

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS DEFENDANTS
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorneys (Firm Name, Address, and Telephone Number)
County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

I. Civil Categories: (Please check one category only).

1. General Civil
2. Administrative Review/Social Security
3. Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE:

CASE NUMBER:

II. **RELATED OR REFILED CASES.** See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action is **RELATED** to another **PENDING** civil case. This action is **REFILED** pursuant to **LR 3.1**.

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule **3.8**, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant.** If the defendant resides in a county within this district, please set forth the name of such county

COUNTY:

Corporation For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) **Non-Resident defendant.** If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

COUNTY:

(3) **Other Cases.** If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

COUNTY:

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

AKRON	(Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)
CLEVELAND	(Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)
YOUNGSTOWN	(Counties: Columbiana, Mahoning and Trumbull)

WESTERN DIVISION

TOLEDO	(Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)
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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION**

Preferred Fluids Management LLC
2630 Exposition Blvd. Suite 117
Austin, Texas 78703

Case No. _____

Judge _____

Plaintiff,

v.

City of Mansfield, Ohio
c/o John Spon, Law Director
30 North Diamond Street
Mansfield, Ohio 44902

Defendant.

**COMPLAINT FOR DECLARATORY JUDGMENT AND
PERMANENT INJUNCTIVE RELIEF**

For its Complaint against Defendant, City of Mansfield, Ohio (“Mansfield”), Plaintiff, Preferred Fluids Management LLC (“Preferred”), states as follows:

NATURE OF THE ACTION

1. Plaintiff Preferred brings this diversity action to clarify the legal relationship between itself and the Defendant, City of Mansfield, Ohio. As set forth herein, Preferred has received from the Ohio Department of Natural Resources, Division of Mineral Resource Management (hereinafter as the “Division”) two permits to build and operate injection wells within the City of Mansfield, Ohio. The wells are for the disposal of waste materials generated by Ohio’s booming oil and gas industry. Pursuant to Ohio law, the Division has the sole and exclusive authority to issue permits for and to regulate the location, spacing and operations of all

oil and gas wells and related operations within the State of Ohio, including Preferred's injection wells. Notwithstanding this exclusive grant of authority by the General Assembly and by Ohio law to the Division, the City of Mansfield has taken the position that it may regulate and/or require permits for Preferred's wells. Preferred asks this Court to declare that the City of Mansfield has no authority to regulate or limit Preferred's state-permitted wells and operations.

PARTIES

2. Plaintiff, Preferred Fluids Management LLC, is a Texas limited liability company with a principal place of business located at 2630 Exposition Boulevard, Suite 117, Austin, Texas, 78703. Plaintiff Preferred is authorized to do business in the State of Ohio. Preferred's members are all residents of the State of Texas.

3. Defendant, City of Mansfield, Ohio is an Ohio city organized and existing under the laws of the State of Ohio, with City offices located at 30 North Diamond Street, Mansfield, Ohio, 44902.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332(a) in that Plaintiff Preferred and Defendant Mansfield are citizens of different states, and the amount in controversy exceeds \$75,000.00, exclusive of interest, costs and attorney fees.

5. Venue is appropriate in this Court because the City of Mansfield is located within this judicial district and the land and facts giving rise to this controversy are located in and/or take place within this judicial district.

FACTUAL ALLEGATIONS

6. In October, 2010, Preferred properly submitted to the Division applications for permits to locate, build and operate at a 4.9-acre site located on Knights Parkway within the City of Mansfield, Richland County, Madison Township, Ohio, two injection wells for the disposal of waste materials generated by Ohio's oil and gas industry.

7. On April 19, 2011, following careful review of Preferred's applications for the wells, the Division issued valid permits for the wells, listed as API Well Numbers 34-139-2-0758-00-00 and 34-139-2-0759-00-00, also known as No. 1 Knight and No. 2 Knight, respectively.

8. The Division requires detailed information in applications for such permits and specifically assesses, among a multitude of other factors, the location of the subject well, (identified by county, township, section or lot number or other necessary geographic subdivisions sufficient to identify the specific location of the well), the specific construction of the well, the planned operation of the well, and the potential impact of the well on the health, safety and welfare of local residents and natural resources; the Division issues permits in response to such applications only upon the finding that the proposed location and operation of the well will not jeopardize public health or safety or the conservation of natural resources.

9. It is well established that the Division has the expertise and training to make such technical decisions.

10. Further, it is the stated public policy of the State of Ohio to encourage oil and gas production when the extraction of those resources can be accomplished without undue threat of harm to the health, safety and welfare of the citizens of Ohio.

11. To further this policy and to ensure uniformity throughout the state, local regulation of some aspects of oil and gas well exploration and development is preempted by the statutory plan embodied in Ohio Revised Code Chapter 1509.

