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April 29, 2015

Pennsylvania Department of Environmental Protection
Policy Office
400 Market Street, PO Box 2063
Harrisburg, PA 17105-2063

Re: 25 PA Code Chapter 78, Subchapter C

Founded in 1992, Dawood Engineering is headquartered in Pennsylvania serving clients nationally with offices located in West Virginia, Ohio, Massachusetts, and Texas. Our company provides consulting services for a wide range of industries including municipal governments, educational institutions, hospitals, landfills, privately held companies and large public corporations. In the oil and gas market, we provide engineering, permitting and field services including facilities design, survey and routing, wetland delineation, geotechnical investigations, and hydrostatic testing.

The exploration and development of the Marcellus Shale in Pennsylvania brought to our firm a tremendous opportunity at a time when we, like many engineering firms, were feeling the negative economic impacts of the Great Recession. Dawood's leadership quickly recognized that the oil and gas industry would need the design skills and regulatory knowledge of our professionals who worked in the land development and transportation industries for years. The transition required rigorous training to attain the strict health, safety, and environmental standards demanded by our oil and gas clients.

The energy industry has brought growth to Dawood and recognition as a top 500 firm by the Engineering News Record in 2013 and 2014. We now have eight office locations and employ nearly 200 employees. As a successful minority-owned firm, we are proud of our diverse workforce of engineers, surveyors, and scientists who assist in the safe, responsible, and compliant development of our natural resources. As a business, we recognize the importance of the oil and gas industry to our economy and believe it helped to position Dawood to withdraw voluntarily from the Disadvantaged Business Enterprise program run by the Commonwealth in October 2014.

As noted, our engineers, scientists, and technicians are knowledgeable and trained in Pennsylvania's regulatory environment and we appreciate the Pennsylvania Department of Environmental Protection's ("PADEP") efforts to protect our natural resources. Pennsylvania has been recognized as having some of the nation's strongest regulations on oil & gas development and we support that. According to STRONGER (the State Review of Oil & Natural Gas Environmental Regulations) the current regulations are "well managed and meeting its program objectives".

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However, we are concerned that the Commonwealth is shifting its focus from upholding these high standards to creating a regulatory environment that is punitive and borders on government overreach. We fear that the new proposed requirements, while meant to protect, will instead provide minimal protection of our valued resources at significant costs. This will ultimately cost jobs, harm our company financially and devastate the economy of Pennsylvania.

Dawood offers the following comments pertaining to the proposed rulemaking on 25 PA Code, Chapter 78, Subchapter C:

1. As per Executive Order 1996-1 and Section 5.2 of the Regulatory Review Act, the PADEP is required to complete a full Regulatory Analysis of any new regulation that includes a cost/benefit analysis and submit such to the Environmental Quality Board (EQB) and the Independent Regulatory Review Commission (IRRC). The PADEP has not completed such action for all elements contained in the proposed revisions to Chapter 78, specifically, as it relates to the noise mitigation proposal and the centralized tank storage provision.
2. §78a.41 Noise Mitigation. The inclusion of new standards pertaining to noise mitigation far exceeds the authority and capacity of PADEP to regulate and enforce. This section is vague and approaches noise from a qualitative perspective that is subjective in nature for assessment and enforcement. Inclusion of this new requirement poses potential conflicts with municipal zoning ordinances that have noise emission standards. This language appears to usurp authority from those who are best equipped to respond to local concerns of such matters. Finally, the PADEP does not have the expertise or equipment needed to enforce matters pertaining to the science of acoustics.
3. §78a.1 Definitions. PADEP is creating conflict with existing standards and regulations in the newest version of the proposed rulemaking. Inconsistent definitions, coupled with new language, will create tremendous regulatory uncertainty and have negative consequences that will drown the oil and gas industry with unnecessary mitigation measures. Three areas of concern are:
 - a. The definition of Floodplain is inconsistent with Chapter 105 and creates confusion with the FEMA definition of floodway, *which is the FEMA mapped floodway or 50 feet from top of bank of a stream (regardless of stream class)*. This language should not differ from the FEMA definition as an ephemeral stream is a subset of an intermittent stream and there may be confusion that ephemeral streams do not need to be considered for permitting, when in fact they must.
 - b. The inclusion of “common areas” of schools or playgrounds will overwhelm the PADEP with the effort to identify such locations. Adding such criteria unfairly burdens the oil and gas industry and companies such as ours because of the sheer number of “common areas” that potentially could be identified and corresponding mitigation measures that could be proposed. The use of this language lacks the transparency of the resources listed in Act 13, which include state and national resources. Such is notable because of the precise listing procedures for inclusion of these resources and/or documented geographic boundaries, in the case of parks, forests, and game lands.

- c. The new definition of “critical communities” sets an unrealistic standard with which the oil and gas industry would have to comply. At the best-case scenario, the definition does not provide for consistency with conceivably compatible definitions or databases. However, most disturbing is the overwhelming number of new categories of resources that would be protected without the required public process or corresponding science and fact finding that is mandated by Pennsylvania law.
4. As authorized by Act 13, the EQB is required to develop criteria upon which permit conditions would be based and which would protect the rights of mineral owners while allowing for optimal development of oil and gas resources. Upon review of the proposed revisions, such criteria is missing. The failure to offer a procedural construct for the regulations will exacerbate regulatory uncertainty for the oil and gas industry.
5. As per Section 5.1 of the Regulatory Review Act, the PADEP is required to provide a comment and response document along with the final form regulation to IRRC upon completion of its review of comments. Dawood submitted written comments and verbal testimony on January 13, 2014, to PADEP and our ability to comment upon the additional changes is weakened without the Comment and Response Document. We request such be made available and provide our initial comments again for reference below:

Section 78.51(2) Quality- *the quality of a restored or replaced water supply will be deemed adequate if it meets the standards established under the Pennsylvania Safe Drinking Water Act (35 P.S. Sections 721.1-721.17) or is comparable to the quality of the water supply before it was affected by the operator if that water supply exceeded those standards.* Dawood agrees that if an operator impacts water quality, the operator is responsible for restoring or replacing the water supply. However, the operator should only be responsible for restoring or replacing an impacted water supply to the quality of the water supply before it was affected by the operator.

Section 78.52a – Abandoned and orphaned well identification, *proposes that the operator identify the location of orphaned or abandoned wells within 1000 feet measured from the surface above the entire length of a horizontal well bore.* Identifying abandoned and orphan wells is acceptable, however, this requirement must not be open ended. In its current form this regulation is unclear as to what requirements will be placed on industry and has the potential for undue and unnecessary added expense.

Section 78.15(g) requires the operator to protect public resources, but the regulations do not provide the criteria for protecting the public resources. Dawood suggests that the proposed regulations be revised to clarify words such as *corridor (Section 78.15(f)1(ii)), discrete areas (Section 78.15(f)4), etc.* As with other regulatory programs (e.g., RCRA), the regulations should provide language that allows the operators to rely on generator knowledge for disposal purposes in lieu of continued chemical analysis of materials generated on site.



In closing, Dawood urges the PADEP and EQB to reconsider the proposed regulations. Modifying and revising the Oil & Gas regulations at this time without providing scientifically sound and clear language, or following the required procedural process, would be detrimental to the EQB, PADEP, industry and the citizens of the Commonwealth.

Sincerely,

Dawood Engineering, Inc.

A handwritten signature in black ink, appearing to read 'Joy M. Ruff', written over the printed name.

Joy M. Ruff, AICP
Director of Planning and Community Relations

A handwritten signature in black ink, appearing to read 'Bony R. Dawood', written over the printed name.

Bony R. Dawood, PE
President

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