



STATE OF INDIANA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF RECLAMATION

IN THE MATTER OF:

INFORMAL HEARING CONCERNING ) Permit Numbers: 55859
ISSUANCE OF DRILLING PERMITS TO ) and 55862
PULSE ENERGY SYSTEMS, LLC )

FINDINGS OF FACT, LEGAL CONCLUSIONS, AND DETERMINATION
ON INFORMAL HEARING UNDER 312 IAC 29-3-4

As provided in 312 IAC 29-3-4, the Department of Natural Resources, through its Division of Reclamation, Oil and Gas Section ("Division") conducted an informal hearing on, February 3, 2022, concerning proposed wells to be drilled under permit numbers 55859 and 55862.

Having reviewed the entire record in this matter, and being duly advised, the Deputy Director of the Division issues the followings findings, legal conclusions and determination:

Findings of Fact

- 1. On February 3, 2022, the Division conducted an informal hearing at the offices of the Indiana Department of Natural Resources, Division of Reclamation, 14619 West State Road 48, Jasonville, IN 47438.
2. The informal hearing was held to consider applications for permit renewals associated with permit numbers 55859 and 55862 ("the 2 proposed permit renewals").
3. Notice about the date, time, and location of the informal hearing was provided as required by law to the parties attending and on the Division's website.

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4. The Division received comments about and objections to the 2 proposed permit renewals on February 1, 2022. Written and oral comments to the 2 proposed permit renewals were submitted and heard during the informal hearing held on February 3, 2022.
5. Comments and concerns received initially to the informal hearing can be categorized as follows with the following corresponding responses:

Below are the Division of Forestry's concerns with re-permitting of the coalbed methane drilling/extraction request pending in your office with Pulse Energy Systems LLC for well # 7-2 (permit # 55862) and well # 8-1 (permit # 55859).

- 1) SURFACE AGREEMENT - It was our understanding that after the 2020 permits were issued, there would be an agreed to surface agreement on these 2 wells and the three already drilled. To date, that agreement has not been finalized. The proposed agreement should include a legal description of the location of these 2 wellheads, a legally recorded easement to cross DNR lands to include locations for access road, electrical power and methane gas distribution pipeline from well head and compensation to owner (DNR) for the use of surface rights.
- 2) MAINTENANCE – A signed agreement on the vegetation control at and around the well head, access road and other related access needs for pipe and electrical power that will expire upon the capping and abandoned of these 2 wells.
- 3) SAFETY – A signed safety agreement to protect the public from accidental injury from the equipment and operation of the wells. This should include the construction and proper maintenance of a security fence around well heads and maintenance thereafter until the wells are capped and abandoned.

### **Response by the Division**

The Division does not have regulatory authority over private agreements between landowners and operators. The Division does require that a well owner or operator have a valid lease for real property minerals on all acres within a proposed drilling unit before it will issue a permit. Landowners should control this relationship through the lease. Landowners should also become fully informed about the rights and duties of oil and gas exploration and producing companies. There are documents that can help educate the landowner such as Purdue University Cooperative Extension Service article on negotiating oil and gas leases on Indiana farmland.

The Division does not have regulatory authority over privately signed agreements on vegetation control at and around the well head, access road and other related access needs for pipe and electrical power that would be removed after plugging and abandonment. The Division does have enforceable rules that address spill prevention and vegetation not causing a fire hazard.

The Division does not have regulatory authority over usage and aesthetics of a property.

The Division does not have regulatory authority over signed safety agreements to protect the public from accidental injury from the equipment and operation of the wells.

### **Legal Discussion and Authorities**

Indiana Code (“I.C.”) 14-37-4-5 governs issuance of well permits by the Division and provides that a permit application requires the following information:

- (1) A plat of the land or lease upon which the well is to be located, together with all property and lease lines and the acreage within the tract.
- (2) The location of the proposed well as certified by a professional surveyor registered under IC 25-21.5.
- (3) The surface elevation of the proposed well and the method used for determining that elevation.
- (4) The depth of the proposed well.
- (5) The number and location of all other dry, abandoned, or producing wells located within one-fourth (1/4) mile of the proposed well.
- (6) The distance from the proposed well to the three (3) nearest boundary lines of the tract.
- (7) With respect to an application to drill within a city or town, a certified copy of the official consent by ordinance of the municipal legislative body.
- (8) Other information determined by the commission that is necessary to administer this article.

