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IRRC

April 8, 2016

Via email: irrc@irrc.state.pa.us
David Sumner, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17120

**Re: Environmental Quality Board Regulation #7-484: Environmental Protection Performance Standards at Oil and Gas Well Sites
IRRC #3042**

Dear Mr. Sumner:

The Pennsylvania Independent Oil & Gas Association (PIOGA) respectfully submits the following comments on the above-referenced final-form regulation.

PIOGA is a nonprofit trade association comprising over 700 members, including oil and natural gas producers engaged in development and production from both conventional and unconventional formations in Pennsylvania, as well as drilling contractors, service companies, manufacturers, distributors, professional firms and consultants, pipelines, end users and royalty owners with interests in the success of Pennsylvania's oil and natural gas industry. In this respect, we have something in common with Governor Wolf and Department of Environmental Protection (DEP) Secretary John Quigley who have stated that they "want the industry to succeed," as PIOGA member companies operate the majority of the state's natural gas wells, including those targeting the Marcellus and Utica shales.

Of course, actions speak louder than words, and the actions this Administration has taken to impose additional regulations with costs that greatly exceed actual environmental benefits is but one example. Of course, to argue against regulations touted as "improving the environment" is perceived as saying "I hate Mom and apple pie." But that is not the case with this single final-form regulation that puts people's and family's livelihoods at real and significant risk.

PIOGA understands the monumental task this Commission has to review the hundreds of pages of comments submitted on this final-form regulation, so PIOGA will not add to this task by repeating the myriad flaws in the regulations and the rulemaking process that are so thoroughly explained in the comments of the Pennsylvania Grade Crude Oil Coalition (PGCC, on behalf of

conventional producers) and the Marcellus Shale Coalition (MSC, on behalf of unconventional producers). PIOGA agrees with those comments and hereby adopts them by reference.

Two early actions by the Administration that now seem in the distant past – but speak volumes in light of the assuredly unexpected results – are Governor Wolf’s: (i) replacement – in the middle of the development of the initial proposed regulations (February 2013) – of the long-serving, competent voting members of the statutorily-created Technical Advisory Board (TAB) with new technical members of the Governor’s choosing as well as new nonvoting “public interest” members *not* authorized by the statute, also of the Governor’s choosing; and (ii) the creation of the new Conventional Oil and Gas Advisory Committee (COGAC) within DEP ostensibly to provide advice to DEP “on all matters pertaining to conventional oil and gas extraction practices” because of the Governor’s removing advice on “conventional industry” practices from the scope of TAB’s responsibility (also *not* authorized by the statute), and staffed by appointees of the Governor’s choosing.

As this Commission knows from the comments submitted, both TAB and COGAC recommended against DEP’s moving forward with the final-form regulation. PIOGA commends the voting members of these two bodies for doing the legally but not politically correct thing, despite being contrary to the Governor’s position. Of course, it was no surprise to us when DEP rejected these recommendations and submitted the single final-form regulation to the Environmental Quality Board (EQB). And it was also no surprise to us when the EQB rejected the motion by one of its members to separate the regulation into one final-form regulation applicable to conventional wells and one final-form regulation applicable to unconventional wells, and adopted the single final-form regulation now before this Commission for review and approval or disapproval.

One other matter must be mentioned. In the Regulatory Analysis Form (RAF) submitted for the single final-form regulation, DEP states that it reached out to industry groups “to derive the cost estimates of this final-form rulemaking.” Attached is PIOGA’s affidavit stating that this is not true with respect to PIOGA. As is clear from the comments of PGCC and the MSC, the lack of reasonable estimates of realistic or actual costs of complying with the final-form regulation, particularly the Chapter 78 part, is one of the significant failures of this rulemaking.

The Commission’s consideration of this single final-form regulation at its April 21, 2016 public meeting is a watershed moment for the Commission.

If the Commission does not disapprove this final-form regulation – which it may do solely on the basis of DEP’s and EQB’s violation of Act 126 of 2014, specifically Section 13.2 that added Section 1741.1-E to the Fiscal Code, 72 P.S. § 1741.1-E – that action will do at least three things: (i) send a loud signal to the agencies that they may disregard with impunity the plain requirements of the Regulatory Review Act (RRA) and the Commonwealth Documents Law for proposed regulations; (ii) show that politics and ideology – not the facts and the law – determine the content of regulations that have the force and effect of law; and (iii) create significant doubt

about why opponents of the politics and ideology behind a regulation should even bother to be involved in the RRA process.

Accordingly, PIOGA asks this Commission to follow the rule of law and take the only action that is consistent with the law – disapprove this final-form regulation.

Respectfully submitted,

A handwritten signature in cursive script that reads "Kevin J. Moody". The signature is written in dark ink and is positioned above a horizontal line.

Kevin J. Moody, General Counsel
PIOGA

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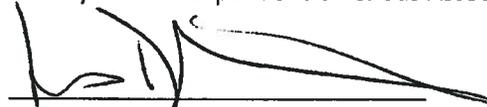
AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF ALLEGHENY :

Lou D'Amico, President and Executive Director of the Pennsylvania Independent Oil & Gas Association (PIOGA), being duly sworn, deposes and says that:

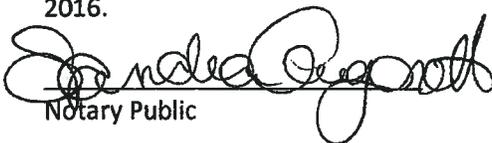
1. PIOGA is a trade association comprising businesses and individuals engaged in activities directly affected by (i) the processes used by the Department of Environmental Protection (DEP) to develop and propose, and by and the Environmental Quality Board to promulgate, regulations applicable to Pennsylvania's conventional oil and natural gas industry and (ii) the part of the final-form regulation, Chapter 78 of Final Regulation #3042, applicable to Pennsylvania's conventional oil and gas industry, if approved by the Independent Regulatory Review Commission (IRRC).
2. As PIOGA's President and Executive Director, I am familiar with all correspondence sent and received by PIOGA as well as all meetings conducted by PIOGA with respect to DEP's process (i) to develop proposed regulations applicable to Pennsylvania's conventional oil and gas industry and (ii) to formulate Chapter 78 of Final Regulation #3042.
3. PIOGA met with DEP in September and November of 2012 concerning the development of proposed Chapter 78 and, in response to a March 20, 2013 email request from Shamus M. Malone, DEP's Director, Bureau of Regulatory and Resources Enhancement, Office of Oil and Gas Management, provided – prior to the submission of the proposed regulation to IRRC on December 13, 2013 – a cost analysis table showing the costs of compliance with provisions being developed as proposed Chapter 78.
4. In the course of formulating Chapter 78 its final-form regulation – contrary to its statement at the bottom of p. 83 of the Regulatory Analysis Form (RAF) for Final Regulation #3042 – DEP did not reach out to PIOGA to discuss compliance costs of Chapter 78 of the final-form regulation to ascertain actual costs of procedures and practices currently engaged in by PIOGA members concerning conventional oil and gas operations or to discuss potential alternatives for small businesses subject to Chapter 78 of the final-form regulation.

Pennsylvania Independent Oil & Gas Association



Lou D'Amico, President and Executive Director

Sworn to and subscribed
before me, a Notary Public,
this 8 day of April
2016.


Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Sandra Angerett, Notary Public
Cranberry Twp., Butler County
My Commission Expires March 7, 2017