



Fact Sheet

FRACKING: Mandatory Pooling

Overview of Fracking

A relatively new drilling technology — known as high-volume, horizontal hydraulic fracturing or “fracking” — now makes it possible to reach natural gas reserves that underlie much of Ohio.

This deep-shale natural gas drilling uses high-pressure injections of water, sand, and chemicals to release trapped gas. (See the fact sheet titled *Horizontal Fracking* for more overview.)

The Drilling Unit

A company that seeks to drill an oil or gas well must have oil and gas rights to a certain amount of land around the well. This area is called a “drilling unit.” The required size for the drilling unit depends how deep underground the well is going to drill.

If the well is to be drilled down to a depth of:

To 1,000 feet, the well head must be located:

- on a 1-acre drilling unit;
- at least 200 feet from any well drilling to the same resource; and
- at least 100 feet from any boundary of the subject tract or drilling unit.

Between 1,000 and 2,000 feet, the well head must be located:

- on a 10-acre drilling unit; and
- at least 460 feet from any well drilling to the same resource; and
- at least 230 feet from any boundary of the subject tract or drilling unit.

Between 2,000 and 4,000 feet, the well head must be located:

- on a 20-acre drilling unit; and
- at least 600 hundred feet from any well drilling to the same resource; and
- at least 300 feet from any boundary of the subject tract or drilling unit.

More than 4,000 feet, the well head must be located:

- on a 40-acre drilling unit;
- at least 1000 feet from any well drilling to the same resource;
- at least 500 feet from any boundary of the subject tract or drilling unit.

Note that the Ohio’s Utica shale is around 2,000 feet underground in the Franklin county area, but between 8,000 and 10,000 feet underground in Monroe and Jefferson counties. The Marcellus shale is closer to the surface, ranging from 2,000 to 6,000 feet deep in Ohio.

There are also spacing requirements that restrict, for example, how close to an occupied house the drilling company can keep certain equipment.

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Oil & Gas Leases

Companies comply with these drilling unit requirements by obtaining oil and gas rights from landowners in the area, typically through an oil and gas lease.

If the company is unable to secure enough leases from landowners to make a drilling unit large enough to meet the requirements, they can apply for a “mandatory pooling” order.

This order would force some landowners to become part of the drilling unit, even though they didn't sign a lease.

When the Ohio Department of Natural Resources (ODNR) receives a mandatory pooling application, they first make sure that the company has tried to contact all landowners in the proposed drilling unit area and made good-faith offers to obtain leases from them.

If they have made such offers, then the company's application for mandatory pooling is scheduled for a hearing before the Technical Advisory Council, which meets every three months. The affected landowners are notified and given an opportunity to testify at the hearing.

After the hearing, the Technical Advisory Council recommends to the Chief of the ODNR's Division of Oil & Gas whether to approve or deny the application. The application will probably be approved if:

- it is necessary to protect the nearby landowners' rights to develop the gas under their land and to provide for effective development of oil and gas;
- there is not an obvious alternative location for the well; and
- the drill operator has secured leases with most of the landowners in the drilling unit (recommended over 90% but 70% has been enough in certain cases) and made reasonable efforts to obtain leases from the other landowners.

If ODNR grants the application, drilling will be allowed to go forward if a landowner in the drilling unit objects to drilling AND refuses to sign a lease. An affected party can appeal the chief's order to the Oil and Gas Commission within 30 days of approval.

The rights of a drilling company and an owner of "mandatory pooled" property are set out in Ohio Revised Code section 1509.27. The drilling company can't disturb the surface of any land that has been “mandatory pooled” into a drilling unit without a written agreement from the landowner.

Each landowner whose property has been “mandatory pooled” into the drilling unit will be able choose whether or not to participate in the costs and risks of production from the well.

If they elect to participate, the landowner will be partially liable for some of the costs associated with the well. They will also receive royalty payments for the value of the gas produced from the well based on the percentage of the land in the drilling unit that they own.

If the landowner chooses not to share in the risks and costs, they will be designated as a “nonparticipating owner.” The gas company may keep the nonparticipating owner's royalty payments to cover the costs that the nonparticipating owner would have been charged if they had participated in the costs of the well, plus a bonus amount known as the “risk penalty.”

Ohio law limits the risk penalty to twice the costs that would have been assessed if the landowner had participated in the risks and costs of production.

After that, the company must pay the nonparticipating owners the rest of their share of the production value as royalty payments.