

OPINION NO. 87-012**Syllabus:**

1. The exception from certain fee requirements for "exempt Mississippian wells" set forth in R.C. 1509.061 is limited to the fee requirements of that section, and does not except such wells from the other provisions of R.C. Chapter 1509. in general, nor does it except such wells from the brine disposal restrictions of R.C. 1509.22(A).
2. The exception from certain insurance requirements for "exempt Mississippian wells" set forth in R.C. 1509.07 is limited to the insurance requirements contained in the first paragraph of that section, and does not except such wells from the other provisions of R.C. Chapter 1509. in general, nor does it except such wells from the brine disposal restrictions of R.C. 1509.22(A).
3. The exception from certain underground brine injection requirements for "exempt Mississippian wells" under R.C. 1509.22(C)(1) is limited to the specific brine disposal restrictions of that subsection, and does not except such wells from the other provisions of R.C. Chapter 1509. in general, nor does it except such wells from the brine disposal restrictions of R.C. 1509.22(A).

To: Joseph J. Sommer, Director, Ohio Department of Natural Resources, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, April 2, 1987

I have before me your request for an opinion regarding the amendments to R.C. Chapter 1509. enacted by Amended Substitute House Bill No. 572.¹ Specifically, you ask the following questions:

1. Does Am. Sub. H.B. No. 572 grant complete immunity to "exempt Mississippian wells" from

¹ Amended Substitute House Bill 572, effective October 21, 1985.

provisions of R.C. Chapter 1509. concerning the production, storage, transportation, and disposal of brine, or is the immunity limited to specific provisions of R.C. Chapter 1509?

2. Can an owner of an "exempt Mississippian well" be held liable for violations of R.C. 1509.22(A)?

The amendments added provisions and exceptions to R.C. Chapter 1509. concerning certain "exempt Mississippian wells" as defined in R.C. 1509.01(W), which reads:

"Exempt Mississippian well" means a well that:

- (1) Was drilled and completed before January 1, 1980;
- (2) Is located in an unglaciated part of the state;
- (3) Was completed in a reservoir no deeper than the Mississippian Big Injun sandstone in areas underlain by Pennsylvanian or Permian stratigraphy, or the Mississippian berea sandstone in areas directly underlain by Permian stratigraphy; and
- (4) Is used primarily to provide oil or gas for domestic use.

Your first question requires an examination of the specific language and scope of the amendments. Aside from definitional provisions, the amendments make substantive additions to only three sections of R.C. Chapter 1509.² One such section, R.C. 1509.061, concerns fee requirements for owners of wells and the administration of generated funds by the director of natural resources. The amendments add language which renders the fee requirements of R.C. 1509.061 inapplicable to "exempt Mississippian wells." After the description of permit fee requirements, R.C. 1509.061 states, in language added by the amendments, that "[t]he fee requirement of this section does not apply to exempt Mississippian wells." The Ohio Supreme Court has held that the plain, unambiguous language of a statute eliminates the need for further statutory construction. Meeks v. Papadopoulos, 62 Ohio St. 2d 187, 404 N.E.2d 159 (1980); State ex rel. Stanton v. Zangerle, 117 Ohio St. 436, 159 N.E. 823 (1927); Swetland v. Miles, 101 Ohio St. 501, 130 N.E. 22 (1920). The language used in the amendment to R.C. 1509.061 unambiguously limits the scope of the exception granted to "exempt Mississippian wells" to the fee requirements of R.C. 1509.061. The amendment to R.C. 1509.061 was clearly not intended to provide general immunity for "exempt Mississippian wells" from R.C. Chapter 1509.

² The sections affected by the amendments are: R.C. 1509.01(V)(added definition of "waters of the state"); R.C. 1509.01(W)(added definition of "exempt Mississippian wells"); R.C. 1509.061 (concerning fee requirements of well owners); R.C. 1509.07 (concerning insurance requirements of well owners) and; R.C. 1509.22(C)(1)(concerning standards for rules on disposal of brine). Only the substantive changes, R.C. 1509.061, R.C. 1509.07, and R.C. 1509.22(C)(1), will be discussed.

