

U.S. Senate Committee on Energy and Natural Resources

Forum on “Shale Development: Best Practices and Environmental Concerns”

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Opening Comments

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Good morning, Chairman Wyden and ranking member Murkowski. My name is Don Garvin, and I am Legislative Coordinator for the West Virginia Environmental Council, and a long-time Board Member of STRONGER, Inc. Thank you for the opportunity to participate in this Forum.

The Marcellus shale play came to West Virginia about five years ago. It was enabled by development of new technologies such as horizontal drilling and large volume slick water hydraulic fracturing. However, the new drilling operations are also larger than conventional drilling in every respect: more land use, more water use, more air pollution, and more wastes to dispose of. So along with the shale play came additional environmental concerns.

The West Virginia Legislature began to grapple with these concerns four years ago. The West Virginia Environmental Council was involved from the beginning of the political process. Finally, in December 2011 the West Virginia Legislature adopted the Horizontal Well Control Act, establishing new statutory regulations for wells drilled and fractured using the new technologies. In April 2013 the Legislature adopted the agency rules implementing the new statute.

As you might expect, for WVEC the new regulations do not go far enough, and issues remain. Some of those issues include: the use of open pits rather than “closed loop” drilling systems; regulation of water withdrawals; adequate regulation of noise, dust, VOC’s and other air pollution; the adequacy of waste water disposal and the disposal of drill cuttings and drilling mud; protections for surface owners who do not own the minerals under their land; protection for public lands and other “special” places; consideration of impacts to human health; and lack of agency enforcement.

Now, about STRONGER. I have served as one of the environmental stakeholders on the STRONGER board since the year 2000. My comments today are my own, and not those of the STRONGER board.

The STRONGER name is an acronym for State Review of Oil and Natural Gas Environmental Regulations. The State Review Process is a voluntary program designed to compare a state’s oil and gas regulatory framework against a set of guidelines developed by stakeholders including state regulators, representatives from the industry, and representatives from the environmental community. The process evolved as a “bargain” struck between EPA and state regulators as a result of the RCRA exemption adopted by Congress in the late 1980’s.

The process has been successful in helping states improve their regulatory programs. I invite you to visit the STRONGER web site – just Google “STRONGER, Inc.” – to learn more about the organization and the success of the State Review Process.

The process is limited only by states’ willingness to volunteer for review. And that’s become a problem. The “exemption bargain” was that the states would volunteer to have their regulatory programs reviewed. If that is not happening, perhaps its time to revisit the “exemption bargain.”

I look forward to participating in the discussion to follow.