

WEST VIRGINIA OIL AND NATURAL GAS ASSOCIATION
October 12, 2011

The Honorable Douglas E. Facemire
Room 217W, Building 1
State Capitol Complex
Charleston, WV 25305

The Honorable Tim Manchin
Room 212E, Building 1
State Capitol Complex
Charleston, WV 25305

Re: Joint Select Committee on Marcellus Shale Draft Legislation

Gentlemen,

I am writing to highlight a few of the very serious concerns that the members of the West Virginia Oil and Natural Gas Association (WVONGA) have related to the draft legislation and amendments under consideration by the Joint Select Committee on Marcellus Shale (Committee).

WVONGA recognizes the critical importance of safe and effective exploration using horizontal technology to develop the Marcellus shale formation and supports the public policy stated in proposed Senate Bill 424 that "allowing the responsible development of our State's natural gas resources will enhance the economy of our State and the quality of life for our citizens while assuring the long term protection of the environment." Equally as critical is that any legislation passed be limited to those wells drilled horizontally that use more than five thousand (5,000) barrels of water and disturb three (3) acres of land or more. Further, WVONGA recommends eliminating any language that identifies a single formation; i.e., Marcellus in a statute or subsequent rule. Identifying a particular formation may limit the application of the statute or subsequent rule when considering other formations produced through the use of similar techniques.

Our support is driven by the fact that WVONGA members are key participants in the development of the Marcellus shale, and we find that rational, predictable statutory and regulatory oversight are critical to decisions to invest in the development of Marcellus shale in West Virginia and elsewhere. This said, over-regulation and abusive fee increases will most certainly decrease investment and correspondingly reduce economic impact including job creation and tax revenue generation – both directly and indirectly. As such, we offer the following key points as a non-inclusive list of concerns associated with the work of the Committee – past and future.

First, the "well location restrictions" amendment pending before the Committee will cause very significant portions of the State to become off-limits to drilling thereby sterilizing many resources. Prohibiting production from being located within 1,000 feet of occupied dwellings, barns, water wells or springs used for "domestic animal consumption," and public water supply intakes effectively precludes drilling within a 72 acre area around each such location. You can quickly see how much drilling space is further sterilized by a water well that is 1,000 feet from a house which is 1,000 feet from

a barn. Perhaps even more problematic is prohibiting drilling within 100 feet of a "watercourse" and 200 feet from a "wetland" where each can be located in close proximity to one another and are not always easily identifiable. This amendment will have a very significant and perhaps unanticipated negative impact on natural gas drilling in our State.

Second, the "casing and cementing requirements" amendment is an example of legislating details of operation rather than leaving such details to rulemaking by the appropriate State agency - the Office of Oil and Gas of the Department of Environmental Protection (DEP) in this instance. The rulemaking process is better designed to consider the very technical operating variables that may exist from one type of horizontal well or target formation to another. It appears that the drafters of the amendment essentially borrowed the language from Pennsylvania regulations that were finalized after considering around 2,000 comments. West Virginians deserve the same opportunity to participate in a rulemaking process rather than having the Legislature serve in the rulemaking capacity.

Third, "property owner public notice" amendment that was adopted appears to be designed to increase administrative burdens without material public benefit. Increasing the list of persons to receive notice of well permit application to include owners of property adjacent to where well work or land disturbance is performed significantly increases work to identify owners without regard to whether such owner might be remotely affected by drilling operations. Moreover, identifying and providing notice to persons "known to the applicant to have a water well, spring or water supply source within 2,500 feet" creates an area of roughly 143 acres subject to this requirement without any standard as to how "known to the applicant" will be interpreted. These requirements - along with an unprecedented requirement that notice of the filing of each application must be published for 2 weeks in a local newspaper - will result in obstructing the well permit application process rather than promoting the stated public policy.

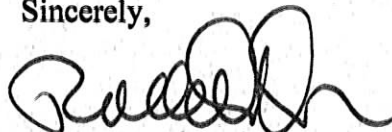
An overarching concern is the magnitude of the proposed fee increase by about 1400%. This increase - atop an already aggressive severance tax, as well as the various other incremental costs associated with current and future regulation - sends a clear message to the industry that West Virginia is an uncompetitive business environment. With low natural gas prices in the United States market, capital is limited and easily transferred to areas where a competitive environment is being embraced. Pennsylvania is experiencing a shift away from the dry gas areas where prices are low, to the liquids-rich regions of Ohio where a more competitive environment for development exists. During this foundation-setting period for shale gas development, making sure we have a proper balance in our statutory and regulatory approach to governing our oil and gas program is absolutely critical if we are to maximize the number of jobs flowing to West Virginia residents. This said, we embrace DEP's funding request and respectfully suggest an alternative approach toward the desired end: blending a small increase in the permit fee with a reallocation of a small percentage of the severance tax currently being collected.

It is WVONGA's view that the adopted and pending amendments do not advance the cause of promoting the development of our natural resources while at the same time ensuring long term protection of the environment. As examples, singling out the drillers of horizontal wells for additional and burdensome reporting to the Division of Labor and expanding from 1,000 feet to 2,500 feet the presumption of pollution of water wells due to drilling operations are unfair and undermine the confidence of the industry that the Legislature supports the development of Marcellus shale gas reserves.

Further, even though 22 amendments have been adopted with another 4 pending, the Committee has not taken any steps toward exploring pooling or unitization provisions that would dramatically improve our ability to efficiently develop our natural resources while at the same time minimizing environmental impact. Such a conservation provision in the proposed legislation would greatly enhance support from WVONGA members.

I would be happy to respond to questions or discuss these and other important issues with you at your convenience. Thank you for your consideration of this letter and for your service to our great State.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Orndorff', with a stylized flourish at the end.

Robert C. Orndorff
President of the Board