The amendments also changed the language of R.C. 1509.07 to provide:

An owner of any well except an exempt Mississippian well shall file with the division of oil and gas a certificate issued by an insurance company authorized to do business in this state certifying that the owner has in force liability insurance coverage in an amount of not less than three hundred thousand dollars bodily injury coverage and three hundred thousand dollars property damage coverage to pay damages for injury to persons or damage to property caused by the drilling, operation, or plugging of all the owner's wells in this state. The owner shall maintain such coverage until all his wells are plugged and abandoned as required by law. The policy or policies providing such coverage shall require the insurance company to give notice to the chief if the policy or policies lapse for any reason. Upon any such termination of coverage, the chief may order the suspension of any outstanding permits and operations of the owner until the owner obtains the required insurance coverage.

An owner of any well, before being issued a permit under section 1509.05 of the Revised Code, shall execute and file with the division a surety bond conditioned on compliance with the restoration requirements of section 1509.072 [1509.07.2], plugging requirements of section 1509.12, permit provisions of section 1509.13 of the Revised Code, and all rules and orders of the chief relating thereto, in an amount set by rule of the chief.

The owner may deposit with the chief, in lieu of a surety bond, cash in an amount equal to the surety bond as prescribed in this section, or negotiable certificates of deposit, issued by any bank organized or transacting business in this state or certificates of deposit issued by any building and loan association as defined in section 1151.01 of the Revised Code, having a cash value equal to or greater than the amount of the surety bond as prescribed in this section. Cash or certificates of deposit shall be deposited upon the same terms as those upon which surety bonds may be deposited. If certificates of deposit are deposited with the chief in lieu of a surety bond, he shall require the bank or building and loan association that issued any such certificate to pledge securities of a cash value equal to the amount of the certificate that is in excess of the amount insured by any of the agencies and instrumentalities created by or under the following acts and amendments thereto:

(A) Federal Deposit Insurance Corporation, 64 Stat. 873, 12 U.S.C. 1811;

(B) Federal Savings and Loan Insurance Corporation, 48 Stat. 1256, 12 U.S.C. 1726;

(C) Deposit guaranty association, sections 1151.80 to 1151.92 of the Revised Code. Such securities shall be security for the repayment of the certificate of deposit. Immediately upon a deposit of cash or certificates with the chief, he shall deliver it to the treasurer of the state who shall hold it in trust for the purposes for which it has been deposited.

In lieu of such bond, the chief may accept proof of financial responsibility consisting of a sworn

financial statement showing a net financial worth within this state equal to twice the amount of the bond for which it substitutes and, as may be required by the chief, a list of producing properties of the owner within this state or such other evidence showing ability and intent to comply with the law and rules concerning restoration and plugging as may be required by rule of the chief. The chief may at any time require updating of the documents filed and shall, upon determining that an owner for whom the chief has accepted proof of financial responsibility in lieu of bond cannot demonstrate financial responsibility, order that the owner execute and file a bond or deposit cash or certificates of deposit as required by this section for the wells specified in the order within ten days of receipt of the order. If the order is not complied with, all wells of the owner which are specified in the order and for which no bond is filed or cash or certificates deposited, shall be plugged. No owner shall fail or refuse to plug such a well. Each day on which such a well remains unplugged thereafter constitutes a separate offense.

The surety bond provided for in this section shall be executed by a surety company authorized to do business in this state.

The chief shall not approve any bond until it is personally signed and acknowledged by both principal and surety, or as to either by his attorney in fact, with a certified copy of the power of attorney attached thereto. The chief shall not approve such bond unless there is attached a certificate of the superintendent of insurance that the company is authorized to transact a fidelity and surety business in this state.

All bonds shall be given in a form to be prescribed by the chief and shall run to the state as obligee. (amending language emphasized).

