

October 15, 2013

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Via Email

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105-8477

Re: Proposed Rulemaking – Oil and Gas Well Fee Amendments

Members of the Board:

The Pennsylvania Independent Oil & Gas Association (PIOGA) submits these comments to the notice of proposed rulemaking (NOPR) adopted by the Environmental Quality Board (Board) at its July 16, 2013 meeting and published in the Pennsylvania Bulletin on September 14, 2013, 43 Pa.B. 5457.

PIOGA is the principal nonprofit trade association representing over 900 of Pennsylvania's independent oil and natural gas producers, marketers, service companies and related businesses. PIOGA member companies drill and operate the majority of Pennsylvania's conventional and unconventional crude oil and natural gas wells. PIOGA's comments are limited to clarifying what is not an "unconventional well" or, conversely, what is a "conventional well."

As described in Section E (*Summary of Regulatory Requirements-Proposed Fee Structure*) of the NOPR, the proposed rulemaking creates two classes of wells – "conventional wells" and "unconventional wells" – based upon the general structure of 58 Pa. C.S. Chapter 32 that establishes the "conventional vs. unconventional" well distinction for a number of other regulatory areas. The proposed rulemaking makes clear that no changes are proposed to the current permit fee structure for permit applications to drill "conventional" oil and gas wells. PIOGA agrees with this approach and asserts that it is both reasonable and appropriate, as the additional regulatory costs of the Department's Oil and Gas Program are driven by unconventional well development and operations.

PIOGA also agrees that the proposed "conventional well" definition is based upon the definitions of "unconventional formation" and "unconventional gas well" in 58 Pa. C.S. § 3203 (also, § 2301), as these four definitions comprise the universe of wells related to oil and gas development and operations under the current statutory structure:

Conventional formation—A formation that is not an unconventional formation.

Conventional well—A bore hole drilled or being drilled for the purpose of or to be used for the production of oil or gas from a conventional formation.

In other words, the proposed definitions reflect that, as a matter of law, an oil or gas well is either a "conventional well" or an "unconventional well" – two mutually exclusive categories. Stated yet another way, an "unconventional gas well" is positively defined by statute, so any well

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related to oil and natural gas development and Stated yet another way, an “unconventional gas well” is positively defined by statute, so any well related to oil and natural gas development and operations that does not come within the terms of the “unconventional gas well” definition is a “conventional well.”

It is apparent that the Department and the Board share this view, as Section E (*Proposed Fee Structure*) sets forth a more detailed description of “conventional well” based upon what is not included within the statutory definitions of “unconventional formation” and “unconventional gas well.” This more detailed description is on the correct track, but does not exhaust the universe of conventional wells. For example, the Pennsylvania Public Utility Commission (PUC) has agreed that, “consistent with the definition of ‘unconventional gas well,’ only wells drilled for the purpose of production of natural gas will be subject to the fee. Wells drilled for other purposes, e.g., monitoring, geologic logging, or other collateral purposes, are not subject to the fee.”¹ To this list of collateral purpose conventional wells, PIOGA would add secondary and tertiary recovery or disposal injection wells. Providing examples of what constitute conventional wells in the regulatory definition will provide more clarity, definiteness and guidance than the simple “contrary” definition in the proposed regulatory definition.

The need for clarity, definiteness and guidance concerning whether a well is “conventional” or “unconventional” has been shown by public criticisms² that the Department has misconstrued the statutory terms, and the Department’s response (*copy attached*). Both the general public as well as Department regional office staff will benefit from inclusion in the regulation of a more detailed “conventional well” definition to make clear that – unlike an “unconventional well” – a “conventional well” is not defined with respect to drilling technology or design or formation.

PIOGA therefore requests that the description of “conventional well” in Section E (*Proposed Fee Structure*) of the NOPR be included in the regulatory definition, but modified to read as follows (changes/additions to the NOPR language are highlighted):

Conventional well—A bore hole drilled or being drilled for the purpose of or to be used for the production of oil or gas from a conventional formation. Conventional wells are, irrespective of technology or design: (1) any wells drilled to produce oil; (2) wells drilled to produce natural gas from formations other than shale formations; (3) wells drilled to produce natural gas from shale formations located above the base of the Elk Group or its stratigraphic equivalent; and (4) wells drilled to produce natural gas from shale formations located below the base of the Elk Group where natural gas can be produced at economic flow rates or in economic volumes without the use of vertical or nonvertical well bores stimulated by hydraulic fracture treatments or by using

¹ Act 13 of 2012 – Implementation of Unconventional Gas Well Impact Fee Act, Docket No. M-2012-2288561, Order entered May 10, 2012, at 7.