12. For example, the Division is vested by clear legislative mandate with the sole and exclusive authority to make the highly technical determinations regarding the permitting location and operation of oil and gas operations. Revised Code Section 1509.02 states:

There is hereby created in the department of natural resources the division of oil and gas resources management, which shall be administered by the chief of the division of oil and gas resources management . . . The division has sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations within the state . . .

The General Assembly has further recognized that:

[t]he regulation of oil and gas activities is a matter of general statewide interest that requires uniform statewide regulation, and this chapter and rules adopted under it constitute a comprehensive plan with respect to all aspects of the locating, drilling, well stimulation, completing, and operating of oil and gas wells within this state, including site construction and restoration, permitting related to those activities, and the disposal of wastes from those wells.

See *id.*

13. R.C. 15091.01(A) defines “well” as “. . .any bore hole . . . for . . .injection of any . . .liquid mineral . . .including natural or artificial brines and oil field waters” (emphasis added), thus including the type of injection wells at issue here.

14. Production operation is broadly defined by law at R.C. §1509.01(AA) to mean “all operations and activities and all related equipment, facilities, and other structures that may be used in or associated with the exploration and production of oil, gas, or other mineral resources that are regulated under this chapter, including operations and activities associated with site preparation, site construction, access road construction, well drilling, well completion, well stimulation, well site activities, reclamation, and plugging.” *Id.*

15. Therefore, by clear statutory declaration and definition, the State of Ohio has assumed total and exclusive permitting and regulatory authority over Preferred's injection wells. Further, OAC §1509:9-3-06 provides that only the Division that may issue permits for such wells.

16. Notwithstanding this express and clear grant of exclusive authority to the Division, Mansfield has taken the position that it may regulate Preferred's wells and require permits for them. For example, Section 117.01, *Scope*, of the Codified Ordinance of the City of Mansfield states:

No building or structure, or part thereof, shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or land be used, designed or arranged for any purpose, except in conformity with the provisions of *this* Zoning Ordinance.

17. The Zoning Ordinance and the City's requirement of local permits is in direct conflict with the exclusive and comprehensive grant of authority to the Division in the context of oil and gas wells and related operations.

18. City officials have further announced their intentions to take any and all steps to block Preferred's efforts to construct and operate its wells. In recent statements to the press, City Law Director John Spon stated that it is "our position that we [the City of Mansfield] are going to oppose the presence of any injection wells in our city."

19. The City's laws and actions cast a cloud of uncertainty over Preferred's legally protected interests and rights in its state-issued permits and over the legal relationship between the parties and between local and state law.

20. Preferred has also made a significant investment in preparing to construct its wells and it will require a significant and even greater investment to construct the wells and to put them into operation.

21. A speedy declaration of the parties rights and responsibilities with regard to the wells in advance of construction will protect and preserve the parties' interests.

COUNT I
(Declaratory Judgment Pursuant to 28 U.S.C. §2201)

22. Plaintiff Preferred incorporates the allegations made in Paragraphs 1 through 21 above as if fully restated herein.

23. There is a real, immediate and actual controversy between Preferred and Mansfield in that Preferred contends that Mansfield has no authority to regulate or require permits for the construction or operation of its injection wells.

24. Mansfield disputes these contentions.

25. Accordingly, a judicial declaration of the parties' rights, responsibilities and obligations under Ohio law and/or under the Ordinances of the City of Mansfield will eliminate the uncertainty affecting the parties' relations and will end the controversy.

26. It is in the interests of the parties and of justice for the Court to settle the legal relations between the parties and to resolve the conflict between the authority of the Division and of the City of Mansfield to regulate such activities.

COUNT II
(Permanent Injunction)

27. Plaintiff Preferred incorporates the allegations made in Paragraphs 1 through 26 above as if fully restated herein.

28. Plaintiff Preferred is entitled to a permanent injunction enjoining Mansfield from requiring any permits of Preferred to operate the wells and/or to regulate the location, construction or operation of the wells.

29. Preferred has no adequate remedy at law to protect its interests in its permits to construct the wells.

30. Preferred's rights in its permits to operate wells at the specific locations identified in the permits cannot be adequately compensated with money damages.

31. The equities and the public interest favor maintaining the authority to regulate such technical matters with the highly trained and experienced regulators at the Division. By contrast, the public will not be served by delegating such unique technical and policy matters to local officials who lack the training or experience needed to regulate oil and gas production and related activities.

RELIEF REQUESTED

WHEREFORE, Preferred requests judgment in its favor as follows:

1. As to Count I, that the Court declare that Mansfield has no authority to require any permits or license of Preferred in order to construct and operate its injection wells within the City of Mansfield, Ohio;
2. As to Count II, that the Court issue a permanent injunction against Mansfield preventing it from requiring any permits or license of Preferred to construct or operate its wells or to regulate in any way the location, construction or operation of Preferred's wells; and,
3. As to all Counts, that the Court award such other and further relief as it may deem proper at law, or in equity.

Respectfully submitted,

s/John K. Keller

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