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April 15, 2016

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

**RE: IRRC #3042**  
**Final Rulemaking – Environmental Protection Performance Standards at Oil and Gas Well Sites (25 Pa. Code Chapters 78 and 78a)**

Dear Chairman Mizner:

On February 3, 2016, the Environmental Quality Board (“EQB”) approved the above-referenced rulemaking by a vote of 15-4. The proposed rulemaking is now before the Independent Regulatory Review Commission (“IRRC”) for review. Although the proposed rulemaking has undergone significant changes since the IRRC issued its comments on April 14, 2014, the IRRC will find that despite those significant revisions many of the IRRC’s comments and concerns regarding the rule were not addressed in the final rulemaking.

Seneca Resources Corporation (“Seneca”) is the exploration and production segment of National Fuel Gas Company. Seneca explores for, develops and produces natural gas and oil reserves in California, New York and Pennsylvania, including the Marcellus and Utica Shales. Seneca has operated in Pennsylvania for over 100 years and owns/leases oil and gas interests in approximately 780,000 net acres in the Commonwealth. As a result, Seneca has a vested interest in conducting its development operations in a safe and effective manner to protect the environment as explained in detail in its previously submitted comments that are part of the record for this matter. In addition, the Marcellus Shale Coalition (the “MSC”), of which Seneca is a member, has contemporaneously submitted comments to IRRC regarding this proposed rulemaking, and Seneca incorporates herein and supports the comments submitted by the MSC.

While Seneca expects and supports strong meaningful regulatory oversight by the DEP of oil and gas development in the Commonwealth, various aspects of the proposed rulemaking remain unclear or will impose unduly burdensome requirements that will provide little or no benefit to protecting the environment. Although Seneca has numerous concerns about the proposed regulations, it is most concerned with provisions that: restrict operators from burying well development pipelines and require daily inspection of well development pipelines (78a.68b), allow DEP to exercise jurisdiction over gathering pipelines (78a.68 and 78a.68a), require small spills to be remediated to Act 2 standards (78a.66), and imposition of a vague subjective Pa. Natural Diversity Inventory process that effectively grants broad regulatory authority to the Pa. Natural Heritage Program (78a.15).

In arguing in support of the proposed rulemaking, the DEP and EQB regularly make reference to the large volume of comments that were submitted through the regulatory review process as evidence

that the proposed regulations are fair and just. However, despite the significant volume of comments submitted by interested parties, the substance of the regulations have changed very little from the prior drafts to the final draft now presented to the IRRC. Many of the IRRC's own comments, even those simply recommending changes to provide further clarification, were disregarded in the final form regulation. Comments from DEP's own advisory boards (Conventional Oil & Gas Advisory Committee and the Oil & Gas Technical Advisory Board) were also not adequately addressed. As noted by Senator Gene Yaw at the EQB meeting on February 3, 2016, what is the point of an agency having advisory boards if it isn't going to listen to them? At that same EQB meeting a number of amendments were proposed by Senator Gene Yaw, Senator John Yudichak, and Representative John Maher. None of the proposed amendments were adopted, even though many of their proposed changes were merely intended to provide clarification rather than substantive changes.

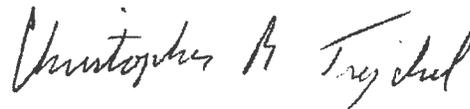
Representative John Maher also questioned how the EQB could justify adopting the proposed regulation when not one single form had been provided for review/comment by DEP and these proposed regulations require the creation and use of numerous new forms. Surprisingly, counsel for DEP responded that providing the forms was not necessary to comply with the requirements of the *Regulatory Review Act* and that the IRRC often overlooks the requirement to have the draft forms submitted with the proposed regulation. Clearly DEP is mistaken in its belief that compliance with all aspects of the *Regulatory Review Act* is optional, as the *Act* expressly states that the regulatory analysis form accompanying the proposed regulation shall include "*copies of forms or reports, which will be required for the implementation of the regulation and an explanation of the measures which have been taken to minimize these requirements.*" 71 P.S. § 745.5(a)(5). Neither the forms nor the required explanation of measures to minimize forms were supplied as required by the *Regulatory Review Act*. As a result, operators were prejudiced by this convenient omission that effectively precludes any public comment or opportunity for advance review of these many new forms that will be utilized to implement these comprehensive and burdensome regulations. Delaying the release of these forms may seem trivial, but it is a very real concern that is only made worse by the fact that the regulation is to take effect immediately upon adoption/publication. One of Senator John Yudichak's proposed amendments at the EQB meeting was to make the rule effective 180 days after publication to provide time for DEP to address administrative matters such as drafting guidance, providing training and finalizing forms. DEP Secretary John Quigley responded by recommending that the amendment be rejected, stating that the final rule has been in the works for 4 years and it's time to finalize it. Not only is the passage of time not justification to ignore statutory requirements; but applying the Secretary's own logic to the issue of the forms, there's simply no excuse for the DEP to not have timely prepared the forms for review considering that DEP staff has been working on this proposed regulation for 4 years. It's incredible that over this 4-year time span the DEP didn't have at least some of those forms available for review/comment with the final form rulemaking. Mere days before the IRRC's public hearing on this matter, DEP has suddenly opted to release 25 draft forms. The timing is curious as it appears to be a very late attempt at complying with the *Regulatory Review Act*, but conveniently provides very little time to prepare any substantive comments on the forms to the IRRC.

IRRC should also perform a careful review of the estimated costs of this proposed regulation in comparison to the need for these regulations. Regarding the unconventional operator costs set forth in Appendix A to the Regulatory Analysis Form, the DEP estimates a very broad range of total annual compliance costs of \$5,895,500 to \$31,149,664. Notably, numerous regulations set forth in Appendix A have either \$0 assigned to them or the DEP simply stated "unable to estimate". Given the significant gaps in the submitted cost estimates, it is not unreasonable to assume that the actual costs of complying with these regulations are likely to be significantly higher than the maximum costs estimated by DEP. If those actual costs are anticipated to be higher than DEP's estimated maximum costs, then the analysis of

the need for these regulations in comparison to the costs imposed upon operators and ultimately the public needs to be re-evaluated. Where the costs of complying with a regulation far exceed the benefits to be derived therefrom, the regulation should be disapproved as it is likely to cause more harm than good. The MSC estimates, based on data provided by its members, that the regulations will result in an increase of about \$2,000,000 per well. Based on that estimate, if Seneca drills 30 unconventional wells next year, then it would incur additional costs totaling approximately \$60,000,000 as a result of this regulation. That is double the maximum annual estimate of costs submitted by DEP and would obviously have a negative financial impact on Seneca (and all other operators in Pennsylvania). Additionally, the timing of these proposed regulations couldn't be worse as the current poor market conditions have already resulted in significant layoffs and losses across all facets of the oil and gas industry and adopting comprehensive regulations that will significantly increase operating costs will only cause further harm to Pennsylvania's economy.

Seneca thanks the IRRC for its consideration of these comments and respectfully requests that the IRRC issue an order disapproving the proposed final rulemaking.

Best regards,



Christopher M. Trejchel  
*Assistant General Counsel*