

STATE OF WEST VIRGINIA

PRELIMINARY PERFORMANCE REVIEW OF THE

Oil and Gas Conservation Commission

**Commission Attendance has Improved
Significantly Since the Previous Audit**

**Oil and Gas Conservation
Commission Records Show that
the Agency is Meeting Mandates of
its Permitting Process**

**OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex**

**CHARLESTON, WEST VIRGINIA 25305
(304) 347-4890**

September 2000

PE00-24-182

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September 2000

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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Antonio E. Jones, Ph.D.
Director

September 10, 2000

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable Vicki V. Douglas
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a **Preliminary Performance Review of the Oil and Gas Conservation Commission**, which will be presented to the Joint Committee on Government Operations on Sunday, September 10, 2000. The issues covered herein are "*Commission Attendance has Improved Significantly Since the Previous Audit; and Oil and Gas Conservation Commission Records Show that the Agency is Meeting Mandates of its Permitting Process.*"

We conducted an exit conference on August 29, 2000 with the Oil and Gas Conservation Commission. We received the agency responses on August 31 and September 1, 2000.

Let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia
Acting Director

JS/wsc

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Executive Summary

The Oil and Gas Conservation Commission (OGCC) was created under §22C-9-1 of the West Virginia Code. The Commission is a five member body with duties consisting of: 1) Regulating the spacing of deep oil and gas wells; 2) Making and enforcing rules regarding waste and rights of deep well owners; 3) Issuing subpoenas for the attendance of witnesses for Commission hearings; and 4) Serving as technical advisor to the Legislature, the Division of Environmental Protection and the Office of Oil and Gas on issues involving oil and gas. A major duty of the Commission is to facilitate and/or mediate hearings for well operators regarding exceptions to rules and regulations on the drilling of a new deep well.

ISSUE AREA 1: Commission Attendance has Improved Significantly Since the Previous Audit.

During the period of review from 1997 through May 2000, the Oil and Gas Conservation Commission held 14 meetings. The Commission attendance rate was **77%** for this period as compared to a **40%** rate for a similar number of meetings as recorded in the previous audit. Review of meeting minutes shows that only twice did the Commission fail to have a quorum present. The Commission has been consistent in having a quorum present for the past ten meetings. The review of the minutes also shows that both the Chairman of the Commission and the Chief of the Office of Oil and Gas had 100% attendance. However, the Director of the Division of Environmental Protection, who serves as an ex officio member, attended only one meeting during the three-year review period. This improvement in attendance could be due in part to a change in the statute which gives the Commission members an active role in Commission meetings. One of these changes is the granting of voting authority to the Commission members. In addition, the number of permits has been consistently increasing since 1995, which could lead to the possibility of more hearings being requested. This would require more Commission meetings, thus indicating more need for the Commission.

ISSUE AREA 2: Oil and Gas Conservation Commission Records Show that the Agency is Meeting Mandates of its Permitting Process.

The Legislative Auditor analyzed 44 applications for deep well permits. Overall, the Commission is doing a good job maintaining the records. Only two of the applications lacked having all seven of the categories. One file was missing the certificate of consent and easement. However, it was later obtained, and a copy of it was provided to the Legislative Auditor. The other file did not have a signed and approved reclamation plan, which was also provided to the Legislative Auditor at a later time. The two missing documents were more than likely in their respective files at one time. Due to the fact that both documents were checked off on a separate check list that is kept in the files.

Another important aspect of the application process is to ensure that the wells are spaced an appropriate distance from each other and from the nearest unit boundary. Every one of the 44 applications that the Legislative Auditor evaluated specified that the well is at least 400 feet from

a lease or unit boundary. Also, two of the 44 applications did not meet the 3,000 feet criteria. In both of these instances exceptions were granted after the applicable hearing.

Review, Objective, Scope and Methodology

This preliminary performance review of the Oil and Gas Conservation Commission is required and authorized by the West Virginia Sunset Law, Chapter 4, Article 10 of the West Virginia *Code*, as amended. The Commission is mandated to encourage maximum recovery of oil and gas, but at the same time prohibit waste of oil and gas resources, and protect the correlative rights of operators and royalty owners.

The primary objectives of the review were to determine if the Oil and Gas Conservation Commission's attendance at meetings/hearings has improved from a previous audit and to evaluate how effectively the Commission is maintaining its records. The scope of the review included June 1996 through August 2000.

