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April 14, 2016

The Honorable John F. Mizner, Esq., Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Final Environmental Quality Board Oil & Gas Rulemaking – IRRC #3042

Dear Chairman Mizner:

I am writing on behalf of the National Federation of Independent Business (NFIB) in Pennsylvania to urge IRRC to disapprove of the final rulemaking currently before you.

NFIB is Pennsylvania's leading small business organization representing over 14,000 small- and independent businesses in the Commonwealth and roughly 325,000 nationwide. We count among our members several conventional oil and gas producers who will be directly affected by the revised Chapter 78 Subchapter C regulations if, in fact, the revisions are approved. Nearly all of Pennsylvania's conventional oil and gas producers are small businesses, as are the supply stores, excavation contractors and other entities indirectly involved with conventional oil and gas producers.

NFIB is gravely concerned that the regulatory flexibility analysis required under the Regulatory Review Act has not been conscientiously and properly performed. As a result, it is impossible for the IRRC to properly render an analysis of the impact of the regulatory revisions upon small businesses.

As you are aware, at Sections 5(a)(12.1) and 5.2(b)(8) the Regulatory Review Act required the DEP and EQB to consider various methods of reducing the impact of the proposed regulation on small business. Among other things, the DEP and EQB should have considered the following:

- 1) less stringent compliance or reporting requirements;
- 2) less stringent schedules or deadlines for compliance or reporting requirements;
- 3) consolidation or simplification of compliance or reporting requirements;
- 4) establishment of performance standards to replace design or operational standards; and
- 5) the exemption of small businesses from all or any part of the requirements contained in the rule.

This simply was not done. We note that in April, 2014, IRRC already expressed concern about the non-performance of the small business considerations when IRRC commented: "...we agree that more information is needed in the RAF. We ask EQB to provide the required regulatory flexibility analysis for each section of the proposed rulemaking."

Having reviewed the revised RAF NFIB remains concerned about the lack of consideration for small businesses. The considerations listed above and contemplated in the Regulatory Review Act are not present in any meaningful way; this is especially troublesome when one examines the failure of the DEP to state the need for the revised regulations. It is impossible for IRRC to conduct the type of balancing



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analysis (of protection of state resources such as clean water and air with the impact of the regulations upon small business health) when the need for regulatory change is not clearly articulated. In reviewing the original and revised RAF it seems apparent that the primary reason for the revised regulations is the advent of the unconventional oil and gas industry in Pennsylvania. This is not an adequate reason to wreak wholesale change upon conventional oil and gas regulations that have been in place for decades, especially when the primary impact of the changes will fall upon small businesses.

The regulatory flexibility requirements of the Act are a critical component of our regulatory review process in Pennsylvania and NFIB was the leading organization that fought to enact the requirements. It appears this rulemaking will be the first true test of these requirements since the law went into effect in 2012.

We also object to DEP's use of the Advanced Notice of Final Rulemaking (ANFR) process, which allowed them to further bypass the requirements outlined in the Regulatory Review Act. Not only did the ANFR contain significant changes to the rulemaking that were never included in the December 2013 proposal, but DEP failed to provide an updated Regulatory Analysis Form to account for these changes. Not only does this process make it nearly impossible for the small businesses that will be subject to this rulemaking to fairly and properly review and comment on the proposal, but IRRC too is not afforded an opportunity to issue comments or seek clarifications.

For these reasons, we respectfully urge IRRC to disapprove of the final rulemaking currently before you.

Sincerely,

A handwritten signature in black ink that reads "Kevin Shivers". The signature is written in a cursive, flowing style.

Kevin Shivers
Executive Director