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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:

On behalf of my company which represents several clients in the oil and gas industry and with the oil and gas associations I am a member of and work with, I would like to submit a letter of support for and agree with the comments that The Pennsylvania Independent Oil & Gas Association (PIOGA) submitted 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.

Please find their comments attached.

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

Sincerely,

Teresa Irvin McCurdy
President & CEO

cc: Kurt Klapkowski, Director
Bureau of Oil and Gas Planning and Program Management (*via email*)

October 15, 2013

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

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,

Kevin J. Moody, Esq.
General Counsel

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cc: Kurt Klapkowski, Director
 Bureau of Oil and Gas Planning and Program Management (*via email*)
 Bureau of Regulatory Counsel (*via email*)
 Doug Brennan, Director
 Elizabeth Nolan, Assistant Counsel
 Jason Oyler, Assistant Counsel
 Regional Offices (*via first class mail, postage prepaid*)