The methodology included interviews, conversations and correspondence with the Program Manager. The review also involved a paper audit of Commission minutes, reports and applications for permits. No field work was performed by the Legislative Auditor to determine the accuracy of well spacing. Every aspect of this review complied with **Generally Accepted Government Auditing Standards**.

Background

The West Virginia Oil and Gas Conservation Commission (OGCC) regulates the drilling of deep wells in the state. The OGCC approves drilling permits and conducts hearings on matters relating to the exploration for or production of oil and gas from deep wells. Hearings are held to determine the optimum spacing of wells and to pool the interests of royalty owners and operators of a drilling unit. Objectives of the OGCC are to:

- 1) Foster, encourage and promote exploration for and development, production, utilization and conservation of oil and gas resources;
- 2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas;
- 3) Encourage the maximum recovery of oil and gas; and
- 4) Safeguard, protect and enforce the correlative rights of operators and royalty owners in a pool of oil or gas to the end that each operator and royalty owner may obtain his just and equitable share and production from such pool of oil or gas.

The OGCC is responsible for over 195,000 unitized acres for primary natural gas production and over 22,000 acres unitized for secondary oil recovery. The OGCC also has jurisdiction over all deep wells drilled in the state.

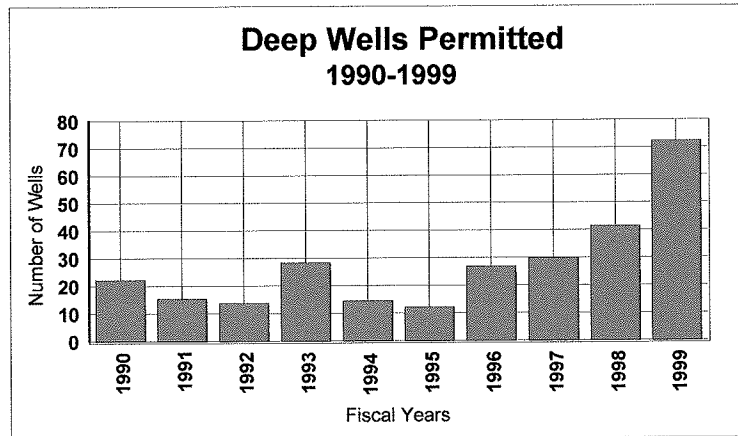
According to West Virginia *Code* §22C-9-4, the Oil and Gas Conservation Commission has the authority to: 1) Regulate the spacing of deep wells; 2) Create and enforce reasonable rules and orders necessary to prevent waste, protect correlative rights, and govern practices and procedures; 3) Issue subpoenas to witnesses and administer oaths and affirmations to such witnesses; and 4) Serve as technical advisor regarding oil and gas to the Legislature, to the Chief of Office of Oil and Gas, to DEP and to any other state agency related to the oil and gas industry.

The Oil and Gas Conservation Commission may designate to the Commission staff the authority to approve or deny applications for new well permits to establish drilling units or special field rules. However, **only** the OGCC has the authority to: 1) Propose legislation; 2) Approve or deny an application for new well permits if the application does not conform to the rules of the OGCC and if a request for hearing has been received; or 3) Approve or deny an application for the pooling of interests within a drilling unit.

Any exception to the field rules or the spacing of wells which does not meet the rules of the Oil and Gas Conservation Commission, and any application for the pooling of interests within a drilling unit, must be heard in a meeting of the members of the OGCC.

Activities performed by the OGCC in 1999 included the permitting of 73 deep wells in 14 counties. In 1998 the OGCC permitted 42 deep wells in 16 counties. The graph below shows the permitting activities from 1990 - 1999.

Graph 1



Issue Area 1: Commission Attendance has Improved Significantly Since the Previous Audit.

During the period of review from 1997 through May 2000, the Oil and Gas Conservation Commission held 14 meetings. The Commission attendance rate was 77% for this period as compared to a 40% rate for a similar number of meetings as recorded in the previous audit. This improvement in attendance could be due to a restructuring of the Commission. Previously, the Commission members only advised the Commissioner and did not vote on decisions. The Commissioner made all final decisions. Since the previous audit, the Commission's statute was amended during the 1998 Legislative session to allow Commission members voting authority on issues instead of merely advising the Commissioner. This gives the members a more active role in Commission activities, thus more reason to attend meetings. In addition, the increase in deep well permits since 1995, as shown in the previous graph, could lead to the possibility of more hearings being requested, which would cause more Commission meetings and would indicate more need for the Commission.

