

# STATE REVIEW PROCESS RULES OF PARTICIPATION

## I. PURPOSE

The purpose of the state review process is to bring together state, industry, and public interest stakeholder representative groups to improve state oil and gas regulatory programs. It allows a state to highlight its successes and evaluate its regulatory programs against a set of national guidelines.

An appropriate set of guidelines to use as a benchmark for evaluating a state's regulatory programs is critical to the success of the state review process. The original guidelines were adopted by the IOGCC in 1990. These guidelines were updated in 1994 and 2000. The guidelines are reviewed and updated periodically to deal with emerging issues, reflect new information and experience, adapt to changing circumstances, and consider innovative techniques of measurement.

The state review process is intended to:

- Identify elements of individual state regulatory programs that meet or exceed the guidelines, and document the particular strengths of individual state regulatory programs;
- Provide criteria to measure the effectiveness of program implementation and identify opportunities for improvement;
- Promote a level of consistency between state programs while allowing flexibility to address unique circumstances;
- Provide information to state representatives on the programs and methods of other states;
- Increase the understanding of public interest organizations concerning oil and gas regulation and provide an opportunity for input into the development of regulatory policy;
- Increase industry understanding of the needs of the regulatory and public interest communities;
- Provide an opportunity for input into the development of regulatory policy to protect human health and the environment while maintaining an economically viable oil and gas industry; and
- Identify program elements that do not meet the guidelines, and provide recommendations for continuing program improvement.

## **II. ADMINISTRATION OF THE STATE REVIEW PROCESS**

The State Review of Oil and Natural Gas Environmental Regulations, Inc. (STRONGER) is a non-profit corporation established for the purpose of moving the state review process forward and creating balanced stakeholder control of the process. The administrative body of STRONGER is the State Review Governing Board (Board).

The Board is comprised of voting members who include: three (3) state oil and gas regulatory officials; three (3) public interest stakeholder representatives; and three (3) representatives of the oil and gas industry. Non-voting members include representatives from the Federal government including the Environmental Protection Agency (EPA) and the Department of Energy (DOE). Each stakeholder group designates a substitute to serve on the STRONGER board in the event that one of the group's representatives is unable to serve. Funding comes from the EPA and the DOE, with additional support being provided by the states and industry.

The Board develops the procedures for the conduct of reviews including procedures for dispute resolution and training of review participants; sponsors the revision of the review guidelines for adoption by IOGCC and develops the review questionnaire; establishes the state review schedule; and provides overall management and strategy development for the future of the review process. The Board also approves review team membership, contracts to provide administrative and clerical support to the Board and to the state review process, and settles disputes.

The State Review Committee of the IOGCC assists member states to ensure that their programs protect public health, safety and the environment through the state review process. The committee accomplishes its mission by encouraging member states of the IOGCC to participate in: 1) development of program guidelines and measures of implementation; 2) preparation for and conduct of reviews of their own programs; and 3) documentation of strengths and development of recommendations for improvements of member states' programs. The State Review Committee also selects three (3) state regulators to act as STRONGER, Inc. Board members.

## **III. PARTICIPANTS FOR STATE REVIEWS**

The team conducting an initial review will consist of state regulatory employees of states other than the one being reviewed, public interest stakeholder representatives, and industry representatives.

Review teams will be made up of the following:

- State regulatory official(s), which include at least one member from a state environmental regulatory agency;
- Representative(s) public interest stakeholders; and

- Representative(s) of the oil and gas industry.

Official observers may include:

- One representative of a local environmental organization;
- One representative of the local oil and gas industry;
- One representative from a state to be reviewed;
- One representative from the IOGCC;
- One representative of the EPA;
- One representative of the DOE;
- One representative of the BLM;
- One representative of an Indian Nation; and
- One local government representative, at the request of the state.

Expenses are reimbursed for transportation, lodging, and meals for review team members in accordance with the grant requirements/restrictions. To encourage participation in the review process, provisions have been made for compensation of public interest stakeholder review team members, where such support is necessary. The federal and state agencies donate staff time to the review process effort, as does industry.

