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April 18, 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: Submission of Written Comments
Notice of Final Rulemaking
Chapter 78 (Conventional Oil and Gas Wells)

Dear Mr. Sumner:

The Pennsylvania Independent Petroleum Producers Association (PIPP) has been the voice for small, independent oil and natural gas producers in northwestern Pennsylvania since 1985. Our nonprofit association consists of over 350 independent producers, supply companies, industry personnel and supporters who have been responsibly developing Pennsylvania's shallow oil and natural gas reserves for generations. The vast majority of our members are small, family-run businesses who depend on the modest income derived from the conventional extraction of oil and gas from new and legacy wells to help supplement their incomes and feed their families. In many ways, our members have more in common with the Amish population than they do with large, billion-dollar unconventional well operators whose proliferation across Pennsylvania is the driving force behind this rulemaking.

The historic disconnect between the Department of Environmental Protection (DEP)/Environmental Quality Board (EQB) and the conventional oil and gas industry – which is plainly evident from PIPP's written comments to DEP on May 19, 2016, as well as the written comments of the Pennsylvania Independent Oil and Gas Association (PIOGA) and the Pennsylvania Grade Crude Oil Coalition (PGCC) – is traceable to a single root cause: The DEP's erroneous presumption from the onset of this rulemaking that the conventional oil and gas industry and unconventional shale gas industry are the same industry. This explains the misguided process employed by DEP/EQB of starting with the same set of rules for each industry, and then making slight adjustments for the conventional industry to account for the differences in business size. This approach is illegal and fundamentally flawed. The fact of the matter is that the conventional oil and gas industry and the unconventional shale gas industry are two separate industries, which require two different regulatory processes.

This confusion appears to have been evident to the Commission, which posed a simple question to the DEP/EQB in its comments to the proposed rulemaking:

> **7. RRA Section 5.2(b)(3)(iii) - Need for the regulation.**
>
> Section D of the Preamble to this rulemaking relates to background and purpose. It notes the following: "The 2012 Oil and Gas Act contains new environmental protections for ***unconventional*** wells and directs the Board to promulgate specific regulations. For these reasons, the [EQB] initiated this proposed mlemaking." (Emphasis added.) Commentators representing the conventional oil and gas industry believe this rulemaking will have a serious negative impact on their businesses. While we understand that EQB has the authority to amend its regulations relating to conventional wells, we ask for a detailed explanation of why more stringent regulations for the conventional oil and gas industry are needed at this time. Has EQB witnessed an increase in environmental mishaps or violations from conventional well operators? What problem is EQB attempting to correct through this proposal with respect to conventional wells?

Comments of the IRRC (April 14, 2014) (emphasis in original). In the two years that have passed since IRRC's comments, the DEP/EQB has yet to provide a direct answer to this direct question.

In its response to comment 2689 (consisting of the IRRC comment above), the DEP referenced its answer to comment 2627, which provides in its entirety:

> Response: As part of this rulemaking, in response to comments and recent legislation (the Act of July 10, 2014 (P.L. 1053, No. 126)), the Department split Chapter 78 into two separate Chapters – one for conventional oil and gas wells (Chapter 78) and the other for unconventional wells (Chapter 78a). The purpose of this amendment to the final rulemaking was to clarify the different requirements for conventional and unconventional wells. The Department believes that having two completely separate regulatory Chapters should serve to eliminate any confusion about what requirements apply to conventional and unconventional wells. In addition, having separate Chapters allows the Department to craft regulations to match the environmental risks posed by each segment of the industry (compare, for example, section 78.56 and section 78a.56, which contain significantly different requirements for temporary storage at conventional and unconventional well sites, respectively).

DEP Comment Response Document, Part 1 of 2, Comment 2627, at 943. This answer is evasive and fails to answer IRRC's straightforward questions about <u>why</u> more stringent regulations for the conventional industry are needed at all.

In its Regulatory Analysis Form (RAF) accompanying its final rulemaking package, the DEP cites to "new technologies associated with extracting oil and gas from conventional formations" as a reason for more stringent regulations on the conventional industry. What new technologies? If the DEP is referring to the use of hydraulic fracturing, this practice has been in use in conventional operations since the 1950's, twenty-years before the 1984 Oil and Gas Act. The DEP also makes reference to its 2010 State Review of Oil and Natural Gas Environmental Regulations (STRONGER) report[1] issued in September 2010 related to hydraulic fracturing. The STRONGER review team concluded that: "the Pennsylvania program is, over all, well managed, professional, and meeting its program objectives." Moreover, although the report was not explicitly limited to unconventional development, the report is replete with references to the Marcellus shale with only one reference to conventional operations. This is hardly a case for more stringent regulations.

Outside of the regulatory process, there has been a great deal of distortion about the environmental record of the conventional industry; some of it perpetuated by groups who are diametrically opposed to our industry and want to see it disappear, and the rest of it perpetuated by the DEP in the form of half-truths. For example:

- The DEP's 2014 Oil and Gas Annual Report states: "In 2014, 1,449 violations were identified at conventional well sites, and 412 violations were observed at unconventional well sites." However, what it failed to point out from its own online compliance reports was that:
    - Conventional well sites outnumbered unconventional well sites by over 12:1 in 2014. (121,988 active conventional wells, 9,848 active unconventional wells).
    - Of the 12,703 inspections of conventional operations conducted in 2014, 11,905 inspections did not reveal <u>any</u> violations. That is a 93.7% compliance rate. That is an amazing statistic given that the Department has turned up the heat on our industry in recent years with more inspectors conducting 24% more inspections than in 2008.
    - 40% of the violations identified in conventional operations (583) in 2014 were merely administrative violations, not environmental health and safety violations.
    - 12 operators were responsible for over 45% of all of the violations identified in 2014.

