

Oil & Gas Terms... Confused? You aren't the only one

By Jeff Fort on November 19th, 2012



The terms “pooling” and “unitization” are often used interchangeably. To confuse the matter further, in Ohio, there are statutory definitions for a “pool” and a “drilling unit” and neither is related to a “unit.” Hopefully, this will provide some clarification.

Pooling and Unitization, Generally

To “pool” [the verb] is to combine multiples into a common entity or fund. In an unfortunate and confusing coincidence, a “pool” [the noun] is an accumulation of a liquid, including oil. As in other specialized areas of law, common terms can have special meanings – so-called “terms of art.”

In the world of oil and gas, the common understanding of pooling, a pool or a pooled unit is the joining together or a combination of small tracts or portions of tracts for the purpose of having sufficient acreage to receive a well drilling permit under the relevant state spacing laws and regulations, and for the purpose of sharing production by interest owners in such a pooled unit. Bruce M. Kramer & Patrick H. Martin, The Law of Pooling and Unitization 1-3 (3d ed. 2006).

In contrast, “unitization” or unit operations refers to the consolidation (don’t use the word “pooling”) of mineral or leasehold interests covering all or part of a common source of supply. *Id.* at 1-4. That is, “unitization” refers to field or reservoir-wide development, which entails much more to accomplish than a pooled unit around a single well.

The objective of unitization is to provide for the unified development and operation of an entire geologic prospect or producing reservoir so that exploration, drilling and production can proceed in the most efficient and economical manner by one operator.

Usually, a pool or unit is formed by the owner of the leasehold pursuant to the authority granted in the lease by the mineral owner.

Ohio

The Ohio Legislature, at ORC section 1509.24, authorizes ODNR to establish

“minimum acreage requirements for drilling units . . . to a source of supply different from the existing pool from boundaries of tracts, drilling units, and other wells for the purpose of conserving oil and gas reserves.” (emphasis added)

Earlier in the Code, a “pool” [i.e., the noun form of the word] is defined as “an underground reservoir containing a common accumulation of oil or gas, or both...” and, a “drilling unit” is defined as “the minimum acreage on which one well may be drilled...” ORC 1509.01(E) & (G).

Depending on the depth of the well, the minimum acreage is 1, 10, 20 or 40 acres.

Voluntary “pooling”

Ohio Revised Code section 1509.26, [titled, “Agreements to pool tracts to form drilling unit”], provides, “The owners of adjoining tracts may agree to pool the tracts to form a drilling unit that conforms to the minimum acreage and distance requirements....” Notification of the agreement is provided to ODNR with the well permit application.

Often a drilling unit thus formed is called a pool or pooled unit, but avoid doing so.

Mandatory pooling

Of course, a voluntary agreement amongst the mineral owners is desirable and cheaper. But if there is a holdout, all is not lost. ORC section 1509.27 provides:

“If a tract of land is of insufficient size or shape to meet the requirements for drilling a well thereon as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable, and the owner of the tract who also is the owner of the mineral interest has been unable to form a drilling unit under agreement as provided in section 1509.26 of the Revised Code, on a just and equitable basis, such an owner may make application to the division of oil and gas resources management for a mandatory pooling order.”

That is, the recalcitrant owner can be forced into the drilling unit as if he/she signed the lease.

On its web site, the ODNR Division of Oil and Gas Resources Management provides a document, “MANDATORY POOLING PROCEDURAL OUTLINE,” dated June 10, 2010, (here), which lists the requirements for the mandatory pooling application and describes the review process. This process includes a review by the Technical Advisory Council on Oil and Gas (“TAC”), notice to owners, a hearing by TAC and the issuance of an Order.

Among other requirements, there must be no obvious alternate location for the well and the operator must have assembled the majority (>90% is recommended) of his unit with lessors that want to have a well drilled.

Just to reemphasize, voluntary pooling and mandatory pooling in the Ohio Revised Code refer to the forming of a minimum acreage “drilling unit.”

Multiple Lessees

If the leases and acreage to be pooled are owned by multiple lessees, then the lessees' consent to make a drilling unit will be encompassed in both: (i) a Joint Operating Agreement into which the lessees customarily enter for the purposes of designating an operator for the unit well, specifying the various terms and provisions relating to operation and development of the pooled unit and accounting issues, and (ii) the pooling declaration or designation filed at the County Recorder as required by the pooling provision of the lease.

Units and Unit Operating Agreements

Just as mineral interests and leases are pooled to form, in Ohio, a "drilling unit" to meet the spacing requirements, so too are leases "unitized" to provide for a larger area of joint operation, often called a "unit," by a single operator. Among other advantages relating to geology and economies of scale, the operator can account to the owners of the produced hydrocarbons with one set of tanks as opposed to multiple tanks for multiple parcels, leases and owners.

Order of Unit Operation of Pool

Analogous to mandatory pooling, ODNR can establish a "unit" if 65% of the owners of the land overlying the pool ask for it. The owners who do not agree can be, in effect, forced in if, after a hearing, ODNR finds that such operation is:

"reasonably necessary to increase substantially the ultimate recovery of oil and gas, and the value of the estimated additional recovery of oil or gas exceeds the estimated additional cost incident to conducting the operation." ORC 1509.28.

In past oil booms, it was secondary recovery (*e.g.*, water flooding to drive the oil out of the sandstone) or tertiary recovery (adding a surfactant to help the oil detach from the sandstone) that necessitated a procedure to combine tracts of land and/or multiple leases to allow for such unit operations.

Now, the simple fact that horizontal wells require a larger area of land than a vertical well means that this procedure is likely to be used more often. And anytime anyone is forced to do something by the government, especially when it impacts something as fundamental as the private ownership of land, it will be controversial.

Summary

Is it not unfortunate that a combination of leases is called a "pool" or is the result of "pooling" in the drilling unit context and is called a "unit" in the larger acreage, unitization context?

In any event, whether it's a combination of interests to form a drilling unit or a more complex combination of leases to form an area-wide joint operation, this is a specialized area of the law and there are tried and true ways to get things done.

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