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**Senate of Pennsylvania**

April 15, 2016

**COMMITTEES**

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VICE CHAIR
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senatorbartolotta.com

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RECEIVED  
IRRC

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

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

Dear Chairman Mizner:

We are writing on behalf of the Senate Gas and Oil Caucus to express our serious concerns with the final oil and gas rulemaking that is currently before the Independent Regulatory Review Commission (IRRC) for consideration. This rulemaking amends 25 Pa Code Chapter 78, related to environmental protection performance standards at oil and gas well sites.

As members of the General Assembly, we support strong protections for our environment and local communities to ensure that oil and gas development is done in a safe and responsible manner. Pennsylvania has done much in recent years to be a leader in this regard, through passage of the enhanced environmental protections contained in Act 13, to additional measures related to pipeline safety and emergency response management. Pennsylvania has routinely received high marks for environmental protection and regulatory oversight through independent evaluations, such as the State Review of Oil and Natural Gas Environmental Regulations (STRONGER).

However, the regulations which ultimately emanate from these statutes must be consistent with and adhere to the parameters established by the General Assembly and as determined by our courts. Additionally, all agencies, including the Department of Environmental Protection (DEP), are required to follow the proper protocols laid out in the Regulatory Review Act when promulgating such rulemakings. That has not occurred with the final rulemaking currently before you.

Particularly troubling is DEP's failure to adhere to Act 126 of 2014. This statute expressly directs the Environmental Quality Board (EQB) – which reviews and approves regulations for DEP – to promulgate separate rulemakings for both the conventional and unconventional oil and gas industry. The General Assembly established this directive not only so that the specific rules for each industry could be more easily comprehended by the regulated community, but also so that consideration of the merits of any proposed changes could be considered and voted on separately. However, all DEP has done with the final rulemaking is separate the requirements for conventional and unconventional operators into separate chapters. This process does not allow for independent consideration of the respective changes affecting conventional and unconventional operators and is not in conformance with the requirements of Act 126.

We also strongly object to DEP's use of the Advanced Notice of Final Rulemaking (ANFR) process to bypass critical requirements of the Regulatory Review Act. In March 2015, DEP released an updated rulemaking utilizing the ANFR process that contained significant new and substantive changes to the rulemaking that were not included or even contemplated in the December 2013 proposed rulemaking. By utilizing the ANFR process in this manner, DEP failed to provide an updated Regulatory Analysis Form (RAF) to accompany the revised rulemaking. As IRRC knows well, a RAF contains critical information – such as cost compliance estimates, statements of need for specific regulatory changes, and a demonstration of what, if any, consideration for small businesses the agency has included – that is necessary for an effective and informed public comment period. Moreover, because the ANFR is an informal process, IRRC is not afforded an opportunity to issue comments, seek clarification, or request additional justification for the changes proposed.

IRRC has received significant comments to date, including from the regulated community, which spell out in detail specific concerns contained in this massive rulemaking. We are concerned that due consideration of these comments and concerns has simply not occurred to date.

At a time when Pennsylvania's oil and natural gas industries are facing unprecedented market challenges, it is incumbent upon the Commonwealth not to impose additional costly and unnecessary burdens that only further the competitive strains Pennsylvania job creators are now experiencing. Moreover, it is essential that any rulemakings be done in a manner consistent with the direction provided by the General Assembly, through an open and transparent process that seeks to build consensus and adopt practical, commonsense rules.

For these reasons, we urge IRRC to disapprove of the final rulemaking currently before you, and to provide direction to DEP and the EQB on changes to the rulemaking necessary to effectuate your ultimate approval. Thank you for your consideration of these comments.

Sincerely,



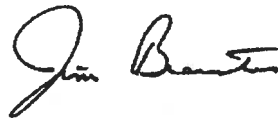
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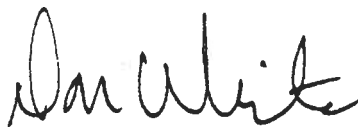
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