



The Ohio Dormant Minerals Act: A Process for Addressing Abandoned Mineral Interests

Ohio has long been a mineral producing state. Oil and gas production dating back to the late 1800s led many landowners to sell their mineral interests, as Ohio law allows a landowner to separate the mineral rights and transfer those rights to a different owner. For this reason, a landowner who holds title to the land might not also hold title to the oil, gas and other minerals beneath the land.

Even where a landowner separated the mineral estate from a property, it is possible that actual development of the minerals never occurred or that some activity took place long ago but has since subsided. This situation can be problematic when there is renewed interest in the mineral resources. Who has the right to develop a mineral interest that appears to be inactive or abandoned?

The Ohio General Assembly enacted the Dormant Minerals Act in 1989 to address this question. The act provides a procedure for declaring in-active mineral interests “abandoned.” Unless the holder of the mineral rights takes action to protect the rights, the law declares the rights abandoned and reunites the minerals with the surface estate. The landowner then holds title to both the mineral rights and the land.

Procedure for Declaring Abandonment of Mineral Interests

Ohio Revised Code Section 5301.56 provides the process a landowner must follow to seek abandonment of the mineral interest. Note that this procedure does *not* apply to coal resources or to mineral interests held by the federal or state government or any political subdivision. For all other separated mineral interests, the landowner must complete the following steps.

1. Notice of intent to declare a mineral interest abandoned.

The landowner must serve notice of the intent to have the minerals declared abandoned to each mineral interest holder, including any parties who succeeded the original mineral holder.

The Ohio Dormant Mineral Act provides a process to address inactive mineral interests.

A landowner may seek a declaration that an inactive mineral interest has been “abandoned.”

A mineral interest holder must take action to protect the mineral estate.

If a mineral interest is legally deemed “abandoned,” the landowner who holds title to the surface estate gains title to the abandoned mineral estate.

Landowners and mineral interest holders should consult an attorney for assistance with the Dormant Minerals Act.

The notice of intent must include:

- a. The names of each holder of the mineral interest and/or the holder's successors or assignees.
- b. A description of the land subject to the mineral interest, including the volume and page number of the recorded deed or other recorded instrument.
- c. A description of the mineral interest to be abandoned, including the volume and page number of the recorded instrument.
- d. A statement attesting that none of the events that would preserve the mineral interest have occurred within the 20 years immediately preceding the date the notice was served or published (see list of events in "affidavit of event preventing abandonment," below).
- e. A statement that the landowner intends to file an affidavit of abandonment in the county recorder's office at least 30 but not later than 60 days after the date the notice was served or published.

The landowner must send the notice by certified mail to the last known address of each mineral holder and must request a return receipt. If the landowner cannot obtain an address for the mineral holder or cannot otherwise serve the notice on the mineral holder, the landowner must publish the notice in a newspaper circulated in each county where the land is located.

2. *Affidavit of abandonment*

The landowner must next file an affidavit of abandonment with the county recorder where the land is located. This filing must occur more than 30 days and less than 60 days after completion of the notification of intent to declare abandonment. The affidavit of abandonment must include:

- e. A statement declaring that the landowner is the surface owner of the lands that are subject to the mineral interest.

- a. The volume and page number of the recorded instrument that established the mineral interest.
- b. A statement that the mineral interest has been abandoned according to Ohio Revised Code Section 5301.56(B) and that the landowner has served notice of the intent to declare abandonment.
- c. The facts that show that the mineral interest is abandoned.
- d. A statement that the landowner served notice of the affidavit of abandonment upon the mineral interest holder.

Protecting the Mineral Interest

The holder of a mineral interest who has received notice of an intent to declare abandonment *must take action* to preserve the mineral rights. If the holder fails to take action, the law will deem the mineral interest abandoned.

The law provides two options for the mineral holder who receives notice that the landowner is seeking abandonment of the mineral interest. In both cases, the mineral holder must notify the landowner of the action taken.

