

**Written Testimony of Cathy Foerster, Commissioner
Alaska Oil and Gas Conservation Commission**

Before

**House Committee on Natural Resources:
Subcommittee on Energy and Mineral Resources**

Re: Proposed Legislation to Empower States to Manage the Development and Production of Oil and Gas on Available Federal Land

October 13, 2017

Good morning Mr. Chairman and members of the Subcommittee. My name is Cathy Foerster and I am the engineering commissioner for the Alaska Oil and Gas Conservation Commission(AOGCC). I appreciate this opportunity to provide testimony from my state's perspective in support of proposed legislation to empower states to manage the development and production of oil and gas on available federal land.

AOGCC Description

The AOGCC is the Alaska state agency charged to prevent hydrocarbon and geothermal waste, encourage greater ultimate recovery of hydrocarbon and geothermal resources, protect correlative rights, and protect fresh ground waters and human health and safety relating to oil, gas, and geothermal well operations. Alaska statutes give AOGCC responsibility to exert jurisdiction on all lands within the state of Alaska (except Denali National Park) and all state waters. We do this by enforcing comprehensive regulations that are constantly under review so that they stay current with technology advances, changes in operating practices, and learnings from other places. Although I can only speak in specifics about my own state, each oil and gas producing state has an agency like mine.

The AOGCC has three commissioners. One must be a petroleum geologist with at least ten years of relevant experience or be a registered professional geologist with some relevant experience. Our current geologist commissioner is a registered professional geologist and has almost thirty years of industry experience. One must be a petroleum engineer with at least ten years of relevant experience or be a registered engineer with some relevant experience. I fill that seat. I, too, have almost thirty years of industry experience and, although not a registered professional engineer in Alaska, I was a registered professional engineer in Texas. The third must have some relevant oil and experience but is not required to meet any specific educational requirements. Our current third member is a former state senator with a law degree and several years of oilfield operational experience before receiving his law degree. The AOGCC has two geologists, six engineers, nine field inspectors and a small administrative staff. Our petroleum engineers, geologists, and field inspectors all must have at least ten years of experience before coming to our agency. Our engineers are required to be registered professional

engineers in the state of Alaska. Our wellwork engineers and field inspectors have blowout preventer certification and incident response training.

Advantages to Eliminating Federal Regulatory Redundancies

The Federal Government has redundant regulatory authority on Federal lands and, for some regulations, on all lands within Alaska. For instance, after the Aliso Canyon disaster in California, the Pipeline and Hazardous Materials Safety Administration (PHMSA) has developed regulations and asserted jurisdiction over all gas storage operations on all lands in all states. Alaska has been regulating gas storage in Alaska since the first gas storage project in the state in 2001, and our regulations are equal to in some areas and more stringent in all the rest, including ones we feel are essential, than PHMSA's. Before PHMSA can give us primacy, we must adopt their regulations and then go through extra steps to be sure that our own can still apply. Another operation with duplicative regulation is hydraulic fracturing. Alaska has perhaps the strongest and most effective hydraulic fracturing regulations anywhere. Yet the Bureau of Land Management (BLM) is also regulating hydraulic fracturing operations on Federal lands and is currently prohibited from granting primacy to any state, even one like Alaska, which has stronger and more effective regulations and better capability to enforce them. The BLM Alaska office has one petroleum engineer, no petroleum geologists, and no field inspectors. The BLM also requires redundant permits for drilling and wellwork on Federal lands and, again, the AOGCC has stronger and more effective regulations and is more capable of enforcing them.