West Virginia Code §22C-9-4 now states that three members are required for a quorum, and two of the members present must be those appointed by the governor. Review of meeting minutes demonstrated that only twice did the Commission fail to have a quorum present. The Commission has been consistent in having a quorum present for the past ten meetings. The review of the minutes also showed that both the Chairman of the Commission and the Chief of the Office of Oil and Gas had 100% attendance. While the overall attendance of the Commission has improved, the Director of the Division of Environmental Protection has only attended one meeting in the past three years. West Virginia Code §22C-9-4(a) states in part,

The oil and gas conservation commission shall be composed of five members. The director of the division of environmental protection and the chief of the office of oil and gas shall be members of the commission ex officio.

The Legislative Auditor believes that the Director of DEP should make an effort to attend the meetings of this committee. In the occasion that the Director's attendance is not possible, a proxy should be sent in his or her place. In addition, the OGCC's Program Manager has been present for every meeting except one. The following table provides a breakdown of the 14 meetings that the Legislative Auditor analyzed.

Table 1
Oil and Gas Conservation Commission Hearings and Meetings Attendance*

<u>Date</u>	DEP Director	Chief, OOG	Member A	Member B	Member C
06/25/97		x	x	x	x
08/12/97**	N/A	N/A	N/A	N/A	N/A
01/07/98***		x	x		Vacant
05/20/98***		x	x		Vacant
06/18/98***		x	x	x	Vacant
09/03/98		x	x	x	Vacant
09/30/98		x	x	x	Vacant
02/11/99		x	x	x	x
05/06/99		x	x	x	x
06/14/99		x	x	x	x
08/20/99		x	x	x	x
10/27/99		x	x	x	x
02/25/00	x	x	x	x	x
05/12/00		x	x	x	x

* "x" denotes attendance of meeting or hearing ** No minutes are available

"Vacant" denotes open position on board

*** The Chief of the Office of Oil & Gas also served as Acting Commissioner/Chairman

Conclusion

With the exception of the Director of the Division of Environmental Protection, the overall attendance of the Commission has improved since the previous audit, which may partly be due to the members gaining a more active role in meetings since the change in the West Virginia Code. Also, the increase in deep well permits since 1995 could lead to the possibility of more hearings being requested which would require more meetings of the Commission, thus indicating more need for the Commission.

Recommendation 1:

The Director of the Division of Environmental Protection should attend meetings of the Oil and Gas Conservation Commission or send a proxy in his or her place.

Issue Area 2: Oil and Gas Conservation Commission Records Show that the Agency is Meeting Mandates of its Permitting Process.

In order to help determine the efficiency and effectiveness of the West Virginia Oil and Gas Conservation Commission, the Legislative Auditor conducted a sample of the 1999 applications for deep well permits. According to West Virginia Code §22C-9-7(a)(1),

After one discovery deep well has been drilled establishing a pool, an application to establish drilling units may be filed with the commission by the operator of such discovery deep well or by the operator of any lands directly and immediately affected by the drilling of such discovery deep well, or subsequent deep wells in said pool. Each application shall contain such information as prescribed by reasonable rules proposed by the commission in accordance with the provisions of section five of this article.

The Elements of a Complete Application

The Commission does have a “check-off list” for whether or not an application conforms to the rules of the Commission. According to the Commission’s Program Manager, an application is checked for completeness when it is first received. A complete application includes: 1) proof that notice of the intent to drill a well was sent to the surface owners of record and the coal owners of record; 2) a certificate of consent and easement executed between the operator and the surface owner of the tract where the well is to be drilled (unless the well is a test well); 3) a signed and approved reclamation plan; 4) a surveyed plat showing the exact location of the proposed well; 5) a topography map of the proposed location; 6) a list of the royalty owners and a reference to the lease record; and 7) an approved casing and tubing program.

Legislative Auditor’s Review of the Applications

The Legislative Auditor analyzed 44 applications for deep well permits. Overall, the Commission is doing a good job maintaining the records. Only two of the applications lacked having all seven of the categories listed above. One file was missing the certificate of consent and easement. However, it was later obtained, and a copy of it was provided to the Legislative Auditor. The other file did not have a signed and approved reclamation plan, which was also provided to the Legislative Auditor at a later time. The two missing documents were more than likely in their respective files at one time. Due to the fact that both documents were checked off on a separate check list that is kept in the files.

