

West Virginia State Emergency Response Commission Response to Comments of the Emergency
Planning and Community Right-To-Know Rule, 55-01

The Commission received the attached comments and voted to accept the comments and amend the proposed rule based upon the comments.

**Independent Oil and Gas Association of West Virginia, Inc.
and
West Virginia Oil and Natural Gas Association**

**Joint Comments to the Proposed Revisions to Legislative Rule, 55 C.S.R. 1,
"Emergency Planning and Community Right to Know"**

To: State Emergency Response Commission

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Independent Oil & Gas Association of West Virginia, Inc. ("IOGA") and West Virginia Oil & Natural Gas Association ("WVONGA") appreciate the opportunity to submit the following joint comments on the proposed revisions to legislative rule, "Emergency Planning and Community Right to Know" 55 C.S.R. 1 ("Proposed Rule"). The Proposed Rule was submitted to the West Virginia Secretary of State on July 13, 2020, including a notice that written comments must be submitted to the State Emergency Response Commission ("SERC") by 4:00 p.m. August 12, 2020. WVONGA and IOGA (sometimes jointly referred to herein as "Commenters" or "the Associations") are recognized as representing virtually the entire oil and gas industry in West Virginia and appreciate the opportunity to submit their joint comments to the Proposed Rule. These comments are submitted without prejudice to any member of one or both Associations submitting comments, including comments that may be inconsistent with these comments, concerning the Proposed Rule.

The Associations

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, as well as 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, while also protecting 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. IOGA members operate in virtually every county in West Virginia and have a longstanding tradition of working with the West Virginia Department of Environmental Protection ("WVDEP") and other state agencies to help regulators understand existing operations and new innovations and how to effectively regulate new technologies in a manner that protects public health and the environment while promoting the economic development so crucial to West Virginia.

Chartered in 1915, WVONGA is one of the oldest trade organizations in West Virginia, and serves the entire oil and gas industry. The activities of WVONGA members include construction, environmental services, drilling, completion, gathering, transporting, distribution and processing. WVONGA members operate in almost every county in West Virginia and employ thousands of people across the State, with payrolls totaling hundreds of millions of dollars annually. Members have cumulative investment of nearly ten billion dollars in West Virginia, account for most of the production and recent well work permits, operate more than 20,000 miles of pipeline across the state and provide oil and natural gas to more than 300,000 West Virginia homes and businesses. As such, WVONGA's members have a keen interest in all aspects of health and environmental regulation associated with oil and gas activities, including the Proposed Rule.

Comments to Proposed Rule

The Associations' primary focus in these comments relate to deletion of former sections 9.6 and 9.7 governing the fee structure associated with oil and gas extraction storage facilities. SERC proposed increasing the fees on oil and gas extraction storage facilities by executive action in August 2019, which fee increase was abandoned following IOGA's objection to the increase of a fee established by legislative rule 55 C.S.R. 1.

Now SERC appears to propose a dramatic fee increase on oil and gas operators during a period of ongoing depressed commodity prices underlying some of the worst economic conditions the industry has experienced in recent memory. Section 15-5A-5(j) authorizes SERC to "[p]romulgate rules establishing the following fees . . . which shall be reasonably calculated to recover the necessary expenses incurred by the Office of Emergency Services in the administration of this article." Without any explanation or justification for the fee increase directed at the oil and gas industry, SERC would dramatically increase fees on oil and gas operators having "extraction storage facilities." It appears that SERC seeks a fee increase on an operator having 35 locations with "extraction storage facilities" from \$25 to \$875 per year - a staggering 35-fold jump. In another example, an operator having 100 locations with "extraction storage facilities" would experience a fee increase from \$675 to \$2,500 per year - a nearly 270% increase.

In its July 13, 2020 public notice, SERC disingenuously asserts that there will be no impact of the rule on the State or its residents. Based upon the examples above, the Associations beg to differ. The public notice does acknowledge an increase on revenues to the state government, specifically a special revenue account and explains that "the monies will be then sent to local government agencies in grants." The fiscal note detail reflects current expenses of \$271,358.51 for fiscal year 2020, \$152,351.44 for fiscal year 2021, and \$202,144.42 for fiscal year upon full implementation. As noted above, §15-5A-5(j) authorizes fees "reasonably calculated to recover the necessary expenses incurred by the Office of Emergency Services in the administration of this article," but it does not authorize the collection of fees without justification or explanation.

In 2017, the West Virginia Legislature passed H.B. 3048 which increased the maximum fee per "facility" from \$100 to \$2,500. The fiscal note claimed the bill "will generate approx. \$55,000 in additional revenue by increasing a 30-year old cap on fees that chemical facilities pay when filing reports of inventory to the State Emergency Response Commission." The note further explained that "[t]his increased (*sic*) only impacts a limited number of larger facilities that store

and report numerous chemicals. Most facilities will not pay more than the minimum \$25.00 fee." Finally the fiscal note estimates increased revenues of \$55,000 per year.

Now only three years later, SERC proposes fee revisions that could generate dramatically higher revenues upon full implementation. The explanation of its estimates simply claims "[r]eturns more monies to the local agencies" without any rationale for sending more money to local agencies. Should we simply assume that SERC believes more fees are better than less fees.

The Associations also offer the following specific observations concerning the Proposed Rule:

1.1. Following the word "establishes" insert the words "reporting requirements and." Also, following the words "collection of" delete the words "public of" because not all information collected will be public information.

2.1.9. "List of MSDS Chemicals" could be revised to "List of SDS Chemicals" consistent with the current use of the term in federal regulations.

2.1.10. same comment as in 2.1.9. Also, the C.F.R. reference should be to 29 instead of 40.

3.1. same comment as 2.1.9. concerning MSDS to SDS.

5.2 should be revised to incorporate former sections 9.6. and 9.7. regarding oil and gas extraction storage facilities.

5.3. references to 5.3 should be to 5.2.

5.4. reference to 5.4. should be to 5.3.

Conclusion

The Associations believe 55 C.S.R. 1, including the revisions contained in the Proposed Rule with regard to fees is unreasonable and beyond the scope of SERC's authority as drafted. The Proposed Rule should be withdrawn following which discussions with the regulated communities and other stakeholders could be undertaken to develop a rule that addresses fees necessary for the administration of article 5A that does not create a windfall of revenue to SERC.

The Associations request that these comments be given serious and careful consideration. We look forward to reviewing the response to comments required pursuant to the West Virginia Administrative Procedures Act.

Respectfully Submitted,

**West Virginia Oil and
Natural Gas Association**

**Independent Oil and Gas
Association of West Virginia, Inc.**