Clearly, there are some major problems with this redundant oversight. First and most obvious, redundant regulatory oversight is wasteful of both time and money. Additionally, the AOGCC has sufficient on-site inspectors and in-state technical staff to respond quickly to any event requiring immediate attention. Our experience with our Federal counterparts is that they are inadequately staffed, both in numbers and in experience and that they are not able to respond quickly when needed. Another problem with redundant oversight is that the Federal regulations tend to be a one-size-fits-all approach, while the states develop their regulations to suit the geology, geography, and other individual circumstances specific to their states. For example, Alaska has regulations that consider the presence of permafrost – permanently frozen soils down to about 1000 feet in depth. No other state has that condition; so Federal regulations do not take it into consideration. Another problem with this redundancy is that, where the state and Federal regulations are different, operators are required to meet both sets of regulation, resulting in added costs, delays, and confusion. The AOGCC cannot cede its responsibility to the Federal agencies because of our statutory mandate. And we WILL NOT because, in all areas of redundant regulations, the regulatory requirements of the AOGCC are at least equal to but often better than those of the Federal agencies and our local staffing is larger in number and stronger in qualifications and experience.

My agency has been disappointed again and again by failures of Federal governmental agencies operating in Alaska to abide by their own statutes and regulations, much less those of our state. In one instance the BLM performed wellwork in Alaska without a permit from the state and, in a public hearing, admitted to us that they knew they needed a permit but thought it would be easier to ask for

forgiveness than permission. Subsequently they have had a mixed compliance record as it relates to getting permits for wellwork in Alaska. Most recently they assert that they do not need our permission to operate on Federal lands in our state. In an earlier case where they did seek a permit from the AOGCC, they were planning to do wellwork without any blowout prevention equipment. This is a violation of our regulations and, if it is not a violation of their own, it certainly should be. We refused to grant them the work permit until they agreed to use blowout prevention equipment, in this case a diverter. A diverter is used for the shallowest part of a well, when there is no pipe in the ground on which to attach a true blowout preventer. The diverter does not actually prevent a blowout but, should one occur, it diverts the blowout fluids away from the rig and the personnel operating it. Thus, it protects the lives of the people doing the wellwork. They agreed to use the diverter and we sent an inspector to the site to ensure that they had the diverter in place. However, but, the day after our inspection, they disassembled the equipment and sent it back to the equipment company to save on rental costs and conducted several days of work with no protection in place. We learned of this violation from a whistleblower. When we sent the BLM notice that we were investigating a potential violation, they supplied us with misleading evidence suggesting that they actually had the diverter in place. When we doubted their story and asked for date-stamped pictures of the diverter in use throughout the job, they sent us several pictures all date stamped on the day that our inspector was there. Through repeated back-and-forth mailings, they stalled our investigation. When we threatened to call a hearing on the matter, they scheduled a meeting, came in to our offices, and admitted that they had indeed done exactly what we were accusing them of. They refused to put anything into writing and told us that we had no jurisdiction over them because Federal law trumps state law.

Perhaps the most glaring example of why we lack trust and confidence in the BLM is the 136 wells drilled by the Federal government on Alaska's north slope and managed by the BLM. When I started at the AOGCC in 2005, I met with the BLM employee in charge of managing these wells. When I asked him why they had not been properly plugged and abandoned, his answer was that he's a regulator just like I am and that I should not hold him to the same standards that I hold oil companies to. When I refused to relent and we ended up taking it to a hearing, the BLM flew an attorney in from DC to tell us that we had no jurisdiction over them – even though not all of the wells are on Federal lands – because Federal law trumps state law. That's when I went on the road and gave speeches about these wells, some of which were actively leaking hydrocarbons or had had recent leaks, to any group I thought might have influence. Finally, I was invited to be part of a group addressing the Senate Energy Committee and the result was a \$50 million budget designation for the plugging of the worst of the wells. The BLM has used up most of that \$50 million and has successfully plugged several wells. Unfortunately, on the two worst wells – one then leaking natural gas and another capable of oil production – they refused to follow a procedure acceptable to the AOGCC, ended up failing to plug either well, and now must spend substantially more to fix their mess and properly plug the wells.

In only one area have we been successful in eliminating the Federal/state redundancy – the underground injection control (UIC) program of the Environmental Protection Agency (EPA). For over thirty years, the AOGCC has had primacy and a good relationship with our EPA partners in managing the Class II (oil and gas waste) UIC program in Alaska.