The numbers of team members and the makeup of the teams are to be determined by the Board, but it is envisioned that participation will be equal from each stakeholder group. The number of team members will depend on several factors, including but not limited to, the size of the state program, the amount of production, public concern about the state program, the intricacy of the program, and complexity of interagency relationships.

#### **IV. SELECTION OF PARTICIPANTS FOR STATE REVIEWS**

Each stakeholder group on the Board will nominate persons for participation on the state review teams, including both team members and official observers. Stakeholder groups are encouraged to collaborate with the state being reviewed and other stakeholders in developing the list of nominees. All nominated persons, whether team members or official observers, are expected to reveal any potential conflicts of interest, such as having pending legal matters before the agencies being reviewed.

The Board members will submit for concurrence the names of nominees to the Board and the state being reviewed. Should any member of the Board be an employee of the state being reviewed, that member will not participate in the process for selecting participants in that state's review. If the Board receives no objections to participation of the nominees from a member of the Board or the state being reviewed, the Board will notify the nominees of their selection for the state review.

If the Board receives written objection to a nominee from a member of the Board or from the state being reviewed, the Board will try to resolve the objection to the satisfaction of the Board. If the problem is not resolved to the Board's satisfaction,

that nominee will be eliminated from consideration and, within ten days, a new nominee will be submitted to the Board. This process will be continued until a nominee who is satisfactory to all Board members is selected. If a nominee drops out prior to beginning a review, the Board members representing the interest of the nominee will nominate another person.

## **V. PREPARATION FOR CONDUCT OF A STATE REVIEW**

States desiring to be reviewed each year will volunteer to the Board. The Board will contact the state's governor's office and/or appropriate state regulatory agencies to establish a time frame for the review. If there are unique factors that could impact how these Rules of Participation are applied in the state to be reviewed, the state is encouraged to identify those factors to the Board, and make suggestions for clarification or refinement of the application of these Rules for consideration by the Board.

To foster and promote STRONGER's purpose to educate regulators and members of the public as to the appropriate elements of a state oil and gas exploration and production waste management regulatory program, the Board will offer to support the state to be reviewed in holding a public meeting or participating in other public outreach activities to explain the state review process.

The Board will provide training to all review team members, which may include training in the basics of oil and gas exploration and production, a summary of the background of the reviews, and an overview of the details of the review process, including an overview of the Guidelines and the Rules of Participation. In addition, at the option of the review participants and depending on the availability of the review state's staff and other resources, a field trip may be scheduled within the state to be reviewed.

In the initial contact between the Board and the state to be reviewed, the Board will request that one key individual from the state agencies being reviewed be identified as the state contact person. The contact person's responsibilities include:

- notifying and coordinating all state agencies involved in the review;
- coordinating the completion and submittal of the State Review Questionnaire;
- coordinating and providing the Board with materials to conduct the review;
- arranging for the attendance of appropriate regulatory personnel to respond to questions during the in-state review; and
- coordinating all state agency responses to the draft report.

As soon as possible after the Board staff has communicated the tentative schedule to the appropriate state agency, the Board will provide the contact person with the State Review Questionnaire. The Questionnaire requests information from all state agencies having a role in E&P waste management. The Questionnaire is designed to provide the review team with insight into the state's

current legislation, regulations, policies, and practices. Documentation supporting the Questionnaire responses is requested.

The contact person will be responsible for obtaining all state agency responses to the Questionnaire and for providing the completed Questionnaire to the Board according to the agreed schedule. In establishing a schedule, the Board will provide 90 days for the contact person to submit the completed Questionnaire and associated documentation.

The state being reviewed will return the completed Questionnaire and associated documentation to the Board staff in time for distribution to review team members and official observers 60 days prior to the scheduled in-state review, but in no case less than 30 days prior to the review. The state being reviewed will make every effort to meet the 60-day target period. In the event that the 30-day response time cannot be met, the Board will, if requested by any review team member or official observer, postpone the review and work with the state's contact person and members of the review team to establish a new review date that is mutually acceptable to all parties.

All written communications related to the planned state review between members of the review team or official observers and the state will be directed through Board staff, so that all participants will be provided with the same information.