8. Under I.C. 14-37-4-8, unless the applicant is in violation of a permit or has shown a pattern of willful violation, a permit shall be issued when it complies with the statute and rules adopted pursuant to the statute.

9. Rule 4 of the Division’s rules, found at 312 IAC 29-4-1, *et seq.*, contains the rules promulgated under I.C. 14-37-4-8 which further regulate the issuance of permits.

10. Rule 6 of the Division’s rules, found at 312 IAC 29-6-1, *et seq.*, contains further requirements for Coal Bed Methane (“CBM”) wells.

11. 312 IAC 29-4-7(a) requires the Division to issue a permit if the applicant complies with I.C. 14-37 and this rule except as provided in subsection (b) which states:

(b) The Division may deny a permit application if the applicant or if a person owning or controlling the applicant:

- (1) has been issued a notice of violation and failed to abate the violation within sixty (60) days after the deadline for abatement, unless the person has requested an administrative adjudication of the notice of violation, and a final determination has not been rendered by the commission;

- (2) controls or has controlled any well for oil and gas purposes and has demonstrated a pattern of violations of IC 14-37 or this article that have resulted in damage to the environment; or
- (3) has had a permit revoked under IC 14-37.

12. I.C. 14-37-4-8 and 312 IAC 29-4-7 specifically require that a drilling permit “shall issue” where all enumerated statutory and regulatory requirements have been complied with and the applicant has not otherwise had a history of non-compliance under prior permits.

13. 312 IAC 29-3-4(c) states in part that an informal hearing is to be conducted in a manner that will facilitate public participation and the gathering of information relevant to the matter under consideration. An informal hearing is not governed by the rules of evidence or discovery.

14. Based upon a review of all relevant comments and concerns submitted and the Division’s responses thereto, the issues raised by the various parties do not apply to the permitting process of the Division.

15. The applicable Indiana Code and rules promulgated thereunder contain no requirement for the applicant to affirmatively demonstrate any of the items in the comments filed other than those contained in I.C. 14-37-4-5.

16. Some of the objections and comments filed seek to address issues of property law. The Division lacks the legal authority to make decisions concerning property law. Indiana Code specifies that “a permit does not convey to the owner or operator a property right or an exclusive privilege.” I.C. 14-37-4-3.

17. Pursuant to I.C. 14-37-4-8 and 312 IAC 29-4-7 the permit “shall issue” where all enumerated statutory and regulatory requirements have been complied with and the applicant has not otherwise had a history of non-compliance under prior permits.

**Legal Conclusion and Order**

18. Accordingly, the Division determines that the objections and comments filed in this matter are outside the purview of the Division’s permitting process to act upon or consider. The permit applications contain the items enumerated by statute and rules of the Division such that the 2 proposed permit renewals should be issued to Pulse Energy Systems, LLC as requested.


**Right to Administrative Review**

19. The above Findings of Fact, Legal Conclusions, and Determination on Informal Hearing under 312 IAC 29-3-4 are subject to administrative review pursuant to I.C. 4-21.5 and 312 IAC 3-1. In order to qualify for administrative review, a person must file a request for review in writing stating facts that demonstrate the petitioner is:

- (A) a person to whom the order is specifically directed.
- (B) aggrieved or adversely affected by the order; or
- (C) entitled to review under any law.

In order to be timely, any petition for administrative review must be filed with the Division of Hearings, Natural Resources Commission, Indiana Government Center North, 10 N. Senate Avenue, N103, Indianapolis, IN 46204 within fifteen (15) days after notice is served or within eighteen (18) days if service is by mail.

Dated: April 12, 2022

  
**Russell Retherford, Deputy Director**  
**Division of Reclamation**

**A copy of the above determination was sent by electronic mail on, April 12, 2022, to:**

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