

**IN THE COURT OF APPEALS
FRANKLIN COUNTY, OHIO**

**The State of Ohio ex rel.
ATHENS COUNTY
FRACKING ACTION
NETWORK**

33 Cable Lane
Athens, Ohio 45701

Relator,

vs.

**THE OHIO DEPARTMENT
OF NATURAL RESOURCES**

C/o James Zehringer, Director
ODNR Fountain Square Campus
Bldg. D
2045 Morse Road
Columbus, Ohio 43229-6693

Respondent.

CASE NO. _____

**ORIGINAL ACTION
IN MANDAMUS**

COMPLAINT

COMPLAINT

Now comes Relator, Athens County Fracking Action Network (“ACFAN”), by and through its undersigned counsel, and

for its Complaint against Respondent, the Ohio Department of Natural Resources, states as follows:

1. This is a mandamus action brought under the Ohio Public Records Act (“the Act”), R.C. 149.43, for a writ compelling the Respondent, the Ohio Department of Natural Resources (“ODNR”), to provide Relator ACFAN with copies of public records in Respondent’s possession requested by Relator on January 16, 2014, by certified mail for which ODNR has acknowledged receipt, and for civil penalties, court costs, and attorneys’ fees as provided by the Act.

2. As of the date of the filing of this Complaint, Respondent ODNR has failed to comply with the ACFAN’s records request in violation of the Act by supplying no records to Relator.

3. In support of this Complaint, ACFAN has attached as Exhibit A the affidavit of Roxanne Groff, a member of ACFAN, who has personal knowledge of the matters averred therein.

4. This Court has jurisdiction over this original action pursuant to R.C. 149.43(C)(1) and Section 3(B) of Article IV of the Ohio Constitution.

5. Relator ACFAN is an unincorporated association of persons residing primarily in Athens County, Ohio, who are concerned about the human health and environmental impacts of the injection of wastes from oil and gas production operations that are issued permits by ODNR pursuant to R.C. Chapter 1509. Obtaining public records about such a waste injection well permitted by ODNR in Athens County was the subject matter of its records request to ODNR that is sought to be enforced by this Complaint.

6. ODNR is a public office of the State of Ohio with possession and control of the records that ACFAN seeks. The records sought by the ACFAN pertain to ODNR's statutory duties to oversee the disposal of waste fluids created by oil and gas drilling and production operations in the State of Ohio as set forth in R.C. Chapter 1509.

7. The Ohio Public Records Act requires public offices of the State of Ohio, upon request, to release information in their possession to the public unless one of 28 specific statutory exemptions applies to the information. R.C. 149.43(A)(1)(a-bb), (B)(1). None of the 28 statutory exemptions is applicable to the ACFAN's records request and ODNR's failure to comply with Relator's request is in violation of this requirement.

8. If a public records request is denied, in part or in whole, the Act requires the responsible agency to provide the requester with "an explanation, including legal authority, setting forth why the request was denied." R.C. 149.43(B)(3). The Act also requires that any explanation of denial be "provided to the requester in writing," if the initial request was provided in writing. *Id.* ODNR has never provided ACFAN with an explanation for why its requests have been denied, let alone a written explanation or one including legal authority, in violation of this requirement.

9. Respondent ODNR's Public Records Policy, maintained on the Department's web-site at

<http://ohiodnr.com/Home/HR/policies/PublicRecordPolicy/tabid/19756/Default.aspx>, last accessed on March 12, 2014, requires that “Responses to public record requests will be completed in a reasonable time taking into account the scope of the request, the ease or difficulty of identifying, compiling, and reviewing potentially responsive records, and the operational needs of the Department.” R.C. 149.43(B)(7) provides that: “[a] public office that adopts a policy and procedures under this division shall comply with them in performing its duties under this division.” Any failure of Respondent ODNR to comply with its own records policy is actionable under R.C. 149.43(C)(1). Respondent ODNR failed to comply with its Public Records Policy by failing to respond to Relator’s request within a reasonable time.

