

# STATE OF WEST VIRGINIA

## PRELIMINARY PERFORMANCE REVIEW OF THE

# OIL AND GAS CONSERVATION COMMISSION

Function of Commission is being  
performed by staff.

**OFFICE OF LEGISLATIVE AUDITOR**  
Performance Evaluation and Research Division  
Building 5, Room 751  
State Capitol Complex

**CHARLESTON, WEST VIRGINIA 25305**

**(304) 347-4890**

PE 96-05-46

# JOINT COMMITTEE ON GOVERNMENT OPERATIONS

## House of Delegates

Joe E. Martin, Chair  
Scott G. Varner, Vice Chair  
Sam Love  
Jay Nesbitt  
Douglas Stalnaker

## Senate

Keith Wagner, Chair  
Edwin J. Bowman, Vice Chair  
Larry Wiedebusch  
Sarah Minear  
John Yoder

## Citizen Members

Andy Gurtis  
Jack McComas  
W. Joseph McCoy  
Phyllis Presley  
Ronald Solomon

Aaron Allred, Legislative Auditor  
Office of Legislative Auditor

Antonio E. Jones, Ph.D., Director  
Performance Evaluation and Research Division

Harvey Burke, Research Manager  
Denny Rhodes, Research Analyst

June 1996

**WEST VIRGINIA LEGISLATURE**  
*Performance Evaluation and Research Division*

Building 5, Room 751A  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0592  
(304) 347-4890  
(304) 347-4889 FAX



Antonio E. Jones, Ph.D.  
Director

June 5, 1996

The Honorable A. Keith Wagner  
State Senate  
Box 446  
Iaeger, West Virginia 24844

The Honorable Joe Martin  
House of Delegates  
Building 1, Room 213E  
1900 Kanawha Blvd. East  
Charleston, West Virginia 25305

Gentlemen:

This is to provide you with a Preliminary Performance Review of the Oil and Gas Conservation Commission Board, which will be reported to the Joint Committee on Government Operations on Monday, June 10, 1996. The overall issue covered herein is "Function of Commission is Being Performed by Staff."

Let us know if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Antonio E. Jones".

Antonio E. Jones

AEJ/wsc



# TABLE OF CONTENTS

Executive Summary .....	3
Review Objective, Scope, and Methodology .....	5
<b>Issue Area 1:</b> The Oil and Gas Conservation Commission is ineffective because of low attendance; permanent staff are able to perform duties without the assistance of the Commission .....	7
<b>TABLE 1:</b> Commission Meetings and Hearings Attendance .....	8
<b>APPENDIX A:</b> Commission Member Response .....	11
<b>APPENDIX B:</b> Commissioner Response .....	13



## **Executive Summary**

The Oil and Gas Conservation Commission is a five member body with duties consisting of regulating the spacing of deep oil and gas wells; making and enforcing rules regarding waste and rights of deep well owners; issuing subpoenas for the attendance of witnesses for Commission hearings; and serving as technical advisor regarding oil and gas to members of the Legislature, Division of Environmental Protection, and the Office of Oil and Gas. A major duty of the Commission is to facilitate or mediate hearings for well operators regarding exceptions to rules and regulation regarding the drilling of a new deep well. There were approximately 10 of these hearings from November 8, 1989 through January 1996. Only two of these hearings were attended by more than two members of the Commission.

The day-to-day duties of the Oil and Gas Conservation Commission are performed by the two full-time staff members, along with the Commissioner who is also the Chief of the Office of Oil and Gas. The Commission as a board is not involved in these day-to-day operations. Without attendance by the members, the Commission cannot be providing the Commissioner with the advice and consultation that is required by the West Virginia Code.





## **Review Objective, Scope and Methodology**

This review of the Oil and Gas Conservation Commission was conducted in accordance with the West Virginia Sunset Law, Chapter 4, Article 10, Section 11 of the West Virginia Code as amended. Preliminary performance reviews are intended to assist the Joint Committee on Government Operations in making one of five recommendations. These recommendations include:

- The department, agency or board be terminated as scheduled;
- The department, agency or board be continued and reestablished;
- The department, agency or board be continued and reestablished, but the statutes governing it be amended in specific ways to correct ineffective or discriminatory practices or procedures, burdensome rules and regulations, lack of protection of the public interest, overlapping of jurisdiction with other governmental entities, unwarranted exercise of authority either in law or in fact or any other deficiencies;
- A performance audit be performed on a department, agency or board on which a preliminary review has been completed; or
- The department, agency or board be continued for a period of time not to exceed one year for the purpose of completing a full performance audit.

