.7	20,184	49,620

Non-Unitized Posey A						
Well Name	Gas (Bcf)	Oil (Mbbbls)	NGLs (Mbbbls)	Gas Equivalent (Bcfe)	PV(10) (\$M)	Gross Production Value (\$M)
Posey A 1H	4.8	351	423	8.69	7,915	21,904
Posey A 3H	4.6	339	408	8.39	8,286	21,127
Total	9.4	690	831	17.08	16,201	43,031

Cross Section Exhibit Example



The Application Process



I. Application

I. Exhibits including economic estimates, geologic cross section, unit maps and lists of all unit owners.

II. \$10,000 filing fee.

II. Hearing to be scheduled within 60 days of application.

III. Completeness Review.

I. Division staff review application and may request corrections.

II. An applicant has 3 business days to correct the application or the hearing can be delayed.

Hearing Notification

❖ Hearing Notification

- ODNR sends notice of the hearing to owners of interests in the unit.
- The Operator of the Unit publishes notification in a newspaper in the county the unit is located within.
 - 5 consecutive times for daily circulation.
 - 4 consecutive weeks for weekly.
 - Provide Division proof of publication no later than 14 days before the scheduled hearing.

The Hearing



Held online via WebEx and telephone.



Applicant presents testimony from a landman, geologist and reservoir engineer.

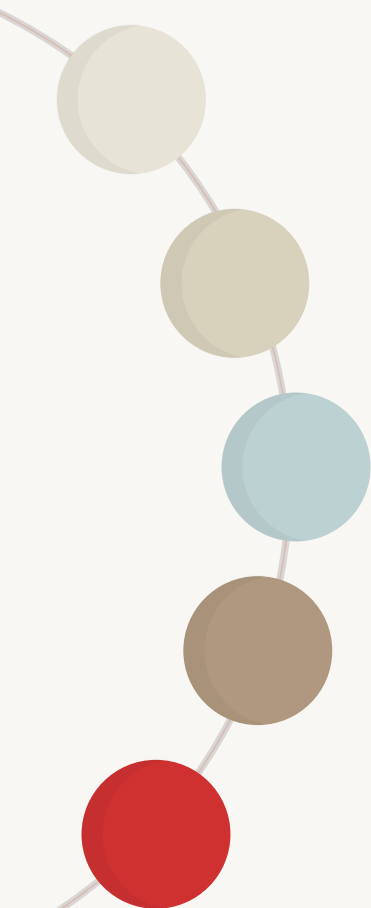


Division staff question the witnesses.



Interest owners can directly appear or appear through representation.

After the Hearing



An order will be issued within 60 days of the hearing.

- Unless an order is not issued.

Applicant will have 6 months to make the order effective.

- Done by filing approval of the order with Division.

Once the order is effective.

- Applicant can permit wells in the target formation within the unit.
- 21 days to record a Declaration of Statutory Unitization.

Credit Info

- ❖ We will be sending a follow-up email with further credit information in the upcoming week(s).
- ❖ Please download the AAPL Affidavit from the handouts section before signing off.
 - The affidavit will not be sent out separately until the follow-up email has been sent.
- ❖ **AAPL component code: OGLA72623**
 - This program has been accredited for 1 RL, RPL, or CPL recertification credit(s) (CEU), and 0 CPL/ESA, and/or 1 Ethics credit(s) (CEU Ethics), for a total of 1 credit(s).
- ❖ This program is approved for 1 core CPLTA credit.
- ❖ We've also applied for:
 - MCLE Credit in **Ohio**. Bar approval is pending.
 - NADOA for a **CDOA Core Credit**. Credit is pending.
- ❖ Complete the post-event survey after the program has ended.

Common Order Terms

Well timelines.

- Expect order to require drilling within 1 year of the effective date.
- Timeframe in years to get all planned wells on production.

Treatment of Unleased Mineral Owners

- 1/8 gross royalty.
- First well operator can recover 200% of proportionate share of costs; 150% thereafter.
- 7/8ths net production payment after cost recovery.

Orders are adapted to the facts of each unit; terms may vary.

Uses for R.C. 1509.28 in Shale Development Context



**Units that include
ancient mineral
severances.**



**Uncertainty under
the Ohio Dormant
Mineral Act or the
Marketable Title Act.**



**Absent and holdout
mineral owners.**



**Units including
working interests
that cannot agree to
development.**



**Units affected by
disputes impacting
the right to drill and
produce on parcels
within unit.**

R.C. 1509.28 is Facilitating Development

- ❖ More than 400 orders during the Utica Shale era.
- ❖ Orders impact more than 800 planned wells.
- ❖ Orders cover more than 240,000 acres across Ohio.
 - Not all have been drilled and some have been repeats.

Questions?



Presenter Information

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BAR ADMISSIONS

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EDUCATION

J.D., University of Dayton School of Law

B.A., Wittenberg University

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