



Comments of IOGA on WVDEP's Review of West Virginia Oil and Gas Regulatory Program

The Independent Oil and Gas Association of West Virginia, Inc. ("IOGA") offers these initial observations on the appropriate scope of the West Virginia Department of Environmental Protection's ("WVDEP") review of its oil and gas regulatory program. Formed in 1959, IOGA is a statewide nonprofit trade association that represents companies engaged in the extraction and production of natural gas and oil in West Virginia and the companies that support these extraction and production activities. IOGA was formed to promote and protect a strong, competitive and capable independent natural gas and oil producing industry in West Virginia, as well as the natural environment of our state. IOGA has been in existence during times of boom and bust and its members have a long history of driving innovation in exploration and development of West Virginia's oil and gas reserves. Our members also have a longstanding tradition of working with WVDEP and its predecessor agencies to help regulators understand these innovations and how to regulate new techniques in a manner that protects the environment while promoting the economic development so crucial to West Virginia. It is in this spirit of innovation and partnership that IOGA offers these preliminary comments.

IOGA can identify two main challenges facing WVDEP in undertaking this review. The first challenge relates to the incredibly broad scope of the review. We understand that at this point the proposed scope encompasses all aspects of the current oil and gas regulatory program. IOGA suggests WVDEP focus its review on those aspects of the program that require revisions or updates. The first step the agency should take is to identify the parts of the program that need further review. It is not appropriate to begin drafting new legislation or revising current regulations until there is a firm understanding about what needs to be done to address any perceived deficiencies. To this point no such understanding exists. As discussed in more detail below, IOGA believes that the existing regulations are sufficient for conventional shallow gas wells but realizes that advances in drilling technology may warrant new or additional statutory or regulatory provisions for nonconventional wells. We do not believe, however, that every advancement in drilling technology warrants making changes to the existing statutes or regulations. IOGA urges WVDEP to take a systematic approach to this review and avoid any assumption that any aspect of the current program needs revision or updating until there is evidence that a programmatic change is warranted. In addition, IOGA urges WVDEP to restrict its review to those subjects within its purview as determined by the Legislature and to leave issues, such as taxation, to other parts of state government that have both the legal authority and the requisite expertise to address those topics.

The second main challenge the agency will face in undertaking this review is the timeframe in which WVDEP intends to complete this work. IOGA believes the current proposed timeframe is ambitious in light of the scope that has been identified. IOGA is concerned, however, that even with a more limited scope of emphasis, that WVDEP's timetable may not be

appropriate. For this reason, IOGA urges WVDEP to avoid any arbitrary deadline for proposing any statutory revisions and instead adopt a flexible approach that would allow the agency to develop focused proposals for statutory or regulatory changes if those are ultimately deemed necessary.

To assist WVDEP in identifying the proper scope of this review, IOGA is providing brief comments on several areas that have been identified by the agency or others as warranting review. These comments are not meant to be comprehensive or IOGA's final thoughts on any issues. Instead, IOGA views this document as a jumping-off point for further discussion.

1. The Current Regulatory System for Conventional Shallow Wells Is Effective.

IOGA believes that the current regulatory scheme – which has been in place for decades – remains an effective system for conventional shallow wells (i.e., vertical shallow wells). The current system is not static. It has been revised and updated through the years to account for changing circumstances. In fact, the rules were revised this year to add new requirements related to design and construction of large pits and impoundments and to make other changes. Although much of the public's attention has been on the Marcellus Shale play these past few years, there are still conventional shallow gas wells being drilled all over West Virginia. These wells are drilled using proven technology and regulated using statutes and rules that have effectively protected the environment. It is likely that smaller operators, and even some bigger operators, will continue to drill conventional shallow gas wells for the foreseeable future. These wells are essential to the continued survival of smaller operators and unnecessarily imposing new requirements without any justification could have severe impacts on these operators. Accordingly, IOGA urges WVDEP to take a focused approach to its evaluation of the current regulatory program and not seek to overhaul the requirements of a program that is working well, i.e., the current regulatory program as it applies to conventional shallow wells.

2. The Current Board System Serves a Vital Purpose.

At present, there are three boards that regulate different areas of oil and gas drilling: the Oil and Gas Conservation Commission; the Shallow Gas Well Review Board; and the Coalbed Methane Review Board. Although there are similarities between shallow wells, coalbed methane wells, and deep wells, there are also significant differences in the issues and regulations that apply to each type of well. IOGA believes that the current system allows for a specialization and expertise in the Boards that promotes efficiency in resolving disputes. As such, IOGA recommends that the current structure of the Boards be maintained.

3. IOGA Supports Appropriate Funding to Allow the Agency to Carry Out its Legislatively Prescribed Duties.

IOGA is proud of its decision to support permit fee increases in 2005 and 2006 to allow for the Office of Oil and Gas to cover administrative expenses and to add staff, including inspectors. It was IOGA's understanding at that time that OOG's funding from the general revenue fund would remain steady. Based on information provided by Deputy Secretary McClung and Chief Martin at the April 12, 2010 meeting, it appears that there has been a

significant decrease in permit applications at the same time that the general revenue portion of OOG's budget has shrunk been reduced. IOGA believes that any discussions involving increasing permit fees must also include an evaluation of current and projected workload levels and staffing needs, opportunities for improving efficiency and reducing expenditures, and this administration's plan for the dedication of general revenues to agency operations. IOGA is willing to participate in such discussions with the goal of determining the funding necessary to assure the efficient and effective administration of the oil and gas regulatory programs and identifying the appropriate sources for funds. In addition, IOGA firmly believes that any increase in permit fees should be tied to retaining full permitting, inspection and enforcement authority within OOG.

