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**CONFIDENTIAL FORMAL ADVISORY OPINION**

August 20, 2014

Jennie Wilhelm Hauser, Esquire  
Special Deputy Attorney General  
NC Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

RE: Permissibility of NCDENR Division of Energy, Mineral & Land Resources Program's  
Acceptance of Additional American Petroleum Institute Standards  
AO-E-14-002

Dear Ms. Hauser:

This is in response to your July 18, 2014, request for a formal advisory opinion, submitted on behalf of Mr. James Womack, the Chair of the Mining and Energy Commission ("MEC"). You have asked whether the State Government Ethics Act ("Ethics Act"), North Carolina General Statutes ("G.S.") Chapter 138A, would permit the North Carolina Department of Environment and Natural Resources' Division of Energy, Mineral, & Land Resources ("the Division") to accept certain Technical Standards from the American Petroleum Institute ("API"); and whether the Lobbying Law, G.S. Chapter 120C, would permit API to give the Division those Technical Standards.

This formal advisory opinion is based upon the information provided in your request and was adopted by the Commission at its August 20, 2014, meeting.<sup>1</sup>

**I. The Facts.**

You are legal counsel to the MEC. The MEC has been charged with the responsibility of adopting rules necessary for the administration of the Oil and Gas Conservation Act and for the further

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<sup>1</sup> Please see the enclosure entitled "Recommended Formal Advisory Opinions Issued by the State Ethics Commission" for further information regarding the protections offered to individuals receiving those opinions.

development of the State's oil, gas, and mining resources. G.S. 143B-293.1(a). The members of the MEC and some of the Division staff are public servants subject to the Ethics Act, including the Act's gift ban. API, a registered lobbyist principal, sells a variety of publications that include technical standards applicable to various segments of the oil and gas industry.

The Division has recently requested that API provide it with a complimentary copy of additional API Technical Standards. A list of those Standards requested is attached to this opinion as Attachment I. They are valued at \$3,216. Those Technical Standards will be used by the Division and the MEC in connection with its rulemaking responsibilities. Specifically, they will be used in development of the MEC's rules and will be incorporated by reference into the final rules to be adopted by the MEC. In addition, the Standards will be used in future rulemaking activities. They will not be used for the personal benefit of the Division's public servant staff or the members of the MEC in their private business pursuits.

## **II. Analysis.**

On November 1, 2013, the State Ethics Commission ("Commission") issued a formal advisory opinion interpreting the Ethics Act. AO-E-13-006. In that opinion the Commission concluded that it was permissible for the Division to accept one complimentary copy of API's Technical Standards on Hydraulic Fracturing, Well Construction, Wellheads, and Well Abandonment in order to assist in the development of proposed rules. The Commission determined that the gift ban did not restrict the Division from accepting those Technical Standards from API since they would be used in developing various rules in accordance with a statutory directive and would not be used for the personal benefit of the Division's public servant staff or the MEC members.

Because the additional Technical Standards requested from API will also be used in connection with the development of statutorily-required rules, and will not be used for the personal benefit of the Division staff or the MEC members or by the members of the MEC in their private business pursuits, the Ethics Act's gift ban would not restrict the Division's acceptance of those Technical Standards from API and the Lobbying Law would not restrict API from giving those materials to the Division. However, as noted in AO-E-13-006, if the materials were given to the Division at the specific request of a public servant and were made for lobbying, API would need to report the fair market value of the materials.

## **III. Closing.**

Thank you for contacting the State Ethics Commission. Please do not hesitate to call the Commission's staff if you have any questions about the foregoing formal advisory opinion. Pursuant to G.S. 120C-102(d1), an unedited copy of this formal advisory opinion will be forwarded to the Secretary of State. The Secretary of State is statutorily obligated to treat the opinion as confidential and not a public record.

### **Formal Advisory Opinions Issued by the State Ethics Commission**

Upon the written request of a public servant or legislative employee, G.S. 138A-13(a) of the State Government Ethics Act (“the Ethics Act”) authorizes the State Ethics Commission (“Commission”) to issue formal advisory opinions on the “meaning and application” of the Ethics Act “and the public servant’s or legislative employee’s compliance therewith.” All opinions have prospective application only, are limited to the particular facts presented, and confer limited civil immunity upon a requester who follows the advice given. G.S. 138A-13(a) and (a2).

Reliance upon a formal advisory opinion immunizes the public servant or legislative employee making the request from (1) investigation by the Commission, except the alleged violation of criminal law while performing his or her official duties, (2) adverse action by his or her employing entity, or (3) investigation by the Secretary of State. G.S. 138A-13(a2).

Once issued by the Commission, formal advisory opinions are published in a redacted format on the Commission’s website within 30 days of issuance. G.S. 138A-13(d). Otherwise, requests for advisory opinions, the opinions themselves, and all materials related to the opinions are confidential and are not public records. G.S. 138A-13(e).

Upon the written request of any person, State agency, or governmental unit affected by G.S. Chapter 120C (“the Lobbying Law”), G.S. 120C-102(a1) authorizes the State Ethics Commission (“Commission”) to issue formal advisory opinions “on the meaning and application” of the Lobbying Law and “that person’s, State agency’s or any other governmental unit’s compliance therewith.” All opinions have prospective application only and must relate to real or reasonably anticipated fact settings or circumstances. G.S. 120C-102(a). Formal advisory opinions confer limited civil immunity upon a requester who follows the advice given. G.S. 120C-102(a1).

