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March 2, 2016

Independent Regulatory Review Commission
c/o John F. Mizner, Esq., Chairman
333 Market Street, 14th Floor
Harrisburg, Pennsylvania 17101

Dear Members of the Commission:

We write today to raise serious concerns about the rulemaking process employed by the Environmental Quality Board and the Department of Environmental Protection over the course of two gubernatorial administrations in pursuit of updated regulations for the operation of oil and gas wells in Pennsylvania. We strongly support the protection of our natural resources through judicious regulation. However, in our view, the Board and the Department have neglected to fulfill several integral requirements of the rulemaking process in a timely manner to allow for a thorough analysis of the impacts of the amendments to Title 25 (Environmental Protection), Chapters 78 and 78a, of the Pennsylvania Code as reflected in the final rulemaking published in the Pennsylvania Bulletin at 45 Pa.B. 1615.

When the Board initially set out to update oil and gas well regulations in 2013, it made clear that it was responding to the development of unconventional wells in Pennsylvania. As the rulemaking process unfolded, the Board and the Department were directed by the General Assembly to bifurcate the regulations to distinguish between what would be required of unconventional wells versus conventional wells. This was an important distinction to make, as the procedures involved in extracting oil and gas via unconventional wells differ greatly from those involved in conventional extraction. Unfortunately, when the Board submitted its proposed rulemaking at 43 Pa.B. 7377 in 2013, prior to the legislature's direction, the required regulatory analysis form (RAF) and regulatory flexibility analysis (RFA) failed to address the differentiated needs of conventional wells.

This was a crippling oversight in the regulatory process. While the unconventional well drillers are often large, multinational corporations, conventional drillers are mostly small businesses that have operated safely in Pennsylvania for many years – in some cases, for more than a century. As the Commission well knows, the Regulatory Review Act (Act 181 of 1982) places a strong emphasis on balancing the need for regulation against the challenges of operating a small business. The Commission clearly understood the distinction between unconventional and conventional well requirements when it questioned the validity of the data provided by the Board as it relates to conventional wells in the RAF. The Commission also acknowledged the Act's attention to the needs of small business when it advised the Board to tailor its

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RFA for each section of the rulemaking. Yet two years passed before the RAF was revised to address the Commission's concerns.

Now, as consideration of the final rulemaking approaches, the Department has published a revised RAF that attempts to rectify some of the problems of the earlier submission. However, this revised RAF falls short in several areas, not the least of which is that it fails to meet the statutory requirement of the Act that such an RAF be submitted "on the same date that an agency submits a proposed regulation." With the release of the 192-page revised RAF at such a late date – and after the close of the public comment period – the people of the Commonwealth and their representatives in the legislature are deprived of the right to fully vet the data contained therein.

The revised RAF includes assessments of the impacts of the regulations on conventional well operators and commentary on regulatory flexibility for small businesses, but having arrived so close to the scheduled vote on final approval of the rulemaking, the interested parties are severely handicapped in their ability to evaluate and offer feedback on the Department's presentation. In fact, we have heard from representatives of the conventional well industry who dispute the regulatory costs as projected by the Department and who assert that they were not consulted in the calculation of those costs. The Department may well have determined the costs in good faith and with proper consultation, but with such a compressed – and potentially unlawful – timeframe in which to evaluate the data, we fear the Commission will be unable to determine the validity of the information in the revised RAF. We also voice our disapproval of the lack of opportunity for public comment on the revised RAF.

We believe these shortcomings in regulatory analysis severely handicap the ability of the Commission to give full consideration to the impacts of the final rulemaking on conventional well operators. The regulation of the gas extraction industry is vitally important to protect both the environment and the economy of this Commonwealth. We urge the Commission to carefully consider the concerns we have highlighted before moving to approve the final rulemaking.

Sincerely,



Rep. Mark Longjetti, Chairman
7th Legislative District



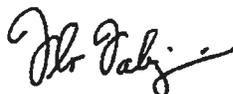
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CC: Rep. Frank Dermody, House Democratic Leader
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Rep. Greg Vitali, Democratic Chairman, House Environmental Resources and Energy Committee
Ms. Sarah Clark, Director of Legislative Affairs, Department of Environmental Protection

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