IOGA believes any increase in fees should be tied to the activities that are driving the workload at the agency. The permit fees for shallow wells are sufficient to cover the typical costs associated with permitting these conventional wells. It is IOGA's understanding, however, that permits with horizontal legs – whether in the Marcellus Shale or other formations – and the modifications requested for these permits occupy a significant portion of OOG staff time. If that is the case, IOGA would be willing to discuss targeted increases in permit fees for these types of wells.

4. IOGA Recognizes that New Techniques and Technologies May Need New Regulations.

Although IOGA believes the conventional shallow well regulatory structure does not need overhauling, we readily admit that some of the drilling techniques now commonly used in the Marcellus Shale and other formations were not contemplated when the current statute was written. IOGA believes that WVDEP should consider whether the regulations or statutes need to be updated to address aspects of horizontal drilling. IOGA suggests that WVDEP avoid the temptation to draft new statutes or rules based solely on formation to be drilled or produced. Based on the experience of the past few years, IOGA believes that the types of drilling and completion techniques are better factors to consider in determining how a well should be regulated. For example, a vertical well drilled to the Marcellus Shale may have much more in common with a conventional shallow well than with a horizontal well drilled to the Marcellus Shale.

An overarching consideration that should be made by the WVDEP in any proposal to change the oil and gas regulatory program is “What benefit will result to our State and at what cost?” There is a constant clamor by environmental organizations and other special interest groups for broader regulation and more stringent standards to be imposed on regulated businesses. We acknowledge that more often than not the regulated businesses resist the push for more regulation. But rather than assume because a change makes a statute more stringent or results in greater protection of the environment it is automatically worth pursuing, the direct and indirect impacts of the change including the effect of added costs to the regulated business and the State must be considered if West Virginia is to maintain a healthy economic base that will enhance the quality of life for all of its citizens. IOGA also encourages WVDEP avoid the temptation to make statutory changes simply because they have been applied in other

jurisdictions. Changes should be recommended only after careful consideration and scientific study of what is necessary based on West Virginia-specific conditions.

5. Water Issues.

There is no question that water withdrawal, management and disposal issues have taken a more prominent place in WVDEP's regulation of oil and gas related activities in recent years. IOGA commends WVDEP for adapting its existing authority to account for the potential for increased water use associated with hydraulic fracturing of horizontal wells, including instituting a new permit addendum for wells with withdrawals over a certain threshold and developing, through the rule-making process, new requirements for pits and impoundments with a capacity greater than 5,000 barrels. These responses show that WVDEP is properly regulating the industry and adapting the program to meet new challenges.

IOGA does not agree with the suggestion that special or additional restrictions on water withdrawals to drill and complete oil and gas wells in West Virginia are necessary. The development of the Marcellus Shale has lead to significant advances in how operators recycle and reuse water during the past year. Many operators are able to capture and reuse almost all of the flowback water used to fracture the well. As such, the estimates of water withdrawals necessary to support the development of the Marcellus Shale put forth even a year ago may overestimate the amount of water that will now be needed to develop these wells. WVDEP should also consider that the overall water use by oil and gas operations is very small compared to other industry sectors. To the extent WVDEP considers any statutory or regulatory changes related to water withdrawals, the agency should recognize the minimal overall impact of oil and gas-related water withdrawals and, more importantly, any proposed regulations should be consistent with the requirements that apply when water users in other industry sectors withdrawal water.

6. Miscellaneous Issues.

With the increase in size of well pads necessary to drill horizontal wells, IOGA understands that there may be a corresponding need to revise and update the OOG's Erosion and Sediment Control Manual to address these situations. IOGA was intimately involved in the drafting of the last version of the Erosion and Sediment Control Manual and will offer its expertise once again should WVDEP decide to review the manual.

We also recognize that there may be a need to add or revise certain definitions in the statute or regulation as a result of changes in drilling wells. For example, IOGA supports revising the definitions of shallow wells and deep wells as proposed in SB 369 which was considered during the 2010 Regular Session of the Legislature.

IOGA also urges WVDEP to remain focused on issues related to environmental protection and the administration of the OOG. In the April 12, 2010 meeting, Secretary Huffman mentioned that he believed that he had authority to recommend any sort of change, including changes outside of Chapter 22 of the West Virginia Code. IOGA believes that it would be

improvident for this agency to make recommendations on subjects outside its legislatively-delegated authority or its areas of expertise.

In conclusion, IOGA appreciates the opportunity to offer these thoughts. We hope that they will assist WVDEP in identifying the proper scope of this program review. IOGA looks forward to offering additional comments and suggestions as the review continues.

Respectfully submitted,

INDEPENDENT OIL AND GAS ASSOCIATION OF WEST VIRGINIA

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