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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

April 15, 2009

Honorable John Hanger, Acting Chairperson
Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101

Re: Regulation #7-431 (IRRC #2742)
Environmental Quality Board
Oil and Gas Wells

Dear Acting Chairperson Hanger:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director

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Enclosure

cc: Honorable Mary Jo White, Majority Chairwoman, Senate Environmental Resources and Energy Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and Energy Committee
Honorable Camille George, Majority Chairman, House Environmental Resources and Energy Committee
Honorable Scott E. Hutchinson, Minority Chairman, House Environmental Resources and Energy Committee

Comments of the Independent Regulatory Review Commission



Environmental Quality Board Regulation #7-431 (IRRC #2742)

Oil and Gas Wells

April 15, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the February 14, 2009 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Environmental Quality Board (EQB) to respond to all comments received from us or any other source.

1. Legislative comment.

Senator Mary Jo White, Chairman of the Senate Environmental Resources and Energy Committee

Senator White submitted comments dated March 18, 2009. Senator White raised concerns and questions relating to the relationship between the length of a proposed well and administrative costs; the methodology used to arrive at a figure representative of what it costs to review and process an "average" permit application; the 10% fee penalty if the final well bore length of a well exceeds the length specified in the permit application; and clarification of the provision stating "Fees are non-refundable" (§ 78.19(e)) in relation to the money-back guarantee program.

Representatives Tim Solobay and Brian Ellis

Representatives Solobay and Ellis submitted a joint comment dated April 1, 2009, on behalf of the Oil and Gas Caucus of the House of Representatives. They suggest that the EQB set a fee that reflects the current application fee adjusted for inflation to the 2009 levels; question the relationship that the depth of the well bore has on the complexity of reviewing an application; request the EQB more clearly define and justify the anticipated cost to operate the permit application review; and request that the final-form regulation clarify that the oil and gas permitting program does qualify under the "money-back guarantee program."

We will review the EQB's responses to the concerns and questions raised by Senator White, Representative Solobay and Representative Ellis as part of our consideration of the final-form rulemaking.

2. Section 78.19. Permit application fees schedule. – Reasonableness; Need; Clarity.

Differentiation between “Vertical Wells,” “Nonvertical Wells” and “Marcellus Shale Wells”

Subsection (a) shows a fee schedule for three types of wells: “Vertical Wells,” “Nonvertical Wells” and “Marcellus Shale Wells.” The text of the proposed regulation does not specify what is a “Vertical Well,” “Nonvertical Well” and “Marcellus Shale Well,” or how to distinguish between them. Consequently, it is not clear how to apply the fee schedule to a well application. The regulation should define these terms.

Fees for “Nonvertical Wells” and “Marcellus Shale Wells”

The fee schedules for these wells are identical in Subsections (a) and (c). The EQB should explain the need for two identical fee schedules.

Nearest foot interval

Subsections (b) and (c) state that for wells exceeding 12,000 feet, “fees shall be rounded to the foot interval.” We suggest more specific language stating that fees shall be rounded to the “nearest 500 foot interval.”

Facsimile Cover Sheet



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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Debra L. Failor
Agency: Department of Environmental Protection
Phone: 7-2814
Fax: 705-4980
Date: April 15, 2009
Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Environmental Protection's regulation #7-431 (IRRC #2742). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by:

Kanya Gordy

Date:

4-15-09