

STRONGER STATE REVIEW PROCESS RULES OF PARTICIPATION

I. PURPOSE

The purpose of the State Review Process is to bring together regulatory, industry, and public interest stakeholders to evaluate and offer recommendations for improvement to state oil and gas environmental regulatory programs based on Guidelines developed by STRONGER.

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. In 1990, the Interstate Oil and Gas Compact Commission (IOGCC), with input from the U.S. Environmental Protection Agency (EPA) as well as industry and public interest stakeholders, developed the original "Guidelines for the Review of State Oil and Gas Environmental Regulatory Programs." The Guidelines have been updated periodically to address emerging issues, reflect new information and experience, and adapt to changing circumstances. The Guidelines are non-proscriptive; instead, taking a programmatic view of criteria that state regulatory agencies should contemplate in their oversight of oil and gas development.

The State Review Process is intended to:

- Identify elements of individual state regulatory programs that meet or exceed the Guidelines' criteria, 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' criteria, and provide recommendations for continuous program improvement.

II. ADMINISTRATION

State Review of Oil and Natural Gas Environmental Regulations, Inc. (STRONGER) is an educational non-profit corporation established in 1999 to administer and carry forward the State Review Process.

STRONGER is governed by a Board of Directors comprised of voting members who include: three (3) state regulatory officials; three (3) public interest stakeholder representatives; and three (3) representatives of the oil and gas industry. Non-voting members may include representatives from Federal government agencies with interest in oil and gas development.

The Board develops procedures for the conduct of reviews, including procedures for dispute resolution and training of review participants. The Board also initiates the revision of the Guidelines and develops questionnaires for states under review. The Board establishes the schedule for State Reviews and provides overall management and strategy development for the future of the Process. The Board also approves review team membership, contracts to provide administrative and clerical support to the Board and to the Review Process, and settles disputes.

III. PARTICIPANTS

State Reviews are conducted by Board members and external subject-matter expert volunteers. Review Teams are comprised of equal representation of the following stakeholders:

- State regulatory official(s), which include at least one member from a state environmental regulatory agency (not from the state under review);
- Representative(s) public interest stakeholders; and
- Representative(s) of the oil and gas industry.

Review Team members are responsible for leading discussion during the in-state interview and drafting the State Review Report. 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. The Board may appoint a Board member, Review Team member from a state agency, or other support staff to serve as Review Team Leader.

Official Observers may include:

- Representative(s) of a local environmental organization;
- Representative(s) of the oil and gas industry;
- Representative(s) from a state to be reviewed;
- Representative(s) from the IOGCC;

- Representative(s) from the Ground Water Protection Council (GWPC);
- Representative(s) of the EPA;
- Representative(s) of the U.S. Department of Energy (DOE);
- Representative(s) of the U.S. Department of the Interior Bureau of Land Management (BLM);
- Representative(s) an Indian Nation; and
- Representative(s) of local governments.

Official Observers may take part in discussions during the in-state interview and review and comment on the final draft of the State Review Report.

Expenses are reimbursed for transportation, lodging, and meals for Review Team members in accordance with any grant requirements and/or 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. Federal and state agencies donate staff time to the review process, as does industry.

Members of the public may observe the in-state interview at the discretion of the state, should the state opt for a public meeting as described in Section VI. Public observers are not permitted to participate in the interview discussion, but will be invited to submit questions in writing to the Review Team. The Review Team will ensure that questions are within the scope of the Guidelines and determine which questions to include in the interview.

IV. SELECTION OF PARTICIPANTS

Each stakeholder group on the Board will nominate persons for participation on the State Review Team, and for Official Observers. Stakeholder groups are encouraged to collaborate with the state being reviewed and other stakeholders in developing their 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.

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 a Board member or the state under review has an objection to a nominee, the Board will make best efforts to resolve the objection to the satisfaction of the Board. If the objection cannot be resolved to the Board's satisfaction, that nominee will be eliminated from consideration and a new nominee will be submitted to the Board within ten days. This process will be continued until a nominee who is satisfactory to all Board members is selected. If a nominee becomes unable to serve prior to beginning a Review, the Board members representing the interest of that nominee will nominate another individual.

V. PREPARATION

States desiring to be reviewed will notify the Board which section(s) of the Guidelines they would like to be reviewed under. The Board will coordinate with the volunteering state regulatory agency or 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, inform 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 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 Process.

