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INDEPENDENT REGULATORY  
REVIEW COMMISSION

January 13, 2014

Environmental Quality Board  
PO Box 8477  
Harrisburg PA 17105-8477

RE: Comments to Proposed Regulation 25 PA Code Chapter 78 - Presented at the Public Hearing held in Williamsport

To Whom It May Concern,

My name is Teresa McCurdy and I am here today to testify at this public hearing on the proposed rulemaking of Chapter 78 under the Oil and Gas Act on behalf of my own company which is a government and public relations firm specializing in energy. Some of my current clients mine coal, generate electricity, and an engineering company that provides services to the natural gas industry.

I also represent a wastewater treatment company that treats a variety of liquid waste that is generated by the natural gas industry. Liquid waste can be flowback and production water, but also cement water, rain water that collects in secondary containment, tank cleanings and other liquid waste generated at a well site or pipeline transmission such as dirty water from boring holes under roads. The plant is a zero-discharge facility. It treats the all of the fluids that it receives into treated brine for reuse by operators for fracking other wells. By treating and reusing brine water, this reduces the amount of fresh water needed and the amount of wastewater to be disposed of injection wells.

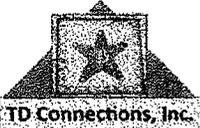
I also provide this company business development services which require me to attend many natural gas conferences and participation in gas associations' events, conferences and meetings such as the PA Independent Oil and Gas Association (PIOGA), PA Grade Crude Coalition (PGCC), PA Independent Petroleum Producers (PIPP), the Marcellus Shale Coalition (MSC) and a few others.

As a member of PIOGA, I serve as the Subcommittee Chair on Water, Waste Management and Recycling as part of the Environmental Committee and have had the honor of attending the Oil and Gas Technical Advisory Board (TAB) Workgroup public hearings on Chapter 78 on behalf of PIOGA.

Why is this relevant? Because one thing that has impressed me since I first learned about the Marcellus Shale in 2008 is how diligent the natural gas industry is at developing and utilizing best management practices; as well as working the PA Department of Environmental Protection (DEP) to ensure that the environment is protected.

I have great respect for both DEP and the industry and commend them both on the thousands of man hours that have gone into this proposed regulation to get it to this point. However, I agree with the aforementioned associations in that due to the recent PA Supreme Court decision on Act 13 of 2012, those sections that are affected by the decision should no longer be part of this proposed rule.

Act 13 contains language aimed at strengthening PA's regulatory landscape to provide greater environmental protection. However, some of the proposed revisions of Chapter 78 could be viewed as



contradictory, unclear or over burdensome on the industry.

Here are a few examples:

1. Exceeding DEP's statutory authority:
  - a. At one of the TAB meetings, members expressed their concerns that that all or parts Chapter 78 revisions dealing with abandoned and orphan wells, public resources, site restoration, pipelines, horizontal direction drilling, and tanks and containers go beyond the department's authority and should be revised or deleted from the proposed rules. Some of these concerns were justified with the PA Supreme Court ruling.
2. Definition of conventional v. unconventional well/formation:
  - a. Based on Act 13, the proposed regulation defines a "Conventional well—A bore hole drilled or being drilled for the purpose of or to be used for the production of oil or gas from a conventional formation" and "Conventional formation—A formation that is not an unconventional formation." However, an "unconventional formation" is not defined.
  - b. However, in DEP's proposed rulemaking for Oil and Gas Well Fee Amendments, industry comments were submitted to change the "conventional well" definition in order to address some of the ambiguity concerns such as that a well shall not be determined due to technology because technology changes over time.
  - c. Before the Marcellus, Chapter 78 there was only conventional operators. Now parts of the regulation apply to both and other parts only apply to one or the other. It is important to note that conventional drilling is on much smaller scale. I once heard a legislator at a press conference state that the same regulations should not be applied when building a single dwelling house as you would to a large retirement home. There are many sections which there is no distinction thus resulting in further confusion and unfairness, such as Sec. 78.57 Control, Storage and disposal of production fluids. This section requires specific slope pitches to impoundments that do not make sense for a conventional operator as the well pads are about 9 times smaller than unconventional operators.
3. Section 78.58(f) – Onsite Processing – states "(f) Sludges, filter cake or other solid waste remaining after the processing or handling of fluids pursuant to subsections (a) or (b), including solid waste mixed with drill cuttings, shall be characterized pursuant to 25 Pa. Code § 287.54 before the solid waste leaves the well site."
  - a. This section refers to Residual Waste regulation which requires a full chemical analysis that can take up to approximately 27 days to get the results for certain parameters. Keeping this material onsite for this length of time is not practicable or would require much larger well pads be built.
  - b. If an operator is taking this residual waste to a recycling facility rather than a landfill, it does not make sense to do a chemical analysis where the liquid waste will be mixed with other liquid waste and then treated. Therefore, we suggest that DEP adds to the end of this paragraph "for disposal."
  - c. In TAB meetings, it was unclear if these tests were to be completed on every truck load or once per waste stream based upon the justification for the proposed rule.
4. Mine Influenced Water (MIW) is defined as:
  - a. "Mine influenced water—Water contained in a mine pool or a surface discharge of water caused by mining activities that pollutes, or may create a threat of pollution to,

waters of the Commonwealth. The term may also include surface waters that have been impaired by pollutional mine drainage as determined by the Department.”

- b. The industry has been working with DEP and the legislature to be able to use MIW, commonly referred to as Acid Mine Drainage Water or AMD, for fracking to help offset the use of high quality stream water through legislation and a White Paper. Both attempt to limit the liability for the use of this water with respect that if a company takes MIW from a source, that company is not responsible to continue to treat that water for forever. Current law states once you touch it, you are responsible for it forever. The industry appreciates both efforts; however, the proposed regulation has very strict standards for testing, storing and monitoring that continues to make the use of MIW non-economical. I am familiar with one gas company that has an impoundment next to the stream in which it withdraws the MIW. It doesn't make sense to monitor the stream from which the water came from. To encourage the use of MIW, there needs to be more flexibility in storage if the storage is located in the same watershed.

In summary, I want to thank the EQB and DEP for holding these hearings and the opportunity to present testimony.

Sincerely,

Teresa Irvin McCurdy  
President/CEO