² See, e.g., Joel Gehman *et al.*, *An Analysis of Unconventional Gas Well Reporting under Pennsylvania Act 13 of 2012*, Environmental Practice, 263-277 (December 2012).

multilateral well bores or other techniques to expose more of the formation to the well bore; and (5) irrespective of formation, wells drilled for collateral purposes, such as monitoring, geologic logging, secondary and tertiary recovery or disposal injection.

PIOGA appreciates the opportunity to provide comments to the Department and the Board to improve the clarity, definiteness and guidance of the proposed regulations with respect to what is a "conventional well." Our companies have worked closely with the Department in the past on environmental issues and we expect that cooperation to continue.

Please contact me if you have questions about, or concerns with, these comments.

Sincerely,



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General Counsel

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
SECRETARY

January 22, 2013

Mr. Joel Gehman
Assistant Professor
University of Alberta
2-23 Business Building
Edmonton, Alberta T6G 2R6
Canada

Dear Mr. Gehman:

I am writing to you in response to the publication of you and your co-authors' article, "An Analysis of Unconventional Gas Well Reporting under Pennsylvania's Act 13 of 2012," published in the December 2012 issue of the National Association of Environmental Professionals' journal, *Environmental Practice*. Joel Gehman et al., *An Analysis of Unconventional Gas Well Reporting under Pennsylvania's Act 13 of 2012*, *Environmental Practice*, 263-277, (December 2012). I am also writing to you about your recent comments in Pennsylvania newspapers about the same report. In both cases, you have either seriously misunderstood or misrepresented key provisions of Act 13 of 2012. 58 Pa.C.S. §§ 2301-3504 (Act 13). You have also wrongly accused the Pennsylvania Department of Environmental Protection (DEP) of having done a poor job with its development of an unconventional spud list for the purposes of Act 13 and in data management in general. See 58 Pa.C.S. § 2304. The list we provided to the Public Utility Commission (PUC) was complete, accurate and faithful to the provisions of Act 13. Contrary to your assertion, Pennsylvanians are not missing out on any legally imposed impact fee revenue whatsoever.

It would have been helpful had you provided my staff with a draft copy of your report prior to submitting it for publication. The errors could have been pointed out in advance of publication. In any event, I will try to explain a few things to you now.

Let me start with the most basic information about Act 13's impact fee. Per § 2302 an impact fee is imposed only for "unconventional wells." 58 Pa.C.S. § 2302. Act 13 defines "unconventional well" as "[a] bore hole drilled or being drilled for the purpose of or to be used for the production of natural gas from an unconventional formation." "Unconventional Formation" is defined as a "geological shale formation existing below the base of the Elk Sandstone or its geologic equivalent stratigraphic interval *where natural gas generally cannot be produced at economic flow rates or in economic volumes except by vertical or horizontal well bores stimulated by hydraulic fracture treatments or by using multilateral well bores or other techniques to expose more of the formation to the well bore.*" § 2301. (emphasis added). I have added this emphasis for the reason that your report did not include this most basic definitional information, *i.e.*, should a well be capable of producing economic amounts of gas from a formation without using such treatments, the well is not considered to be unconventional and is not subject to the impact fee.

The spud list we provided to the PUC, in fact, is the list of unconventional wells as that term is defined under Act 13. See 58 Pa.C.S. § 2304. Only those wells are subject to the impact fee. Other wells are not subject to the impact fee. The wells you identify are not unconventional and, thus, are not subject to the impact fee.

You are completely incorrect to assert that Medina wells are or should have been subject to Act 13's impact fee. Such wells were produced with economic flow rates decades ago using conventional technology. Further, the producing formation in the Medina group was not the Cabot Head Shale but a sandstone. Act 13 by its terms limits the definition of an unconventional formation to shale. See 58 Pa.C.S. § 2301 (An "Unconventional Formation" is "A geological shale formation . . ."). So, for these reasons, Act 13 makes clear that the Medina wells are not to be considered unconventional and, thus, are not subject to the impact fee.