The Board will provide support to the Review Team before the Review, during the interview, and throughout the Report-writing process. The Board will make training available to all Review Team members and Official Observers, which may include training in the basics of oil and gas exploration and production, a summary of the background of the Process, and an overview of the details of the review process, including an overview of the Guidelines and these Rules of Participation. In addition, at the option of the review participants and depending on the availability of the 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 individual from the state agency or agencies to be reviewed serve as the primary contact person. The contact person's responsibilities include:

- Notifying and coordinating all state agencies involved in the review;
- Coordinating the completion and submission of the State Review Questionnaire;
- Coordinating and providing the Board with materials to support the review;
- Arranging for the attendance of appropriate regulatory personnel to respond to questions during the in-state interview portion of the review; and
- Coordinating all state agency responses to the draft Report.

As soon as possible after the Board has communicated the tentative schedule to the appropriate state agency, the Board will provide the contact person with the relevant Guidelines Questionnaire(s). The Questionnaire requests information from all state agencies having a role in oil and gas environmental programs. The Questionnaire is designed to provide the review team with insight into the state's current legislation, regulations, policies, and practices.

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 up to ninety days for the contact person to submit the completed Questionnaire. If a state agency with jurisdiction over activity covered by the Guidelines section for which the volunteering state agency has requested a Review declines the volunteering agency's request to participate, the portions of the Questionnaire relating to the non-participatory agency will be omitted from the Review. The final Report will note which questions were omitted, which sections of the Guidelines they pertain to, which state agency has jurisdiction over those activities, and that agency's decision not to participate. The Report will not make Findings or Recommendations pertaining to the non-participatory agency beyond encouraging that agency to participate in future Reviews.

The state being reviewed will return the completed Questionnaire and any associated documentation to the Board at least thirty in advance of the in-state interview to allow Review Team members and Official Observers to familiarize themselves with the state program(s). In the event that the Questionnaire cannot be delivered thirty days in advance of the interview, the Board will, if requested by any Review Team member or Official Observer, postpone the interview and work with the contact person, Review Team members, and Official Observers to establish a new date that is mutually acceptable to all parties.

All written communications related to the planned Review between members of the Review Team or Official Observers and the state will be directed through the Board to ensure that all participants will be provided with the same information.

VI. IN-STATE INTERVIEW

The in-state portion of a Review involves an interview by the Review Team and Official Observers of agency staff from the state's participating oil and gas environmental regulatory programs. At the discretion of the state under review, the interview may be conducted as a sunshine meeting. The duration of the interview will depend on the number of Guidelines sections included in the Review, availability of state staff, and availability of the Review Team and Official Observers. The interview is intended to be an open discussion amongst the Review Team, Official Observers, and state staff that will provide the Review Team with an in-depth understanding of the state's program(s) and unique circumstances. The discussion is limited to the participants identified in Section III, and questions must be limited to the scope of the Guidelines.

At the conclusion of the interview day(s) the Review Team and Official Observers will meet in Executive Session to develop comments from the day's discussion. The Team Leader will provide a summary of comments and issues to all Team members and Official Observers at the end of each day. The Leader will communicate those comments or issues that the Team feels require additional discussion to the state's contact person prior to the next day's session, if the interview lasts multiple days.

The Review Team and Official Observers will participate in an orientation the day before the interview. The Review Team will participate in a planning call at least two weeks prior to the interview. During the call the Review Team will divide the applicable Guidelines section(s) into assignments for each member and establish a schedule for writing the report. Team members will lead the discussion for their

assigned sections during the interview and be responsible for writing the associated section(s) of the Report. The Review Team will also determine if they will request a site visit during the in-state interview. All members of the Review Team are expected to be available for the duration of the interview. If a Review Team member or Official Observer must leave prior to the conclusion of the interview, that individual may forfeit the right to write and/or comment on sections of the report not covered by their time of departure, at the discretion of the other Review Team members and the Board.

VII. REPORT WRITING

State Review Reports are a snapshot in time of a state's oil and gas regulatory program. After the interview 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 on the applicable STRONGER Guidelines, the state's responses to the Questionnaire, and discussions during the interview.