A preliminary performance review as defined in Chapter 4, Article 10, Section 3 of the West Virginia Code, as amended, is to determine the goals and objectives of a department, agency, or board and to determine the extent to which plan of a department, agency, or board has met or is meeting those goals and objectives. The criteria for a preliminary performance review set forth in Chapter 4, Article 10, Section 11 of the West Virginia Code, as amended, enable the determination of the following:

- If the board or agency was created to solve a problem or provide a service;
- If the problem has been solved or the service has been provided;
- The extent to which past board or agency activities and accomplishments, current projects and operations, and planned activities and goals for the future are or have been effective;
- The extent to which there would be significant and discernible adverse effects on the public health, safety or welfare if the board or agency were abolished;
- Whether or not the board or agency operates in a sound fiscal manner.

The time period covered by the preliminary review began with the records of the Commission's November 1989 hearing through January 1996. Information about the Commission was obtained through interviews with members and employees of the Commission a review of meeting minutes and hearings, and attendance at a Commission hearing.



**Issue Area 1: The Oil and Gas Conservation Commission is ineffective because of low attendance; permanent staff are able to perform their job duties without the assistance of the Commission.**

### **Mission of the Oil and Gas Conservation Commission**

The Oil and Gas Conservation Commission is one of six entities located within the Bureau of Environment; the Commission is maintained as a separate entity from the Division of Environmental Protection (DEP) even though employees are housed in the Office of Oil and Gas located in the DEP offices in Nitro. The Commission's five member body is composed of the director of the Division of Environmental Protection, and the Chief of the Office of Oil and Gas located within DEP as ex-officio members of the Commission. The remaining three members are appointed by the governor for six year terms. Two full-time employees currently perform the office duties of the Commission. Staff consists of an engineer and an administrative assistant, under the supervision of the Commissioner, who is also the Chief of the Office of Oil and Gas.

The mission of the Commission is to appoint the oil and gas conservation commissioner and advise the commissioner regarding the duties and authority under the provisions of WVC §22C-9-4. These duties consist of: regulating the spacing of deep oil and gas wells; making and enforcing rules regarding waste and rights of deep well owners; issuing subpoenas for the attendance of witnesses for Commission hearings; and serving as technical advisor regarding oil and gas to members of the Legislature, DEP, and the Office of Oil and Gas. A major duty of the Commission is to facilitate or mediate hearings for well operators regarding exceptions to rules and regulations regarding the drilling of a new deep well.

Hearings are requested by well operators when they want an exception to the rules and regulations regarding the drilling of a new deep well. There were approximately 10 of these hearings from November 8, 1989 through January 1996. The Commissioner makes the final order in these hearings. Commission members are provided an opportunity along with the engineer employed by the Commission to air their opinions on the matter, but the Commissioner is given the final decision. **The Commission has no regulatory power, nor can they promulgate rules and regulations.**

### **Oil and Gas Conservation Commission Attendance**

From November 8, 1989 through January 18, 1996, the Oil and Gas Conservation Commission has held 10 hearings and meetings. Meetings are usually held following a hearing. According to hearing and meeting attendance records, only two of these meetings were attended

by more than two members of the Commission. The August 8, 1995 hearing was attended by three members, and the November 8, 1989 hearing was attended by three members. One Commission position was vacant until the Governor's Office filled it in February 1994. This position was vacant for approximately four years. All but one hearing was attended by the Chief of the Office of Oil and Gas, **and the Director of the Division of Environmental Protection never attended a hearing or meeting during the study period.** Hearings and meetings are chaired by the Commissioner which at this time is the Chief of the Office of Oil and Gas. The engineer employed by the Commission was present at all meetings and hearings. Table 1 illustrates the attendance of Oil and Gas Conservation Commission hearings and meetings since November 1989 through the most recent Commission hearing on January 18, 1996.

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

	Chief, Office of Oil and Gas	DEP Director	Member #1	Member #2	Member #3
January 18, 1996	X		X		
August 8, 1995	X		X	X	
May 31, 1995	X			X	
Sept. 27, 1994	X			X	
January 12, 1994			X		
May 20, 1993	X		X		
October 8, 1992	X				
July 28, 1992	X				
March 15, 1990	X				
November 8, 1989	X		X		X

\* "X" denotes attendance of meeting or hearing

The day-to-day duties of the Oil and Gas Conservation Commission are performed by the two full-time staff members, along with the Commissioner who is also the Chief of the Office of Oil and Gas. The Commission as a board is not involved in these day to day operations. Daily operations by the staff include reviewing and approving permits for deep wells, of which there are approximately 15,000 throughout the state. **Only 10 of these deep well permits since November 1989 resulted in a hearing which requested the assistance of the Commission.** Shallow well permits are handled by staff members employed by the Office of Oil and Gas. Staff are also responsible for some deep well enforcement responsibilities, including field work testing of water samples four or five times a month.