Another important aspect of the application process is to ensure that the wells are spaced an appropriate distance from each other and from the nearest unit boundary. According to Procedural Rule §39-1-4 (4.2),

To prevent waste,... each deep well drilled shall be not less than 3,000 feet from a deep

well drilling to or capable of producing hydrocarbons from the objective pool of the deep well and no deep well shall be less than 400 feet from a lease or unit boundary.

Every one of the 44 applications that the Legislative Auditor evaluated specified that the well is at least 400 feet from a lease or unit boundary. Also, two of the 44 applications did not meet the 3,000 feet criteria. In both of these instances exceptions were granted after the applicable hearing. The Legislative Auditor did not perform field work sampling to determine the accuracy of the information provided in the applications. In lieu of field work, a paper audit was performed relying on the accuracy of the documentation within the Office of Oil and Gas' files. CSR §39-1-4.4(c) requires that a topographical plat be included in each application. The plat showing the locations of all deep wells in that area is prepared, signed and stamped by an independent licensed land surveyor. The plat is then examined by the Commission staff to determine the distances between existing wells and proposed wells. In addition, according to the Commission's Program Manager, inspectors from the Office of Oil and Gas physically check the locations of the wells. The inspector can determine if the location is reasonably close to the actual survey location. Each application file reviewed by the Legislative Auditor included a plat as required, and the audit relied on the expertise of the land surveyors and inspectors to determine the accuracy of the spacing between land boundary units and current wells. Table 2 depicts a synopsis of the 44 applications that the Legislative Auditor analyzed.

Table 2
Sample of 1999 Deep Wells Permitted

# Of Applications	# At least 400 feet away from property boundary	# At least 3000 feet away from another well	# Having consent & easement	# Having approved rec. plan	# Having approved casing & tubing	# Having list of royalty owners	# Having plat & map
44	44	42 (2)*	43	43	44	44	44
% of total	100%	100%	97%	97%	100%	100%	100%

* Exceptions were granted

In addition to the aforementioned categories listed above, the Legislative Auditor also examined the application files to see if the certificate of consent and easement was filed in the applicable County Clerk's office. This was done due to West Virginia Code §22C-9-7(b)(4), which states:

*No drilling or operation of a deep well for the production of oil or gas shall be permitted upon or within any tract of land unless the operator shall have first obtained the written consent and easement therefor, **duly acknowledged and placed on record in the office of the county clerk**, for valuable consideration of all owners*

of the surface of such tract of land, which consent shall describe with reasonable certainty, the location upon such tract, of the location of such proposed deep well, a certified copy of which consent and easement shall be submitted by the operator to the commission.

The Legislative Auditor found that all 44 of the certificates of consent and easement were notarized by a Notary Public. However, 15 of the 44 or **34%** had no proof of being filed in the County Clerk's office. This does not necessarily mean that these 15 certificates were not recorded by the County Clerk's office, merely that the Legislative Auditor was unable to see physical proof (i.e. County Clerk stamp) of these certificates being recorded. In these instances, the onus does not lie with the Oil and Gas Conservation Commission but with the respective County Clerk's office.

Application Approval Date Exceeds Application Received Date

After analyzing the applications, the Legislative Auditor discovered that five of the 44 applications had an approval letter that was dated earlier than the "stamped date" of the application being received. In cases such as these, the Oil and Gas Conservation Commission receives the application before the Office of Oil and Gas, which is the office that stamps in all relevant documents. Therefore, the Commission will approve an application then forward it to the Office of Oil and Gas, who may not stamp it in until a few days after the application has been approved. In addition, both the Oil and Gas Conservation Commission and the Office of Oil and Gas receive applications. There is no rule that states the applications have to come directly to the Oil and Gas Conservation Commission or to the Office of Oil and Gas.

Conclusion

Through analysis of Oil and Gas Conservation Commission records, the Legislative Auditor has determined that the Commission is following Legislative Rules by analyzing documents as required during the permitting process. This shows that the Commission is making sure that deep well drilling is being done according to rules, and that conflicts among well owners are avoided by documenting land ownership and spacing between wells. The Legislative Auditor commends the agency for its thorough record keeping. Considering the number of documents that filter into both the Commission and the Office of Oil and Gas, the Commission is able to account for the required documentation.