Review Team members will prepare a written draft of their section(s), including all comments and issues identified during the interview. Review team members will submit their individual drafts to the Team Leader by the date scheduled during the planning call. The Leader will compile the individual sections into a complete draft and will distribute the draft to the Review Team. Review Team members and Official Observers will meet via conference call or similar medium according to the schedule established during the planning call to discuss the draft's content, findings, and recommendations. This process will repeat until the draft is complete. The Review Team will endeavor to complete the draft report within sixty days of the last day of the interview. If additional time is required to complete the draft, the Team Leader will inform the Board and the state as to the additional time anticipated to deliver the draft.

All Review 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. Critiques will be accompanied by citations keyed to the Guidelines. The Review Team must reach consensus in developing their findings and recommendations.

The final draft will be sent to the Official Observers and the state's contact person for a comment period of not less than thirty days, unless otherwise stipulated at the beginning of the Review. 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 Review Team Leader. All comments will be submitted to the Leader by the agreed deadline. The Leader will distribute the comments to all Review Team members.

Team members will convene to consider all comments received on the draft, and to finalize the Report. The Leader will confirm that any changes are accurately reflected in the final report delivered to the Board. The Board will vote to accept or modify the report, or reconvene the Review Team to address outstanding issues or questions. Other than minor editorial changes, which may be made by the Board, the report will be considered final at the conclusion of the last Team meeting. Additional changes will not be accepted after the Team recesses. If the Board has substantive questions or issues with the content of the report, the Board may reconvene the Team to address those issues. The Board will then prepare the final Report for publication and distribution. All Review materials are to remain confidential among the Review Team, Official Observers, and state, to the extent legally practicable, until publication of the final Report by the STRONGER Board. Draft versions of the Report are not to be publicly distributed.

VIII. FOLLOW-UP REVIEWS

The Follow-Up Review Process mirrors the initial review process. Follow-Up Reviews may be conducted under an edition of the Guidelines that has been revised since a state's prior review. Follow-Up Reviews are intended to examine actions taken by a state in response to recommendations from that state's prior review. Follow-Up Reviews will also examine other program elements or changes contemplated by new criteria in revised editions of the Guidelines.

IX. GENERAL PROVISIONS

Basis and Scope of the State Reviews

State reviews are based on the most current STRONGER Guidelines. It is the responsibility of the Review Team to strive for and achieve consensus on the Report. However, participants will be given latitude beyond the Questionnaire and Guidelines when asking questions of the volunteer state's staff. 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.

State Program Implementation Inquiries

The implementation of the program can be explored within the limits of time constraints of the Review Process and volunteer agency resources. Knowledge of a state program prior to the review enables the Review Team to ask questions concerning implementation, enforcement, and the administrative process following enforcement. Questions concerning these issues are considered appropriate..

Site Visits

The Review Team may request a field trip to visit sites and/or agency field offices to witness industry practices and state regulatory program requirements in action. The Team Leader will contact the state after the Review Team planning call, a minimum of two weeks prior to the commencement of the in-state interview, to arrange logistics for the site visit(s). The state under review will select appropriate sites that would demonstrate current regulatory practices or highlight challenging

problems. The Review Team may request specific sites to visit; however, the availability of sites is dependent upon the state and operator approval.

Responsibilities of Review Team Members

The responsibilities of Review Team members and Official Observers include meeting all deadlines, participating in all meetings, observing these Rules of Participation, and following other guidance from the Board and ground-rules established for the Review. If a Team member is unable to complete a Report section by an established 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 Team member'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 the Review Team and/or Official Observers will be held confidential until the final Report is released. Team members will agree to delete or destroy draft material upon approval of the final draft for publication by the Board.

X. DISPUTE RESOLUTION

Mediation

A stakeholder group is by definition a diverse group of people with different levels of knowledge, 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 their 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. 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 goal of the State Review Process is to have a Review Team comprised of equal representation of government, public interest, and industry stakeholder groups develop a consensus report assessing how well the programs of the state under review compare to the STRONGER Guidelines. Review Teams must strive to reach consensus on all findings and recommendations. If the Review Team feels that it cannot reach consensus, 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, 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 completing a consensus Report does not appear possible, the Team may ask the Board for assistance in mediating the issue(s).

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 Team to attempt to reach a consensus resolution of the issue. The facilitator will endeavor to help the Team 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. 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. Official Observers may observe the mediation. The Board subcommittee will schedule the location and timing of the meeting(s) to hear from the Review Team representatives. The subcommittee will provide adequate notice to all interested parties to ensure that

the appointed Review Team members and the appointed subcommittee members have the opportunity to attend.

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

If the subcommittee is unable to assist the 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 Board will be the final arbiter of all disputes.