1. *Affidavit to preserve the mineral interest*

The mineral holder may file an affidavit to preserve the mineral interest no more than 60 days after receiving the notice of intent to declare abandonment. The affidavit must contain:

- a. A description of the claimed mineral interest and any recording information supporting the claim.
- b. A declaration of the holder's intent to preserve the holder's rights in the minerals.

2. *Affidavit of event preventing abandonment*

No more than 60 days after receiving notice, the mineral holder may file an affidavit stating that an event occurred during the 20 years preceding the

the notice of abandonment that would prevent abandonment. A “savings event” that preserves a mineral interest can be any of the following:

- a. The mineral interest was the subject of a title transaction filed or recorded in the county recorder’s office where the land exists.
- b. Actual production or withdrawal of minerals occurred.
- c. The holder of the mineral interest has used the mineral interest for underground gas storage operations.
- d. The holder of the mineral interest has been issued a drilling or mining permit and an affidavit has been filed in the county recorder’s office that includes the name of the permit holder, the permit number and type, and a description of the land affected by the permit.
- e. An affidavit to preserve the mineral interest has been filed.
- f. A separately listed tax parcel number has been created for the mineral interest.

Filing a Notice of Failure to File

If the landowner meets the legal requirements for filing both the notice of intent to abandon minerals and the affidavit of abandonment *and* the mineral holder does not meet the legal requirements for preserving the mineral interest, the surface land owner must file a notice of failure to file with the recorder of each county where the land is located. The notice of failure to file must contain:

1. A statement that the person filing the notice is the owner of the surface of the land subject to the mineral interest and
2. A description of the surface of the land that is subject to the mineral interest.
3. The statement: “This mineral interest abandoned pursuant to affidavit of abandonment recorded in ... [insert volume and page of public record].”

- a. The mineral interest is in coal, or in mining or other rights connected to an interest in coal. If a mineral interest includes both coal and other minerals, a landowner may use the Dormant Minerals Act to declare abandonment of the other minerals.
- b. The mineral interest is held by the federal or state government or any political subdivision or agency.
- c. An event preventing abandonment occurred within the 20 years preceding the date on which a notice of abandonment is filed and the mineral interest holder timely filed an affidavit identifying the event. See “Affidavit of event preventing abandonment” above for a listing of the events that prevent abandonment.

Is the Dormant Minerals Act Constitutional?

A common reaction to the Dormant Minerals Act is that it is unconstitutional because it “takes” a mineral owner’s property rights. While no one has challenged the constitutionality of Ohio’s law, the United States Supreme Court has upheld a similar law in Indiana. In *Texaco v. Short*, the Supreme Court heard a challenge that Indiana’s Mineral Lapse Act allows a taking of private property without compensation. The Court rejected the argument, saying that states have never been required to compensate owners for the consequences of their own neglect in protecting their property. The Court explained that states do have the power to require performance of reasonable conditions to retain a property interest, that Indiana’s Act sufficiently allows mineral holders to retain their interests by taking appropriate steps, and that the law sorts out interests that are no longer being used while allowing new owners to step in to those interests. Given the similarity between the laws of Ohio and Indiana, it is not likely that a constitutional challenge to Ohio’s Dormant Mineral Act would be successful.

Dormant Minerals Act Litigation

The recent increase in shale gas development in Ohio generated many new court cases regarding the Dormant Minerals Act. For a listing and other information on Dormant Minerals Act litigation, visit the “[oil and gas law page](#)” of our “law library” on our website, <http://aglaw.osu.edu>.

Consulting an Attorney

It is important to consult with an attorney about rights and obligations under the Dormant Minerals Act. If a party does not understand the different property interests or correctly follow the law, the party may lose his or her property rights. An attorney can help ensure that a party meets the requirements of the law.

Sources:

- Ohio Dormant Minerals Act, Ohio Rev. Code Ann. §5301.56 (2014)
- Indiana Mineral Lapse Act, Ind. Code Ann. §32-23-10-2 (2002)
- *Texaco v. Short*, 454 U.S. 516 (1982)

Authors:

- *Peggy Kirk Hall, Asst. Professor, Agricultural & Resource Law*
- *Catharine Daniels and Matt Muzic, OSU Extension Agricultural & Resource Law Program*