Once issued by the Commission, formal advisory opinions are published in an edited format on the Commission’s website within 30 days of issuance. G.S. 120C-102(c). Requests for advisory opinions, the opinions themselves, and all materials related to the opinions are confidential and are not public records. G.S. 120C-102(d). However, the Commission is required to send an unedited copy of each formal advisory opinion to the Secretary of State’s Office at the time the formal advisory opinion is issued to the requester, and the Secretary of State is required to treat the formal advisory opinion as confidential and not a matter of public record. G.S. 120C-102(d1). In addition, Commission staff is specifically authorized to share all information and documents related to requests for formal advisory opinions with the Secretary of State’s Office. The Secretary of State’s Office is required to treat any such information and documents in its possession as confidential and not a matter of public record G.S. 120C-102(d1).

ATTACHMENT 'I'

	A	B	C
1	Document Number	Title	Edition
2	API SPEC 12B	Specification for Bolted Tanks for Storage of Production Liquids	15th
3	API SPEC 12D	Specification for Field Welded Tanks for Storage of Production Liquids	11th
4	API SPEC 12F	Specification for Shop Welded Tanks for Storage of Production Liquids	12th
5	API RP 2003	Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents	7th
6	API SPEC 5CT	Specification for Casing and Tubing	9th
7	API SPEC 5B	Specification for Threading, Gauging and Thread Inspection of Casing , Tubing, and Line Pipe Threads	15th
8	API RP 5A3	Recommended Practice on Thread Compounds for Casing, Tubing, Line Pipe, and Drill Stem Elements	3rd
9	API RP 5C5	Recommended Practice on Procedures for Testing Casing and Tubing Connections, Petroleum and natural gas industries-Testing procedures for casing and tubing connections	3rd
10	API SPEC 11D1	Packers and Bridge Plugs	2nd
11	API RP 74	Recommended Practice for Occupational Safety for Onshore Oil and Gas Production Operations	1st
12	API MPMS Ch. 14.1	Manual of Petroleum Measurement Standards, Chapter 14-Natural Gas Fluids Measurements, Section 1-Collecting and Handling of Natural Gas Samples for Custody Transfer	6th
13	API MPMS Ch. 14.3 Part 1	Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids-Concentric, Square-edged Orifice meters-Part 1: General Equations and Uncertainty Guidelines	4th
14	API MPMS Ch. 14.3 Part 2	Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids-Concentric, Square-edged Orifice meters-Part 2: Specification and Installation Requirements	4th
15	API MPMS Ch. 14.3 Part 3	Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids-Concentric, Square-edged Orifice meters-Part 3: Natural Gas Applications	4th
16	API MPMS Ch.14.3 Part 4	Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids-Concentric, Square-edged Orifice meters-Part 4: Background, Development, Implementation Procedures and Subroutine Documentation	3rd
17	API MPMS Ch. 14.4	Manual of Petroleum Measurement Standards, Chapter 14-Natural Gas Fluids Measurements, Section 4-Converting Mass of Natural Gas Liquids and Vapors to Equivalent Liquid Volumes	1st

## ATTACHMENT 'I'

	A	B	C
1	Document Number	Title	Edition
18	API MPMS Ch. 14.5	Manual of Petroleum Measurement Standards, Chapter 14-Natural Gas Fluids Measurements, Section 5-Calculation of Gross Heating Value, Relative Density, Compressibility and Theoretical Hydrocarbon Liquid Content for Natural Gas Mixtures of Custody Transfer	3rd
19	API MPMS Ch. 14.6	Manual of Petroleum Measurement Standards, Chapter 14-Natural Gas Fluids	2nd
20	API MPMS Ch. 14.7	Manual of Petroleum Measurement Standards Chapter 14-Natural Gas Fluids Measurement, Section 7- Mass Measurement of Natural Gas Liquids	4th
21	API MPMS Ch. 14.8	Manual of Petroleum Measurement Standards Chapter 14-Natural Gas Fluids Measurement, Section 8-Natural Gas Fluids Measurement: Liquefied Petroleum Gas Measurement	2nd
22	API MPMS Ch. 14.10	Manual of Petroleum Measurement Standards Chapter 14-Natural Gas Fluids Measurement, Section 10-Measurement of Flow to Flares	1st
23	API MPMS Ch. 21.1	Manual of Petroleum Measurement Standards Chapter 21-Flow Measurement Using Electronic Metering Systems, Section 1: Electronic Gas Measurement	2nd
24	API MPMS Ch. 21.2	Manual of Petroleum Measurement Standards Chapter 21-Flow Measurement Using Electronic Metering Systems, Section 2: Electronic Liquid Measurement	1st
25	API MPMS Ch. 22.1	Manual of Petroleum Measurement Standards Chapter 22-Testing Protocols, Section 1: General Guidelines for Developing Testing Protocols for Devices Used in the Measurement of Hydrocarbon Fluids	1st
26	API MPMS Ch. 22.2	Manual of Petroleum Measurement Standards Chapter 22-Testing Protocols, Section 2: Differential Pressure Flow Measurement Devices	1st