## **VI. IN-STATE REVIEW**

The in-state review involves the detailed interview by the review team and official observers of agency staff from the state's E&P regulatory programs, particularly waste management programs. Staff from the state under review provide descriptions and clarification of program functions and activities, and respond to questions from the review team members and official observers. Through this process, the team gains an in-depth understanding of the state's regulatory program and of circumstances or conditions unique to that state.

In-state reviews generally will be scheduled for one full business week, Monday through Friday. States with smaller oil and gas programs may not require a full week for the in-state review. Team members and official observers are expected to participate in a telephone conference meeting at least two weeks prior to, and attend an organizational meeting on the Sunday before the in-state review, and to be available to meet for the full five days. If a review participant must leave prior to the conclusion of the in-state review, that individual may forfeit the right to prepare and/or comment on sections of the report not covered by the time of departure, at the discretion of the other review team members.

At the telephone conference meeting, to be held at least two weeks prior to the in-state portion of the review, the review team will select a team leader. The review team leader will be a state agency representative, and will be responsible for managing the work of the review team. The Board will provide staff support to the review team before and during the in-state review, and throughout the report-writing process. Two weeks before the in-state portion of the review, Board staff

will complete all logistical and support arrangements for the in-state portion of the review.

At either the telephone conference meeting or the Sunday organizational meeting, a schedule for the review and dates for draft report writing and final report writing will be established by the review team with input from the Board. In addition, the team leader will allow individual team members to volunteer for taking the lead on specific sections of the questionnaire. If no team member volunteers for a section or sections of the questionnaire, the team leader will assign individual team members a section or sections. Each section leader will lead the discussion on that section during the in-state review and develop that section of the draft report.

Questioning of representatives of the state regulatory agencies will be conducted as “sunshine” meetings, open to anyone wishing to observe. Questioning of representatives of state regulatory agencies will be conducted by the participants identified in Section III. The questioning will end at approximately 2 p.m. on each day of the review, at which time the review team and official observers will meet in executive session to develop comments from that day’s questioning of state agency officials. Executive sessions are open only to review team members, official observers, and Board members and staff.

The team leader will facilitate this discussion by asking team members and official observers to provide comments and issues in a brief and concise manner and by keeping team members on point and within the established review parameters.

The team leader, with assistance from Board staff, will provide a list of comments and issues to all team members and official observers at the end of each day or the beginning of the following day. The team leader will be provided additional copies to communicate those comments and issues to the state’s key person prior to the next day’s session.

## **VII. REPORT WRITING**

After the in-state review is complete, the review team members will prepare a draft report summarizing the state program, along with related findings, documentation of strengths and best practices, and recommendations for program improvements. The report must be based upon the guidelines developed by STRONGER and adopted by the IOGCC.

Review team members will prepare a written draft of their sections, including all comments and issues identified during the in-state review. A minimum of four weeks following the end of the in-state review will be provided for preparation and submittal of draft sections. Review team members will submit their individual drafts to the Board staff by the scheduled date, allowing staff time to have the first draft report edited for grammar and punctuation and computer formatted, then distributed to all team members. Drafts, if possible, should be submitted in a format specified by the Board.

Review team members will meet for a maximum of three days to discuss each section of the draft report and develop an “official” draft report. This meeting will occur approximately five to six weeks after the in-state review. During this meeting, each team member is responsible for accurately maintaining a mark-up copy of the changes to their section(s) so that changes can be made on computer files and updated drafts can be distributed to the team members for review during the week.

All team members will follow the same procedure with regard to critiquing a particular element in a state program. The report will recognize the strengths and unique qualities of the state program being reviewed to encourage the sharing of best practices between states. Any finding that a state program element does not meet the Guidelines must be accompanied by suggestions for improving that program element and specific reasons the current practice is believed to not be effective or is otherwise inconsistent with the provisions of the Guidelines. Critique will be accompanied by citations keyed to the Guidelines.