- The DEP also released a set of 108 inflammatory photographs of conventional well sites to the media. This too was a misleading and incomplete accounting of our industry.
    - Most of the photos are unlabeled. No idea as to the operator, site, date or location.
    - The photos that are labeled only depict the actions of 6 operators. To compare, the Department estimates that there were 7,280 conventional operators at the end of 2013.
    - The photos cover a span of eight years, with some dating back as far as 2007.
    - There are no photographs that depict the sites in question <u>after</u> they were remediated under existing regulations. Those photos were left out.
    - There are no photos that depict a gap in the current regulations. In other words, all of the photos published reflect conduct that is <u>already</u> a violation of existing regulations.

[1] http://www.shalegas.energy.gov/resources/071311_stronger_pa_hf_review.pdf

The most recent and disturbing iteration of the root problem with the rulemaking process described above was the EQB's decision on February 03, 2016, to issue an order adopting a *single* final-form regulation for *both* conventional oil and gas wells and unconventional gas wells in clear violation of Act 126 of 2014 § 1741.1-E. PIPP reacted strongly to this decision, filing a Petition for Review with the Commonwealth Court on March 24, 2016, seeing declaratory, injunctive, and mandamus relief. PIPP's central argument in support of its Petition for Review was that the EQB's decision to violate Act 126 and lump the conventional industry and unconventional industry together was *per se* harmful to PIPP and severely undermined PIPP's position before IRRC that the regulation is not in the public interest. More specifically, PIPP argued that its members would be irrevocably harmed if IRRC was forced to evaluate the economic/fiscal impact of the regulation and the need for the regulation for the protection of public health/safety/welfare/natural resources as to the entire industry as a whole. During the oral argument held on PIPP's Petition for Expedited Summary or Special Relief, IRRC (who was named as a Respondent only because it is a necessary party under the Declaratory Judgments Act) spoke in defense of the integrity of the regulatory process, and did not suggest that IRRC would be hampered in its ability to address the Act 126 issue. As a result, on April 15, 2016, the Commonwealth Court denied PIPP's request to enjoin the IRRC meeting. PIPP continues to believe that IRRC will be hampered in its ability to properly evaluate each industry separately under the Regulatory Review Act, which is why it has appealed the Commonwealth Court's decision and filed an emergency application for an injunction of the regulatory process pending appeal. However, if the Supreme Court decides not to intervene in the regulatory process, then there should be no reason why (in IRRC's view) it cannot disapprove the regulation on the basis that Chapter 78 (governing conventional wells) is not in the public interest.

Finally, one of the key objectives of the regulatory review process is to ensure that all citizens who will be adversely affected by proposed changes in government regulations have meaningful notice of any proposed changes and a full and fair opportunity to be heard. Unfortunately, the process that the DEP has chosen to follow to solicit comments on this regulation has greatly prejudiced our members. In the end, DEP appears to have adopted a "catch me if you can" mentality, pushing the envelope in the hopes of national recognition while trampling on small, conventional producers and what is left of their industry. "Consultations" with the conventional industry were more like lectures, and the detailed cost estimates provided by PIPP were essentially ignored. See affidavit. If there was ever a situation where IRRC was needed to exercise its independent authority, this is it. Thank you.

Very truly yours

Mark L Cline

Mark Cline
President

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF Mckean :

Mark Cline, President since October 1, 2014 and before that a member of the Board of Directors of the Pennsylvania Independent Petroleum Producers (PIPP), a trade group representing small oil and gas operators and businesses involved in or directly affected by Pennsylvania's conventional oil and gas industry, being duly sworn, deposes and says that:

1. As President and former Board Member of PIPP he is familiar with all correspondence sent and received by PIPP as well as all meetings conducted by PIPP;
2. In the course of formulating its final form rules relative to Chapter 78 (C) the Department of Environmental Protection (Department) did not reach out to PIPP to discuss costs of the final form rules, to ascertain actual costs of procedures and practices currently engaged in by PIPP members concerning conventional oil and gas operations, or to discuss potential alternatives for small businesses relative to the final form rules.
3. On March 5, 2015 PIPP submitted a 45 page document to the Environmental Quality Board (EQB)relative to proposed revisions to Chapter 78 (C), which showed PIPP's estimated costs of the new regulations. We showed the affects the cost would have on a small family run oil company, and how they would not be able to comply with the new regulations. Neither the EQB nor the Department thereafter consulted with PIPP concerning any matter contained in our document, yet financial estimates provided by the Department to the IRRC as contained in the 192 page Regulatory Analysis Form are inconsistent with financial information provided by PIPP.

Pennsylvania Independent Petroleum Producers

Mark Cline

Mark Cline, President

Sworn to and subscribed
before me, a Notary Public,
this 24th day of March,
2016.

Joyce A Cline

Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Joyce A. Cline, Notary Public
City of Bradford, McKean County
My Commission Expires Oct. 28, 2019
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES