



west virginia department of environmental protection

**UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES**

TESTIMONY OF SECRETARY RANDY C. HUFFMAN

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The State of West Virginia and its Department of Environmental Protection (DEP) appreciate and welcome the opportunity to address this committee. The advancement of unconventional shale gas extraction has drastically changed America's energy future, and with it the regulatory landscape. West Virginia, like other energy producing states, takes its duty to protect the environment seriously. DEP and its Office of Oil and Gas (OOG) oversee the permitting, drilling, completion, and production of every oil and gas well in the State. With that authority comes the responsibility to promote economic growth and the development of the State's natural resources. The primary factor in maintaining a proper balance is the recognition that West Virginia is in the favorable position of being proactive, rather than reactive.

Unconventional extraction, along with its potential, brings unique concerns. In order to establish a stable and predictable regulatory climate, all parties must be allowed a seat at the table. As part of West Virginia's oversight of the Marcellus Shale activity, participation of environmental groups, land owners, other state and local agencies, members of the public, and the industry all play a key role in robust regulation. West Virginia, through its ability to foster its relationships with and manage these competing interests, is in a naturally advantageous regulatory position. In the summer of 2010, then Governor Joe Manchin III ordered DEP to form a taskforce comprised of members of those groups to review West Virginia's oil and gas regulatory program with an eye toward developing comprehensive legislation to regulate this burgeoning industry. That group worked hard and was successful in developing a wide-ranging bill to address most of the concerns raised by its members and their constituents. While that bill did not pass, it created the impetus to have a robust debate on the matter, which is continuing in the Legislature.

West Virginia recognizes that, as unconventional extraction increases, so do DEP's regulatory duties. The practices associated with unconventional extraction are not new. For example, in West Virginia's long history of regulating oil and gas activity, it has overseen the decades-old practice of hydraulically fracturing wells. What is unprecedented with unconventional extraction is the scale of both the surface disturbance and the water use, and with that increased scale come environmental issues, such as water management and surface disturbance, and safety issues, such as well design, site stabilization, and drilling practices.

Governor Earl Ray Tomblin recognized the importance of these issues, and on July 12, 2011, he issued an Executive Order directing the DEP to promulgate an emergency rule to address these and other matters surrounding horizontal well development, including erosion and sediment control, casing standards, and public notice procedures.

In addition, West Virginia has been commended for DEP's development of a water withdrawal guidance tool. This tool is available on the DEP's website and provides timely data for operators to follow when withdrawing surface water. This tool is constantly being updated to provide the most accurate data to both operators and regulators so that both can take the steps necessary to protect this vital natural resource. It will be invaluable in implementing the water management plans that are a central component of the emergency rule, which went into effect on August 29, 2011.

West Virginia also restricted publicly owned treatment works from accepting wastewater in 2009, well ahead of EPA's guidance of March 2011. Currently, the only acceptable methods of wastewater disposal in West Virginia are underground injection control (UIC) wells, which West Virginia regulates, and the recycling or reuse of water, which is strongly encouraged. The emergency rule mandates that all drill cuttings and associated drilling mud from an unconventional well site must be disposed of in an approved solid waste facility, unless the operator can prove to the satisfaction of DEP that its on-site management of those materials will be protective of the environment. West Virginia currently has one permitted facility that is entirely dedicated to wastewater treatment for reuse, and is working with other operators to develop similar facilities, both centralized and on-site.

Other policies implemented by DEP to complement the rule are enhanced casing and cementing standards for horizontally drilled wells and stringent standards for well site safety plans. West Virginia's Division of Highways also has policies in place that require operators to repair and maintain roads.

The upswing in unconventional extraction has had a dichotomous effect on the permit load in the Office of Oil and Gas. The number of well work permits issued has dropped, from a high of 2,391 permits issued in 2007 to 508 in 2010, but the number of horizontal permits has shot from zero in 2006 to 430 in 2010. In other words, 85% of the permits issued by the Office of Oil and Gas are now horizontal, unconventional well work permits. This shift in the permitting load has caused a huge loss of revenue for DEP but a huge increase in the workload of the OOG permit staff. OOG has a small staff – less than 30 total – and 19 members of that staff are in the field. The permitting staff consists of two full-time permiters and their supervisor. DEP believes that the West Virginia Legislature, which is currently working on a comprehensive bill to regulate unconventional drilling activity, will include a funding mechanism in its legislation that will enable the OOG to hire the amount of staff necessary to implement a robust regulatory program.

While there is no aspect of unconventional extraction that is beyond West Virginia's reach, that does not mean there is no role for the federal government to play. However, such a role does not include contributing to the myth that states are incapable of or ineffective at regulating oil and gas activity. First and foremost, the federal government ultimately oversees

the Clean Water Act, the Clean Air Act, and the Safe Drinking Water Act, all of which play a role in oil and gas regulation, but all of which are primarily implemented by the states. Federal agencies are also in a position to undertake research and provide reliable data on controversial topics, such as radioactivity, and to recommend best management practices and technological advances in hydraulic fracturing and well design and construction. Recommendations could serve as an invaluable resource as states evaluate the needs of their regulatory programs, but anything beyond recommendation may prove to be ineffective and tumultuous considering the independence and asymmetry of state regulatory programs. The best way to ensure this undesirable effect does not come to fruition is to continue engaging the states, rely upon them for an accurate depiction of their regulatory capacity and efficacy, and trust that no state considers environmental protection an ancillary concern.

West Virginia has played a proud role in this nation's energy history, and we anticipate maintaining a prominent role in our nation's energy future. The opportunity presented by unconventional extraction carries with it unique concerns and challenges. As it has done in the past, West Virginia will continue to answer the regulatory call associated with oil and gas activity. Mineral development, including unconventional extraction, does not have to come at the expense of our State's other natural resources, and in West Virginia, it will not!