The scope of exception for "exempt Mississippian wells" added to R.C. 1509.07 through the amendment may be gleaned from the plain language of the statute, the intent of the General Assembly expressed through that language, as well as the rules of statutory construction. See State v. Hooper, 57 Ohio St. 2d 87, 386 N.E.2d 1348 (1979); Henry v. Central National Bank, 16 Ohio St. 2d 16, 242 N.E.2d 342 (1968). One such rule of construction is that each statutory amendment is presumed to have been made to effect a legislative purpose. Dennison v. Dennison, 165 Ohio St. 146, 134 N.E.2d 574 (1956); Lytle v. Baldinger, 84 Ohio St. 1, 95 N.E. 389 (1911). See also State ex rel. Clampitt v. Brown, 165 Ohio St. 139, 133 N.E.2d 369 (1956); Leader v. Glander, 149 Ohio St. 1, 77 N.E.2d 69 (1948).

With these fundamental principles in mind, I turn to your specific question as to whether the exception for "exempt Mississippian wells" added to R.C. 1509.07 applies to R.C. Chapter 1509. in its entirety, or only to the first paragraph of R.C. 1509.07 concerning insurance requirements. Prior to its amendment by Am. Sub. H.B. No. 572, the first paragraph of R.C. 1509.07 began "[a]n owner shall file..."³ It now reads "an owner of any well except an exempt Mississippian well shall

³ Amended Substitute House Bill No. 501, effective April 12, 1985.

file..." The remainder of the first paragraph was unaltered. The second paragraph was amended by adding the phrase "of any well." Before the amendment it spoke only of "an owner." This change indicates that the General Assembly intended the exception for "exempt Mississippian wells" to apply only to the first paragraph. Had the General Assembly intended to apply the exception for "exempt Mississippian wells" beyond that paragraph, the change in the second paragraph from "an owner" to "an owner of any well" would have been unnecessary. Since each amendment is presumed to have been enacted for some substantive purpose, the addition of the phrase "of any well except an exempt Mississippian well" to the first paragraph and the specific inclusion of the owner of "any well" in the second paragraph indicates that the scope of the exception is limited to the insurance requirements contained in the first paragraph of R.C. 1509.07.

The remaining statute which was affected by Am. Sub. H.B. No. 572 is R.C. 1509.22(C)(1). As amended, that section reads:

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

(1) Brine from any well except an exempt Mississippian well shall only be disposed of 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 surface application in accordance with section 1509.226 [1509.22.6]⁴ of the Revised Code; in association with a method of enhanced recovery as provided in section 1509.21⁵ of the Revised Code; or by other methods approved by the chief for testing or implementing a new technology or method of disposal. Brine from exempt Mississippian wells shall not be discharged directly into the waters of the state. (Footnotes added and amending language emphasized).

The language amending R.C. 1509.22(C)(1) is clear and unambiguous; thus, no further construction is required to determine the legislative intent thereof. See Meeks v. Papadopoulos, 62 Ohio St. 2d at 190, 404 N.E.2d at 161; State ex rel. Stanton v. Zangerle, 117 Ohio St. at 439, 159 N.E. at 824-825; Swetland v. Miles, 101 Ohio St. at 503, 130 N.E. at 22. R.C. 1509.22(C) details the standards for administrative rules relating to the storage and disposal of brine to be promulgated by the chief of the division of oil and gas. The

⁴ R.C. 1509.226 concerns the application of brine to roadways. Because it was unaffected by the amendments of Am. Sub. H.B. No. 572, and does not affect the treatment of owners of "exempt Mississippian wells," it will not be considered in this opinion.

⁵ R.C. 1509.21 concerns secondary recovery operations and permit requirements. Since it was unaffected by the amendments in Am. Sub. H.B. No. 572, and does not affect the treatment of owners of "exempt Mississippian wells," it will not be considered in this opinion.

first sentence of R.C. 1509.22(C)(1) provides standards for brine disposal from "any well except an exempt Mississippian well." The last sentence provides that "[b]rine from exempt Mississippian wells shall not be discharged directly into the waters of the state." The language used in amended R.C. 1509.22(C)(1) expresses the intent of the General Assembly to limit the scope of the exception for "exempt Mississippian wells" solely to standards for promulgation of rules on disposal of brine. Nothing in the language amending R.C. 1509.22(C) suggests that the General Assembly intended to exclude "exempt Mississippian wells" from other provisions of R.C. Chapter 1509, which deal with the production, storage, transportation and disposal of brine. Therefore, in answer to your first question, I conclude that the amendments to R.C. 1509.061, R.C. 1509.07, and R.C. 1509.22(C)(1) do not confer general immunity from the provisions of R.C. Chapter 1509, upon "exempt Mississippian wells."⁶

