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INDEPENDENT REGULATORY
REVIEW COMMISSION

To: Environmental Quality Board
From: Patrick Greuter, Esq. – Executive Director
Re: Chapter 78 Oil and Gas Regulation Changes

Thank you for the opportunity to comment on the proposed changes to the Chapter 78 Oil and Gas regulations. My name is Patrick Greuter and I am an environmental attorney and the Executive Director of the Center for Coalfield Justice, which is located here in Washington. The Center for Coalfield Justice was founded in 1994 by individuals organizing against the harm and destruction of longwall coal mining. We have since expanded our mission to help folks impacted by the fracking industry as well. CCJ has more than a thousand members and supporters, most of whom live here in the crosshairs of the fossil fuel extractive industry, Washington and Greene counties.

While I commend the Board for recognizing the need to adopt revised environmental protection performance standards, it is important to note that the proposed standards are far weaker than what the law requires. Regrettably, it appears that the authors of the Proposed Rulemaking have ignored several fundamental issues related to oil and gas development. Instead, the Proposed Rulemaking wrongly prioritizes a narrow aim of fast tracking and accommodating the extraction of the Commonwealth's oil and gas resources.

I'd like to echo some of the sentiments added by partner organizations related to the need for pre-drill water testing and the restoration and replacement of contaminated water supplies.

Additionally, the regulations related to residual waste are unlawfully inadequate. The DEP's own studies have shown extensive and significant environmental pollution and harm resulting from faulty pits. Some companies have already started using a closed loop system to better contain these harmful wastes. For some reason, despite all this, the DEP has proposed allowing onsite burial of pits. In fact, the DEP only requires the pits to be 20 inches above the seasonal high groundwater table. Other states are more protective, New Mexico requires 25 ft. Also, the DEP is only proposing setback requirements for pits in regards to streams flowing year round, rather than protecting intermittent streams, which is contrary to the Clean Streams law. Why the DEP would fail to recognize the persistent threat that pits pose to the environment and human health is difficult to comprehend. Clearly, all pits must be prohibited.

Also, under the proposed regulations the DEP would allow brines from conventional gas wells to be spread on roads for dust suppression and de-icing. Brines spread on the roadways make its way through stormwater runoff, into nearby waterways or wetlands. Brines have the potential to push salinity loads far above any naturally occurring conditions, which would

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impact the quality and uses of nearby waters. The proposed regulations are not only imprudent but they are also contrary to existing regulation.

The beneficial use of brine for dust suppression has never been approved under the Solid Waste Management regulations. Furthermore, the Department has already attempted to issue a beneficial use general permit that would have allowed gas well brines to be used for both dust suppression and de-icing purposes. However, as a result of concerns about health and water quality impacts, the DEP withdrew the general permit in November 2012. Now, the proposed revisions to Chapter 78 would allow brine to be used for both dust suppression and de-icing – precisely what was attempted with the failed attempt earlier.

In addition, these revisions would be unlawful if adopted because they would establish a “permit-by-rule” approval process. Chapter 287 regulations do not allow a new-permit-by rule approval for beneficial uses.

Another glaring deficiency in the proposed regulation relates to the Department’s duty to investigate water pollution. The proposed chapter 78 regulations require the Department to investigate a claim and determine whether the pollution or a diminution of a water supply was “caused by well site construction, drilling, alteration, or operation activities.” This is particularly alarming because this set of activities is much more limited than the activities included in the definition of oil and gas operations in the proposed regulations. The Department wants to define Oil and Gas operations to include: well location assessment, seismic, operations, construction, drilling, hydraulic fracturing, completion, production, operation, alteration, plugging, site restoration, water withdrawals, residual waste processing, water and other fluid management and storage used exclusively for the development of oil and gas wells; construction, installation, use, maintenance and repair of oil and gas pipelines, natural gas compressor stations, and natural gas processing plants or facilities performing equivalent functions; construction, installation, use, maintenance and repair of all equipment directly associated with activities; and finally earth disturbance associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities.

Despite the fact that all of the activities included in the definition of Oil and Gas may be relevant to the Department’s investigation or have the potential to cause or contribute to the pollution of a water supply, the Department wants to limit its investigation to only 4 of those activities. This proposed revision is fundamentally flawed and must be revised to include all of the activities included in the definition of Oil and Gas Operations.

Finally, Pennsylvania is pot-marked by old abandoned wells, some known, and some unknown. The existence of these wells presents a possible migratory pathway for harmful fracking fluids, drilling fluids, and gas. While CCJ appreciates the Department’s effort to address the issue of abandoned wells in Pennsylvania, the proposed regulations do not go far enough to protect citizens and the environment. Section 78.73 does not do enough to prevent a problem. Under

the proposed regulations, if an abandoned well is identified within 1000 ft of the well bore or lateral, and the abandoned well likely penetrates a formation intended to be stimulated, the operator must visual monitor during stimulation activities. If the operator alters the orphaned or abandoned well by fracking, then it must plug the well.

The Department has neither defined what the operator must do to visually monitor the abandoned well nor what constitutes altering an abandoned well, thereby triggering the requirement that the operator must plug the well. It is conceivable that by the time the operator, by visually monitoring the well, notices it altered the abandoned well - the damage may be done. The Department has a duty to prevent environmental harm. If an abandoned well is located and it is likely that the old well penetrates a formation intended to be fracked, the Department should require the operator to either plug the abandoned well or locate its well pad somewhere else.