**FACTS GIVING RISE TO RESPONDENT’S
CLAIMS FOR RELIEF**

10. On January 16, 2014, Relator ACFAN served a public records request on Respondent ODNR simultaneously by certified

mail and by electronic mail (hereafter, “the records request”) through its attorney. A true and exact copy of the certified mail letter signed by ACFAN’s attorney is attached hereto as Exhibit B and a true and exact copy of the electronic mail message sending a copy of the letter to ODNR, is attached as Exhibit C. The letter specifically stated that it was a public records request pursuant to R.C. 149.43.

11. The request requested copies of all document in the Respondent’s possession on two separate Salt Water Injection Wells, being API Well Nos. 34-009-23821-00-00 and 34-009-2-3823-00-00, both of which are permitted and inspected by the Respondent and both of which are located in Troy Township of Athens County. An “injection well” is a facility that disposes of oil and gas waste fluids by injecting the waste deep underground and is regulated by ODNR’s Division of Oil and Gas pursuant to R.C. 1509.22. The request also described the documents being requested more specifically in thirteen separately numbered paragraphs. The request also contained a second part that

requested all guidance documents developed or used by the Respondent in the permitting, operation and oversight of injection wells.

12. The return receipt from the United States Postal Service establishes that the certified mail containing the Relator's records request was received by ODNR on January 17, 2014.

13. On January 22, 2014, ACFAN's attorney received an electronic mail communication from an employee of ODNR acknowledging the receipt of ACFAN's records request. This message stated in part: "This email is in receipt of your request. We are working on compiling the information for you." A true and exact copy of this message is attached hereto as part of Exhibit C. This was the only communication from the Respondent ever received by Relator in regards to the records request.

14. Approximately one month later, on February 21, 2014, ACFAN's attorney sent electronic mail to ODNR sending an additional copy of ACFAN's records request and stated that the records requested had not been produced, that the unreasonable

delay in producing the records violates R.C. 149.43, and requesting compliance with the request “right away.” A true and exact copy of this message is attached hereto as part of Exhibit C. ACFAN’s attorney received no response from Respondent to this inquiry.

15. As of the date of the filing of this Complaint, no documents have been provided to Relator by Respondent in response to its public records request of January 16, 2014, and no other communications regarding that request have been received by Relator from Respondent.

16. Respondent ODNR has failed to provide the public documents requested by Relator ACFAN within a reasonable period of time as required by R.C. 149.43(B)(1).

17. Respondent ODNR has denied Relator ACFAN’s public records request by failing to provide Relator with the documents requested. Moreover, Respondent ODNR has failed to provide Relator with a “written [...] explanation, including legal authority, setting forth why the request was denied” as required by R.C. 149.43(B)(3). As of the date of filing of this Complaint,

Respondent ODNR continues to deny Relator ACFAN's public records request.

18. In light of ODNR's failure to produce the requested records without any explanation and its failure to comply with its duties under Ohio's Public Records Act, ACFAN is filing this Complaint for a writ of mandamus.

RELATOR'S CLAIM

19. ODNR has possession of the records requested by ACFAN in its public records requests identified above.

20. These records are public records under the Public Records Act.

21. ACFAN has a statutory right to the records it seeks under the Public Records Act and no legal basis exists for ODNR's refusal to provide the records.

WHEREFORE, Relator Athens County Fracking Action Network respectfully requests that this Court:

(1) Issue a Peremptory Writ in Mandamus ordering Respondent ODNR to immediately provide the requested records to Relator; and

(2) Award Relator its reasonable attorney's fees and court costs in this action; and

(3) Award Relator ACFAN all statutory damages applicable under R.C. 149.43(C)(1); and

(4) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Richard C. Sahli

Richard C. Sahli, Esq.

Supreme Court ID 0007360

Attorney for Relator ACFAN

981 Pinewood Lane

Columbus, OH 43230

Phone: (614) 428-6068

rsahliattorney@columbus.rr.com

PRAECIPE FOR SERVICE

TO THE CLERK:

Please issue a Summons along with a copy of this Complaint to the Respondent identified in the caption on page one via Certified Mail, return receipt requested.