The review team will strive to reach consensus in developing its findings and recommendations, but will include in an appendix to its report any minority findings and recommendation. In addition, any critique that cannot be tied directly to the Guidelines will be noted as “outside the scope of the Guidelines”, and may be included in an appendix to the report.

The draft report will be sent for comment to official observers and the state’s contact person for a comment period of not less than 30 days. The state’s contact person has the responsibility to circulate the draft report to all involved state agencies and to compile comments for submission to the Board. All comments will be submitted to the Board by the agreed deadline. The Board staff will copy the comments and immediately distribute them (via e-mail, fax or overnight mail) to all review team members and official observers.

Team members will meet to consider all comments received on the draft report, and to finalize their state review report. This meeting will take place approximately two months after the draft report writing meeting. At this final meeting, the team will be responsible for making all final changes to the report. The team leader will confirm that all changes have been accurately reflected in the report. Other than minor editorial changes, which may be made by the Board staff, the report will be considered final at the conclusion of the last team meeting. Additional changes will not be accepted after the review team recesses. Copies of the final report will not be provided to team members at the conclusion of this meeting, but will be provided upon publication.

The review team will submit its final report to the Board. Board staff will prepare a final report for publication, which will occur as soon as practical, but with a target of not more than 30 days after the final meeting.

Participants in the state review process are required to maintain confidentiality of the report content until publication.

## VIII. FOLLOW-UP REVIEWS

The follow-up review process mirrors the initial review process. In the past, follow-up reviews have been conducted by a review team or by an individual. A team approach and report process similar to the initial review process is necessary because many of the follow-up reviews will be based on a revised set of Guidelines and will include an evaluation of the effectiveness of program implementation. In some cases, follow-up reviews will be conducted by full review teams, and in other cases by a smaller team incorporating multi-stakeholder representation. The team size and make-up will depend on various characteristics of the state program, which will be considered by the Board when developing the follow-up review teams.

## IX. GENERAL PROVISIONS

Basis and Scope of the State Reviews. State reviews are based on the current Guidelines. It is the responsibility of the team to strive for report consistency from state to state. However, participants will be given latitude beyond the Questionnaire and Guidelines when asking questions of the reviewed state's regulatory officials. In this regard, the team leader will remain obligated to point out to the review team those areas where the team may have gone beyond the scope of the Guidelines. The team leader will consult with the Board for guidance in this area. This will not limit the team in its final decision to include a particular issue in the report, but would require the review team to identify the issue as "Beyond the scope of the Guidelines" and place the discussion and recommendations in an appendix to the report. If the entire review team does not reach consensus on a finding or recommendation, the finding or recommendation will be placed in the appendix to the report, and the lack of consensus will be noted.

State Program Implementation Inquiries. The implementation of the program can be explored within the limits of time constraints of the review process and agency resources. Knowledge of a state program prior to the review enables the team members to ask questions concerning implementation, enforcement, and the administrative process following enforcement. Questions concerning these issues are considered appropriate in the state review process.

Site Visits. The review team may request a field trip to visit E&P sites and agency field offices to witness industry practices and state regulatory program requirements in the field. The team leader will contact the state a minimum of two weeks prior to the commencement of the in-state review in order for the state to arrange the site visits. Review team members may request specific sites to visit. However, the availability of such sites is dependent upon the state and operator approval. The reviewed state will select representative sites that would demonstrate current regulatory practices or highlight challenging problems particular to that state.

Responsibilities of review team participants. The responsibilities of team members and official observers include meeting all deadlines, participating in all meetings

and observing these Rules of Participation and ground-rules established for the review. If a deadline has been established and a team member is unable to complete a report section by the deadline, the team leader and Board will determine if those sections should be distributed to other team members, and will also determine if the non-performing member forfeits the opportunity for further participation. If lack of performance is due to a situation beyond the individual's control, the team leader will confer with other team members to determine whether a substitute is necessary. All draft report material distributed to and discussed by participants will be held confidential until the final report is released.

## **X. DISPUTE RESOLUTION**

The proposal for revitalization of the State Review Process, which was unanimously approved by the IOGCC, identified establishment of procedures and rules of participation for state reviews as one of the responsibilities of the Governing Body. This responsibility includes resolution of unresolved questions and issues arising during the conduct of state reviews.

