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MAR 17 2014
INDEPENDENT REGULATORY
REVIEW COMMISSION

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February 5, 2014

SECRETARY'S OFFICE

Environmental Quality Board
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FEB 19 2014

Dear Board Members:

DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Thank you for considering these comments to the proposed Chapter 78 rulemaking affecting oil and gas activities, and specifically how they will impact job creating small businesses in this Commonwealth.

As a historical point, I would like to note that my district (and region) has had a long history of producing natural gas through conventional drilling. These are small businesses and often family owned and operated through several generations. These businesses impact a wide range of other businesses with positive economic forces, including agriculture, with minimal environmental impact.

As noted in the letter from Senator Scott Hutchinson, et al., the relatively recent technological advances that have allowed for production of previously inaccessible formations have also necessitated updates and revisions to Pennsylvania's laws and regulations governing the new industry. Unfortunately, many of these regulatory and legislative changes – including parts of this proposed rulemaking related to surface activities – do not adequately allow for the significant differences between conventional and unconventional development.

Unlike the well-known multinational corporations – most of whom are developing unconventional shale formations in a safe and responsible manner – conventional operators are mainly *multigenerational* small businesses. The Regulatory Review Act requires the consideration of alternatives for small businesses. At a minimum, the proposed regulations should be revised in a way that establishes alternative technical requirements for conventional producers.

The obvious differences within the industry cannot be ignored and should be reflected in a separate regulatory framework for conventional oil and gas operations. The Department should educate its staff and inspectors on these differences – or better yet, delineate a separate inspection team altogether.

If advanced as proposed, the impact of these regulations will be felt far beyond the small business producers. In Pennsylvania there are two refineries designed specifically to process the Pennsylvania grade crude oil that is unique to our region. Both facilities employ hundreds of local residents and have made significant capital investments in recent years. Unfortunately, due in part to increased regulatory burdens on the producers, their supplies of Pennsylvania grade crude have reached alarmingly low levels. If this trend continues, the overall impact to the local economy will be devastating.

The environmental resources that are the pride of our Commonwealth have flourished side-by-side with conventional oil and gas development for over a century and these proposed regulations will not materially benefit those resources. We acknowledge that the conventional oil and gas industry is unfamiliar to most Pennsylvanians and is often assumed to be similar to the unconventional industry. In reality, the processes of conventional oil and gas drilling and production are vastly different and its surface impacts are far less. In many cases, the proposed regulations as they are currently written inadequately account for these differences and would place an inordinate burden on conventional operators, most of whom are small businesses, functioning much like family farms and only reaping small margins over the life of each well.

Again, I appreciate this opportunity to comment on a proposed regulation that will so significantly impact an industry that has defined the region I represent and continues to provide considerable economic benefit. At a minimum, I urge revisions (see Appendix) of the proposed rulemaking to reflect the considerable differences between conventional and unconventional oil and gas development and reject future efforts at one-size-fits-all regulation of the oil and gas industry. However, a more responsible and appropriate course of action would be for the Department to promulgate separate regulations for the very different conventional oil and gas industry.

Sincerely,



Sam Smith, Speaker
66th Legislative District

SHS:djp

Enclosure

APPENDIX

Listed below are several of the proposed regulatory changes that are of concern to Pennsylvania's conventional oil and gas industry. In addition to these specific concerns, the currently proposed regulations reference no less than 23 separate notifications to the Department. This onerous notification process should be limited or streamlined wherever possible. Furthermore, we would support the establishment of a building permit for conventional well operators, which would allow for well pad and access road construction if appropriate erosion and sediment controls are followed.

- **§ 78.15. Application requirements.**

- Like others, the conventional oil and gas industry has been adversely impacted by the ambiguity surrounding the requirements related to threatened species, endangered species and species of special concern. We urge cooperation between the Department of Environmental Protection and the resource agencies to establish an efficient system for identifying and protecting endangered species, including availability of a centralized database of endangered species and their areas of critical habitat.
- The language related to the protection of public resources, including the definition of a species of special concern, is ambiguous and should be revised to clarify what constitutes a public resource and what activities may be considered a harmful impact.

- **78.17. Permit renewal.**

- Businesses of all types face regular operational uncertainties. A one year permit term is inadequate and the regulations should be revised to provide for a three year term on drilling permits.

- **§ 78.51. Protection of water supplies.**

- The language should be revised to require a water supply affected by an operator to be restored or replaced to meet the quality and quantity of water that existed prior to well development activities.

- **§ 78.52a. Abandoned and orphaned well identification.**
 - Because conventional well drilling does not employ the practice of horizontal drilling, a search radius of 150 feet is sufficient to identify abandoned and orphaned wells that may be impacted by the operations.

- **§ 78.55. Control and disposal planning; emergency response for unconventional wells.**
 - The surface impact of a conventional well site represents only a small fraction of an unconventional well, and unlike unconventional well sites, conventional operators store minimal equipment and fluids at individual sites. Furthermore, the impacts of conventional well sites vary nominally. The proposed language requiring Preparedness, Prevention & Contingency (PPC) Plans should clarify that a single comprehensive plan is satisfactory for conventional well operators rather than site specific PPC plans. If the proposal is intended only for unconventional wells, the language should consistently state so.

- **§ 78.56. Temporary storage.**
 - The proposed language related to securable tank valves, access lids and other equipment should be clarified to reflect the differences between conventional and unconventional well sites. Furthermore, the language regarding securable equipment should be revised to specify that these upgrades will be required only at new sites, and at existing sites when the useful life of the current equipment ends and an upgrade is necessary.
 - High demand for limited drilling services, delays caused by weather events, and other extenuating circumstances make it difficult to establish a definitive timeframe for the drilling and completion of a conventional well. Moreover, the time frames necessary for the drilling and completion of conventional wells are far shorter than unconventional wells. The proposed language should be revised to allow for the single notice already required at the commencement of drilling a conventional well in lieu of the additional notice required under the proposed regulations.

- **§ 78.57. Control, storage and disposal of production fluids.**
 - The proposed language specifying a 2:1 slope for storage pits should be revised to allow for vertical sides in small pits. Pits at conventional well sites are used for a shorter duration and a steeper slope allowance will result in less surface disturbance without any greater likelihood of ground contamination.

- The proposed language related to open-top storage of brine and other production fluids should be clarified to reflect that such storage containers may be used during the drilling and completion of oil and gas wells.
- **§ 78.62. Disposal of residual waste – pits.**
 - The proposed language related to a certified minimum 20” pit depth above the seasonal high groundwater table should be revised to remove the certification requirement.
- **§ 78.66. Reporting releases.**
 - The threshold for a reportable release fails to account for the low level of total dissolved solids found in conventional well production water. Categorizing these fluids with other much more hazardous substances and contaminants unnecessarily burdens conventional well operators with minimal environmental benefit. The proposed draft regulation is overly inclusive and should be revised.
- **§ 78.67. Borrow pits.**
 - Conventional well operations often include a series of wells in relative close proximity. For this reason, borrow pits should remain active for the life of a project area, not for the construction of a single well pad.
- **§ 78.68b. Temporary pipelines for oil and gas operations.**
 - This section should be revised to clarify that it is not applicable to conventional operators.