APPENDIX A

Transmittal Letter to Agency

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



Antonio E. Jones, Ph.D.
Director

August 29, 2000


Brett Loflin, Program Manager
Oil and Gas Conservation Commission
#10 McJunkin Road
Nitro, West Virginia 25143-2506

Dear Mr. Loflin:

Here is a draft copy of the Preliminary Performance Review of the Oil and Gas Conservation Commission. Should you wish to have one or more written responses included as an appendix to the final report, please submit it to us by Friday, September 1, 2000 by 4:00 p.m.

If you have any questions, please contact me.

Sincerely,


Brian Armentrout
Research Manager

Joint Committee on Government and Finance

APPENDIX B
Agency Response

State of West Virginia
Bureau of Environment
OIL AND GAS CONSERVATION COMMISSION
#10 McJunkin Road
Nitro, West Virginia 25143-2506

Barry K. Lay, Chairman
Michael W. Sinicropl, Member
Denny P. Harton, Member
John H. Johnston, Ex-Officio
Michael C. Castle, Ex-Officio

Telephone (304)759-0516
Fax (304)759-0529

M E M O R A N D U M

TO: Chris Nuckols, Research Analyst
FROM: Brad Loflin, Program Manager
RE: Preliminary Performance Review
DATE: August 31, 2000

RECEIVED

AUG 31 2000

RESEARCH AND PERFORMANCE
EVALUATION DIVISION

Thank you for your review of the Oil and Gas Conservation Commission. With regards to recommendation #1 the Commission has contacted the Director of the Division of Environmental Protection. The Director intends to attend future meetings of the Commission. In instances where he can not attend, he will send a proxy in his place.

Again, thank you for your timely review of the Oil and Gas Conservation Commission and we look forward to meeting with you in the future.

State of West Virginia
Bureau of Environment
OIL AND GAS CONSERVATION COMMISSION
#10 McJunkin Road
Nitro, West Virginia 25143-2506

Barry K. Lay, Chairman
Michael W. Sinicropi, Member
Denny P. Harton, Member
John H. Johnston, Ex-Officio
Michael C. Castle, Ex-Officio

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M E M O R A N D U M

RECEIVED

SEP 1 2000

RESEARCH AND PERFORMANCE
EVALUATION DIVISION

TO: Chris Nuckols, Research Analyst
FROM: Barry Lay, Chairman *BL*
RE: Preliminary Performance Review
DATE: September 1, 2000

First, I would like to thank you for giving the Commission the opportunity to review your draft of the preliminary performance review. As Mr. Loflin discussed in his memo of August 31, 2000, Mr. Castle has appointed two proxies if he is unable to attend any meeting of the Commission. I have attached a copy of that memo for your file. The only other comment that I would make is with regard to Table 2, page 11 of the review. The Commission staff informs me that one well which did not have a consent and easement along with one well without an approved rec plan, were filing errors in the Office of Oil and Gas files. Also as we noted at the exit meeting at the Capitol, the two wells that were permitted with a variance to the 3,000 foot well spacing, were granted approval by hearing of the Commission.

Thank you for your consideration in this matter.



Executive Office
 #10 McJunkin Road
 Nitro, West Virginia 25143-2506
 304-759-0514
 Fax: 304-759-0529



West Virginia Division of Environmental Protection

Cecil H. Underwood
 Governor

Michael C. Castle
 Director

MEMORANDUM

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SEP 1 2000

DATE: September 1, 2000
TO: Oil and Gas Conservation Commission
FROM: Michael C. Castle, Director
SUBJECT: Appointment of Proxy

Michael C. Castle
 RESEARCH AND PERFORMANCE
 EVALUATION DIVISION

The September, 2000, Draft "Preliminary Performance Review of the Oil and Gas Conservation Commission" noted in Recommendation 1, that when I am unable to attend meetings of the Commission, that I may want to appoint a proxy. Therefore, when I am unable to attend, first, Randy Huffman will be my proxy with all the rights I hold to vote and to otherwise act. In the event, neither Randy nor I are unable to attend, Allen Blankenship will be my proxy with all the rights I hold to vote and to otherwise act.

cc: Members of the Conservation Commission
 Brett Loflin
 Randy Huffman
 Allen Blankenship

"To use all available resources to protect and restore West Virginia's environment in concert with the needs of present and future generations."



West Virginia
 Division of
 Environmental Protection