## **Conclusion**

Without adequate attendance of its members, the Commission cannot be providing the Commissioner with the advice and consultation that is required by the West Virginia Code. However, the Commission seems to be operating adequately without attendance by the members since most permits are handled without the assistance of the Commission, and permits that result in a hearing are not widely attended by Commission members. Also, the day-to-day operations of the Oil and Gas Conservation Commission are performed without the input of the Commission members. Interviews with Commission staff and Commission members revealed that the office can operate without the Commission members' assistance. While the Commission's experience and knowledge would provide valuable support, attendance records show that the Commission's services have not been available. Office duties by the Commission staff are similar to those performed by the Office of Oil and Gas, and housed in the same office and supervised by the same individual yet are not a part of the Office of Oil and Gas. The Commission office staff could be smoothly integrated into the Office of Oil and Gas within the Division of Environmental Protection, and the Commission as a board could be sunset.

### Recommendation 1

*PERD recommends that the Legislature sunset the Oil and Gas Conservation Commission according to the Sunset Legislation in West Virginia Code §4-10-11.*

### Recommendation 2

*PERD recommends that the Legislature transfer Oil and Gas Conservation Commission staff into the Office of Oil and Gas within the Division of Environmental Protection. Duties and job descriptions of the two staff members should stay the same.*



## APPENDIX A

May 9, 1996

Office of Legislature Auditor  
Performance Evaluation and Research Division  
Building 5, Room 751  
State Capitol Complex  
Charleston, W.Va. 25305

Dear Sir :

As a member of the Oil and Gas Commission of the State of West Virginia, I have reviewed the report on performance of the Commission.


I agree with the conclusions arrived to.

However I suggest that the " Citizens Representative " serving in the Commission be retained.

It would be a mistake to eliminate from the Commission the " link " with the people.

I believe that such relationship in time of crisis could be of the utmost importance.

With warm regards,

  
Mike Sinicropi  
P.O. Box 2117  
Weirton, W.Va. 26062

Member of the Oils and Gas  
Commission of West Virginia

RECEIVED

MAY 15 1996

RESEARCH AND PERFORMANCE  
EVALUATION DIVISION





## APPENDIX B

From WVDEP Oil and Gas to 9,3474889 at 05/23/96 04/51p Pg 002/00



### OIL AND GAS CONSERVATION COMMISSION

GASTON CAPERTON  
GOVERNOR

10 McJunkin Road  
Nitro, WV 25143-2506  
Telephone 304-759-0514  
January 2, 1996

Theodore M. Streit  
Commissioner

Mr. Antonio E. Jones  
Director - Performance Evaluation and Research Division  
West Virginia Legislature  
Building 5, Room 751A  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0592

Dear Mr. Jones:

Thank you for the opportunity to comment on your draft copy of the performance review of the Oil and Gas Conservation Commission.

I believe that the functions of the commission are vital to the well being of owners of oil and gas property in West Virginia. If the legislature wishes to move the responsibility of the commission to the DEP the staff of the commission will insure it is done in an orderly manner.

If you have any more detailed questions please feel to contact me at the above.

Sincerely,

A handwritten signature in cursive script, appearing to read "T. Streit".

Theodore M. Streit  
Acting Commissioner  
Oil and Gas Conservation Commission

attachment: Corrections



**WEST VIRGINIA LEGISLATURE**  
*Performance Evaluation and Research Division*

Building 5, Room 751A  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0592  
(304) 347-4890  
(304) 347-4889 FAX



Antonio E. Jones, Ph.D.  
Director

April 24, 1996

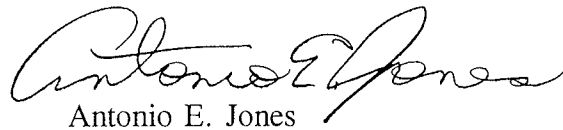
Mr. Ted Streit, Chairman  
Oil and Gas Conservation Commission  
10 McJunkin Road  
Nitro, West Virginia 25143-2506

Dear Mr. Streit:

This is to transmit a Preliminary Performance Review of the Oil and Gas Conservation Commission which may be reported to the Joint Committee on Government Operations at the May interims. The issue covered is "Function of Commission is Being Performed by Staff." If you desire to have a written response included in the draft to be distributed to committee members, please deliver such response by May 10, 1996.

Should you have any questions, Harvey Burke or Denny Rhodes will be available to meet with you to discuss any part of this report.

Sincerely,

  
Antonio E. Jones

AEJ/wsc

Enclosure