Tools Used by States to Achieve Regulatory Excellence

Four organizations exist to assist states in enacting, implementing, and updating strong, effective, and appropriate regulations: the Interstate Oil and Gas Compact Commission (IOGCC), the Groundwater Protection Council (GWPC), the State Oil and Gas Regulatory Exchange (SOGRE), and the State Review of Oil and Natural Gas Environmental Regulations (STRONGER). Alaska and all of the other oil and gas producing states use these organizations.

The IOGCC developed and provides model statutes that the oil and gas producing states have used to develop our own statutes and, from there, our regulations. Thirty-eight states, seven Canadian provinces, and three countries (Egypt, The Republic of Georgia, and Venezuela) are members or associate members of the IOGCC. The twelve states not in the IOGCC are Connecticut, Delaware, Hawaii, Iowa, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey, Rhode Island, Vermont, and Wisconsin - the states that have no oil and gas wells. However, should any of them anticipate the onset of oil and gas operations in their state, they may reach out to the IOGCC – or to any of the other organizations listed. IOGCC member states meet twice each year to share learnings and experiences in regulating the oil and gas industry. Between meetings, member states can, at any time, request that the IOGCC staff send out to all other states requests for assistance in answering any regulatory questions that arise. For example, if a state has never had to permit a horizontal well, the regulators from that state can send out an inquiry to all the other states asking for help in applying their existing regulations to horizontal drilling where possible and adding new regulations, where needed.

The GWPC is charged to do just what its name says – protect the nation's ground water. It assists all fifty states and the EPA in developing, enforcing and updating appropriate regulations aimed at protecting ground water. It assists states in developing and maintaining positive relationships with EPA in managing UIC programs. Both GWPC and IOGCC participate in and provide input to all pending Federal regulations changes or additions in their areas of responsibility.

SOGRE is an outreach program created by the GWPC and the IOGCC to assist states to continually improve their state oil and gas regulatory programs by providing member states consultation and program review services targeted to their specific needs. As an example, Idaho – not a big oil and gas producing state – is experiencing rapid growth in its oil and gas activity. The Idaho Department of Lands recently reached out to SOGRE to assist in an assessment of the adequacy of its statutes and regulations. SOGRE promptly put together a peer review team, of which I was a member, to provide this service to Idaho. The report documenting the results of that assessment can be found at <https://www.idl.idaho.gov/oil-gas/2017-sogre-review.pdf>. Two members of the assessment team traveled to Idaho and presented the results to the Idaho Department of Lands and the Idaho State Legislature. Another SOGRE review is currently underway for Virginia. After the deadly gas explosion in Firestone, the Colorado Oil and Gas Conservation Commission has requested an extensive review of its regulations. I have volunteered to assist in that review.

STRONGER develops guidelines for state oil and gas environmental regulatory programs and, when requested, conducts reviews of states' regulations against those guidelines. As public concerns over hydraulic fracturing increased, Alaska did a complete review of the adequacy of our hydraulic fracturing regulations and made a few changes such as adding a requirement that operators report all injected materials to FracFocus and a requirement that operators conduct a baseline water sampling program in an area to experience hydraulic fracturing. We also created a section entitled "hydraulic fracturing" that restated our existing requirements for well construction, operation, and maintenance. The sole purpose of this change was to make it easier for the public to see what our requirements are and ease their concerns. After making these changes, we requested a STRONGER review of our hydraulic fracturing regulations. The only substantive recommendation for improvement that STRONGER made was that we encourage other agencies in our state to request similar reviews.

Conclusion

I've provided you with a lot of information here. I hope it helps you to see that my state is well equipped to relieve Federal agencies of the burdens of redundant oversight in drilling and operating oil and gas wells in Alaska and that other states have – and use – the same resources Alaska does to get themselves to that same level of regulatory excellence.