Mediation. A stakeholder group is by definition a diverse group of people with different levels of understanding, different backgrounds, different perspectives, and different opinions. Understanding that the ideas and possible approaches of each stakeholder group will be different is the first step towards working together. The more each stakeholder knows about the others and understands the diverse approaches, the more the group may realize that they share relatively common goals and motives. Accomplishment of this objective requires that all parties carefully listen to, and make a concerted effort to understand, each stakeholder's point of view and interests or concerns so that consensus is possible. In fact, the purpose of mediation is to look at things from many different angles so as to see the whole picture. Mediation is a way of finding out if stakeholder interests can be broadened so that a common ground can be found and consensus reached.

The overarching common goal of the state review process is to have a state review team comprised of equal representation of all stakeholder groups develop a consensus report assessing how well the programs of the state being reviewed compare to the established, approved state environmental program Guidelines. The review teams must strive to reach consensus on all findings and recommendations. In areas where consensus cannot be achieved, appropriate entries will be made in the report. However, this should be infrequent. If any review team feels that it cannot reach consensus on an important matter, or has other serious issues that need to be resolved, it may request to enter into mediation.

Mediation is particularly useful and sensible when parties can benefit by continuing to do business after the dispute is resolved, one or all of the parties wishes to maintain or enhance its public reputation, and the dispute centers around complex factual issues. Mediation involves people and the interactions between people. There are requirements to make mediation work. The parties must be willing to find a mutually acceptable solution or to reach a compromise.

The goal of mediation is for the review team members, with the help of a facilitator, to be able to find negotiated solutions that are agreeable to all parties and to reach consensus on the issue(s) in dispute.

Mediation Procedure. If a dispute arises among the review team such that a consensus report does not appear possible, the review team may ask the Board for assistance in mediating the issue.

Upon the request of the review team, the Board may appoint a facilitator for mediation. The Board may decide to use the services of Board staff in facilitating the mediation process, or may select an outside facilitator, depending on available funding. The appointed facilitator will schedule a meeting of the review team to attempt to reach a consensus resolution of the issue. The facilitator will assist the review team members to stay on point, make sure that they are really listening to each other, and try to make sure that all stakeholder representatives are seeing the viewpoints of the others. The facilitator will try to help the review team members themselves to find imaginative, often unforeseen alternatives for resolving the dispute.

The facilitator will also help set the ground rules, which will include, at a minimum, the following:

- Each individual must be treated such that they feel that they and their ideas and opinions are valued and respected.
- Each stakeholder group may present any information supporting its opinion or concern. However, the information must be valid to the issue and supported by facts.

If the review team members, with the help of the facilitator, cannot come to consensus, the Board may appoint from its membership a three-person special subcommittee with a representative from each stakeholder group to help mediate the dispute. The members of the Board subcommittee must meet the following qualifications:

- The regulatory group representative cannot be from the state that is the subject of review.
- The industry group representative cannot have outstanding, unresolved enforcement action in the state that is the subject of review.
- The public interest stakeholder representative cannot have outstanding legal or administrative actions against either the industry group representative's company or the state in which the regulatory group representative is employed.

Each stakeholder group on the review team will appoint a spokesperson to meet with and present information to the special subcommittee. The official observers

(DOE, EPA, etc) may observe the mediation. The Board subcommittee will schedule the location and timing of the meetings to hear from the review team stakeholder representatives. The subcommittee, through the Board staff, will provide adequate notice to all interested parties to ensure that the appointed review team members and the appointed subcommittee members have an opportunity to attend. The Board will also notify the official observers of the location and time of the meetings.

The subcommittee will consider the discussion and information presented by the stakeholder representatives, and will assist the review team representatives in reaching a consensus resolution, if possible.

If the subcommittee is unable to assist the review team representatives in reaching resolution of the issue, the subcommittee will prepare a recommendation for resolution of the dispute for consideration by the Board. The subcommittee may also consider comments from the official observers present at the facilitated meetings in making its recommendations. The full Board will be the final arbiter of the dispute.