You, again, have incorrectly read the terms of Act 13 in your discussion of "Spud Interpretation." Contrary to your assertion, a well is not an "unconventional well" under Act 13 merely because the well bore passes through an unconventional formation. A well is only an "unconventional well" for purposes of Act 13 if the well is intended "for the production of natural gas from an unconventional formation." 58 Pa.C.S. § 2301. Under Act 13, a conventional well does not magically become an unconventional well by merely passing through an unconventional formation down to its destination in a conventional formation.

Even if that "magic" did occur, these historical wells would still not be legally subject to Act 13's impact fee because they are all stripper wells – vertical wells that do not exceed the threshold of 90 thousand cubic feet (mcf) per day on an average monthly basis. 58 Pa.C.S. § 2301, 2302(b.1). Act 13 specifically excludes wells that do not "produce natural gas in quantities greater than that of a stripper well" from the impact fee. 58 Pa.C.S. § 2302(b.1). Per that legal imperative, the PUC in its July 19, 2012 implementation order made clear that it would consider 2011 production volumes for the purposes of determining whether vertical wells produced in excess of 90 mcf/day. In re: Act 13 of 2012 – Implementation of Unconventional Gas Well Impact Fee Act, Docket No. M-2012-2288561 (Pa. P.U.C June 19, 2012). Wells that did not produce in excess of 90 mcf/day in 2011 were by definition excluded from the requirement to pay the Act 13 impact fee. This was also consistent with the Conference Committee Report for House Bill 1950, which specified that a "vertical unconventional gas well shall only pay a fee if it is producing in quantities greater than those of a stripper well."

With respect to your discussion of the supposed 1,500 omitted "recent" unconventional spud wells, you were reviewing preliminary data prepared in March 2012 specifically for the purpose of obtaining public comments. We made that list available so that our process would be completely transparent. That transparency worked well since some errors were identified and corrected.

For example, because operators were able to "group" well permits on a pad for purposes of reporting production amounts or waste generated amounts, see 58 Pa.C.S. § 3222(a.1), a well

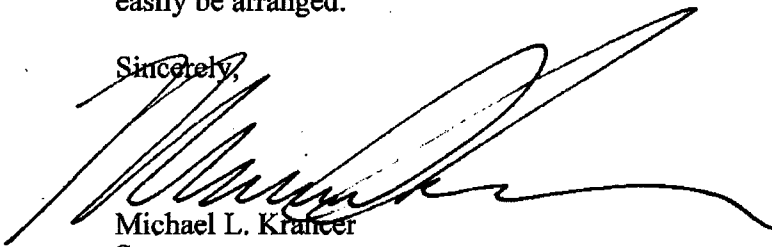
that had not been spud might have a gas production report. Under this circumstance, an operator might have had five wells permitted on a pad but only drilled three in 2011. Before my staff changed the reporting system, the operator could group all of the permits and divide the 2011 production or waste generated equally between all of the well permits, rather than assigning specific values to each individual well. Thus, all five well permits on the pad would show production or waste but only three would show a spud date. Similar anomalies between our several production, permits, spud and compliance reports were addressed and resolved. As a result of the hard work done by DEP staff, the PUC and unconventional well operators, by the time the impact fees were due on September 1 the spud list and these other databases were corrected and accurate.

Pennsylvanians are not missing out on any impact fee revenue whatsoever. In fact, the initial distribution last year of more than \$204 million exceeded initial expectations by greater than \$20 million.

Ensuring data accuracy is a top priority at DEP. My staff has worked quite hard in both developing the list of unconventional wells and revising our data management system to prevent a recurrence of the errors we discovered. That you would respond to our criticisms about your report by stating in the press that my department "remains out of compliance [with Act 13] to this day" shows that you have really failed to do your homework or that you are more interested in publicity for yourself than the truth, or both.

If you would like to come in and meet with our legal staff, our oil and gas program staff and or Information Technology team so you can get better acquainted with Act 13's legal provision and DEP's activities relating to proper accounting for impact fees please give me a call and that can easily be arranged.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Michael L. Kraner', is written over the word 'Sincerely,'.

Michael L. Kraner
Secretary