Having concluded that the exception for "exempt Mississippian wells" enacted through Am. Sub. H.B. No. 572 are limited in scope, I must also conclude that none confer immunity from R.C. 1509.22(A). R.C. 1509.22(A) was not amended by Am. Sub. H.B. No. 572. It provides:

(A) Except when acting in accordance with section 1509.226 [1509.22.6],⁷ of the Revised Code, no person shall place or cause to be placed brine 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:

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

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

R.C. 1509.22(A) prohibits the contamination of ground and surface water through the discharge of brine. The exceptions for "exempt Mississippian wells" contained in the amendments to

⁶ I find further support for my conclusion that the exceptions for "exempt Mississippian wells" are limited in scope in the preamble to Am. Sub. H.B. No. 572. It reads:

To amend sections 1509.01, 1509.061, 1509.07, and 1509.22 of the Revised Code and Section 3 of Am. Sub. H.B. 501 of the 115th General Assembly to exempt owners of certain types of oil and gas wells from certain brine disposal and insurance requirements and to prohibit the discharge of brine from such wells directly into the waters of the state. (emphasis added.)

While the preamble is not necessarily indicative of legislative intent, the use of the word "certain" in modification of "brine disposal and insurance requirements" suggests that the exceptions conferred upon "exempt Mississippian wells" were not meant to apply to R.C. Chapter 1509, in its entirety.

⁷ See note 4 supra.

R.C. 1509.061 and 1509.07 deal with fees and insurance requirements. Nothing in the amendments to those sections suggests that they were intended to limit the brine disposal prohibition of R.C. 1509.22(A). The amendment of R.C. 1509.22(C)(1) reflects an intention to direct the chief of the division of oil and gas to adopt rules concerning the storage and disposal of brine according to standards included therein. Brine from "exempt Mississippian wells" is excluded explicitly from these standards. The only reference to standards for "exempt Mississippian wells" is found in the last sentence which provides that "[b]rine from exempt Mississippian wells shall not be discharged directly into the waters of the state." R.C. 1509.22(A) is not limited to the promulgation of such rules. It expressly prohibits conduct which threatens contamination of water, injury to public health or safety, and damage to the environment. Had the General Assembly intended to except brine taken from "exempt Mississippian wells" from the generalized prohibition on surface and ground water contamination set forth in R.C. 1509.22(A), it presumably would have done so expressly when R.C. 1509.22(C) was amended. Indeed, throughout Am. Sub. H.B. No. 572, the General Assembly added specific language excepting "exempt Mississippian wells" from selective provisions of R.C. Chapter 1509. See, R.C. 1509.061, R.C. 1509.07, R.C. 1509.22(C)(1). The absence of specific language excepting "exempt Mississippian wells" from the provisions of R.C. 1509.22(A) leads me to conclude that the General Assembly did not intend to except the brine from such wells from the prohibition set forth in that section.

Therefore, it is my opinion and you are so advised that:

1. The exception from certain fee requirements for "exempt Mississippian wells" set forth in R.C. 1509.061 is limited to the fee requirements of that section, and does not except such wells from the other provisions of R.C. Chapter 1509. in general, nor does it except such wells from the brine disposal restrictions of R.C. 1509.22(A).
2. The exception from certain insurance requirements for "exempt Mississippian wells" set forth in R.C. 1509.07 is limited to the insurance requirements contained in the first paragraph of that section, and does not except such wells from the other provisions of R.C. Chapter 1509. in general, nor does it except such wells from the brine disposal restrictions of R.C. 1509.22(A).
3. The exception from certain underground brine injection requirements for "exempt Mississippian wells" under R.C. 1509.22(C)(1) is limited to the specific brine disposal restrictions of that subsection, and does not except such wells from the other provisions of R.C. Chapter 1509. in general, nor does it except such wells from the brine disposal restrictions of R.C. 1509.22(A).