/s/ Richard C. Sahli
Richard C. Sahli (0007360)

EXHIBIT A

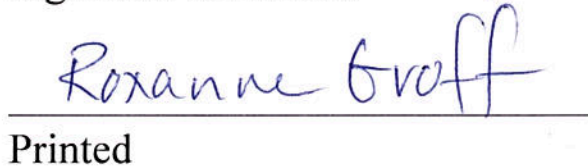
STATE OF OHIO)
) SS: VERIFYING AFFIDAVIT
COUNTY OF ATHENS) FOR WRIT OF MANDAMUS

I, Roxanne Groff, being duly sworn, state under penalty of law that the following is true:

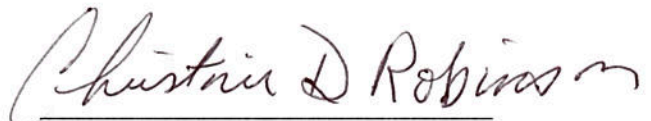
1. I am a member of the Athens County Fracking Action Network (“ACFAN”) an unincorporated association of persons in the Athens County area concerned about the impacts of the disposal of waste fluids from oil and gas production operations in our region. I reside in Athens County.
2. I have reviewed each and every line in the foregoing complaint for a writ of mandamus and the exhibits attached thereto.
3. I am personally familiar with all of the matters alleged in the complaint.
4. The facts and allegations contained in the foregoing complaint are true.
5. The exhibits attached to the complaint are true and exact copies of the originals and are what they purport to be.

6. I have a good faith belief that Respondent ODNR has failed to comply with Ohio's Public Records Act for the reasons stated in the complaint.


Signature of Affiant


Printed

SWORN TO before me and subscribed in my presence this 14th day of March, 2014.


Notary Public



CHRISTINE D. ROBINSON
NOTARY PUBLIC, STATE OF OHIO
MY COMM. EXPIRES JUNE 22, 2014

RICHARD C. SAHLI, ATTORNEY AT LAW

981 Pinewood Lane, Columbus, Ohio 43230-3662
614-428-6068 - rsahliattorney@columbus.rr.com
Protecting Ohio's Environment since 1995

EXHIBIT B

PUBLIC RECORDS REQUEST
PURSUANT TO R.C. 149.43

January 16, 2014

Mr. RICHARD J. SIMMERS, Chief
Division of Oil and Gas Resources Management
Ohio Department of Natural Resources
2045 Morse Road, Building F-2
Columbus, Ohio 43229-6693

Via Certified Mail
Return Receipt Requested

Re: Request for Documents on SWIW Wells 34-009-23821-00-00 and 34-009-2-3823-00-00 and UIC Program Guidance Documents.

Dear Chief Simmers:

This is a public records request pursuant to Section 149.43 of the Ohio Revised. This request is in two parts.

The first part is for copies of all documents in the possession of the Division of Oil and Gas Resources Management ("Division") on two separate Salt Water Injection Wells ("SWIW"), being API Well Nos. 34-009-23821-00-00 and 34-009-2-3823-00-00. Both of these wells are permitted and inspected by the Division. Both wells are located in Troy Township of Athens County, Ohio, and both wells are owned by K&H Partners LLC, which is located at 2130 Harris Highway, Washington, West Virginia, 26181.

While this records request is for copies of all records in the Division's possession regarding these two salt water injection wells, this request is specifically for, but not limited to, copies of:

For both wells:

1. the application for a permit to drill and operate the well and all supplements thereto,
2. the permit and any terms and conditions made part of the permit,
3. all documents that the Division reviewed from any source whatsoever during its consideration of both applications, including but not limited to, documents obtained from the applicant, the Ohio Geological Survey and the Ohio Environmental Protection Agency,
4. all documents that employees or agents of the Division created while reviewing the two applications and acting on the permit,

5. all correspondence and communications, including electronic mail, between any employees or agents of the Division or the Department of Natural Resources regarding the wells, and
6. all correspondence and communications, including electronic mail, between any employees or agents of the Division and any other person, including but not limited to employees or agents (including consultants) of the applicant and employees of the Ohio Geological Survey and the Ohio Environmental Protection Agency.

For well 34-009-23821-00-00 (which began operation during 2013):

7. all inspection reports for all inspections conducted of the well by Division employees,
8. all notices of violation issued by Division employees regarding this well, any other documents indicating lack of compliance with the Division's requirements at the well, and the documents indicating how such enforcement matters were resolved,
9. all documents containing the results of testing done regarding the legal compliance and/or mechanical integrity of the well, including but not limited to all pressure testing of the components of the well,
10. all reports or other documents prepared by the applicant or its agents regarding the completion or operation of the well, including but not limited to any well log or boring log documenting the drilling of the well,
11. all documents containing any geological data regarding the vicinity of the well, including but not limited to any geophysical log depicting the geologic strata surrounding the well bore,
12. all documents recording pressure readings of any kind at the well, the annulus to the well, or any component of the well including of its casings, whether during operation (injection disposal) of the well or at any other time, and
13. the Annual Report Form (ODNR Form 204 or equivalent) for the well if one has been filed with the Division.

The second part of this records request is for copies of all guidance documents developed by or used by the Division that relate to the permitting, operation, inspection, testing, measures for the public health or safety or for environmental protection, or other aspect of the operation or oversight, of SWIWs by the Division. While this request is for copies of all such documents in the Division's possession, it includes but is not limited to all guidelines or guidance, either interim or final, any Standard Operating Procedures ("SOPs"), any Executive Orders signed by the Governor, any handbooks, including but not limited to the Oil and Gas Well Site Restoration Handbook, and any measures required or recommended by the United States Environmental Protection Agency. This request does not include copies of any federal or state statutes or regulations.

For the purposes of this public records request, all terms herein are defined as provided in the Ohio Public Records Law, O.R.C. §149.43 or as defined in R.C. Chapter 1509 or in the rules promulgated pursuant to that chapter.

After you have assembled the records in the Division's possession that are responsive to this request, please contact the undersigned regarding the quantity and location of records involved in order to determine the best means for transmitting copies thereof. I would be willing

to accept electronic copies of these documents, including electronic files contained on a compact disk, if that is preferable to the Division. If the Division requests any fees for the copying of these documents, please advise the undersigned thereof in advance of any such copying in order to make arrangements for payment.

Your assistance in fulfilling this request is appreciated. If you have any questions regarding this request or encounter any difficulties in fulfilling this request, please do not hesitate to contact the undersigned to discuss how this request can be most reasonably satisfied.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard C. Sahli". The signature is written in a cursive style with a large initial "R" and "S".

Richard C. Sahli, Esq.
981 Pinewood Lane
Columbus, Ohio 43230
614- 428 - 6068
E-mail: rsahliattorney@columbus.rr.com

EXHIBIT C

From: Richard Sahli [<mailto:rsahli@columbus.rr.com>]
Sent: Friday, February 21, 2014 9:07 AM
To: DNR oilandgas (oilandgas@dnr.state.oh.us)
Subject: FW: Public Records Request; SWIW Wells/UIC Class II

Oil & Gas Division,

The records requested in the attached public records request submitted to the Division a month ago has not been produced. The return receipt to the certified mail service on this request documents that the hard copy of this request was received at the Division on January 17. This unreasonable delay in records production violates RC 149.43. I request that you produce these records and comply with R.C. 149.43 right away.

Richard C. Sahli
Attorney At Law
981 Pinewood Lane
Columbus, Ohio 43230-3662
(614) 428-6068

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From: Gingras, Jennifer [<mailto:Jennifer.Gingras@dnr.state.oh.us>] **On Behalf Of** DNR oilandgas
Sent: Wednesday, January 22, 2014 2:51 PM
To: Richard Sahli
Subject: RE: Public Records Request; SWIW Wells/UIC Class II

Mr. Sahli,

This email is in receipt of your request. We are working on compiling the information for you.

Thank you for your patience.
[Jennifer Gingras](#)
[Ohio Department of Natural Resources](#)
[Div. of Oil & Gas Resources Management](#)
[UIC Section](#)

[2045 Morse Road Bldg. F-2](#)

Columbus, OH 43229
614-265-6923

From: Richard Sahli [<mailto:rsahli@columbus.rr.com>]
Sent: Thursday, January 16, 2014 4:20 PM
To: DNR oilandgas
Subject: Public Records Request; SWIW Wells/UIC Class II

Dear Oil & Gas Division,

Please find attached a public records request to the Division. A hard copy is being sent to you today by certified mail.

If you have any questions, please reply to this e-mail or call me at the phone number below.

Thank you for your assistance and cooperation.

Richard C. Sahli
Attorney At Law
981 Pinewood Lane
Columbus, Ohio 43230-3662
(614) 428-6068

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