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CONVENTIONAL OIL AND GAS ADVISORY COMMITTEE

2015 JUL -7 AM 11: 31

Proposed Amendments to 25 Pa. Code Chapter 78
Environmental Protection Performance Standards at Oil and Gas Well Sites Re; Pa. Code
Chapter 78 Subchapter C

Dear Deputy Secretary Perry,

The Environmental Quality Board proposed amendments to 25 Pa. Code Chapter 78 that were published in the Pennsylvania Bulletin on December 14, 2013, accepting comments through March of 2014. The regulated community provided written and oral testimony along with voluminous comments that expressed serious concerns with many detailed aspects of the proposed rules as they would affect conventional oil and gas operations. Many commenters cited flaws in the statutorily mandated process for promulgating a new rule for conventional oil and gas wells.

During the initial meeting of COGAC on March 26, 2015, committee members provided critical comments and concise recommendations to revise the draft ANFR before its publication. COGAC members questioned why no harms analysis was conducted or data provided to demonstrate that the existing rules for Conventional Oil and Gas Wells do not adequately protect the environment.

DEP subsequently published an ANFR in April 2015 that did not address the vast majority of the concerns expressed by the Conventional Oil and Gas Industry and in fact, raised many others.

The trade associations (including PGCC, PIPP, PIOGA) have all provided detailed comments on the ANFR, and have expressed serious concerns about the legality, the need for, and specific details of the rule. The voting members of COGAC share all of these same concerns and are in agreement with the industry comments. They are attached to this letter for reference.

The comment period for the ANFR is now complete and the Department is reviewing written and oral comments received. COGAC understands that DEP will be disclosing a final draft of the Rule at the COGAC meeting on August 27, 2015.

In the spirit of cooperation and fairness, the voting members of COGAC would like to communicate our findings and recommendation to the Department now, rather than wait until August 27th. The voting members of COGAC met on June 18, 2015 to discuss the current status of the Chapter 78 regulatory process and concluded that we are in full agreement that the vast majority of the proposed changes are unnecessary and inappropriate, and the process for promulgating the Rule for Conventional Oil and Gas wells is fundamentally flawed and cannot

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be cured. More specifically the voting members of COGAC believe the procedure for promulgating this new rule (25 Pa Code Chapter 78a Subchapter C) for Conventional Oil and Gas Operations is flawed for the following reasons;

1. The Department has failed to comply with the rulemaking standards of the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

The Department has not provided evidence along with supportive data that would demonstrate there is a compelling need for sweeping revisions to the regulations for the Conventional Oil and Gas Industry.

In the comments to the proposed rule provided by the Independent Regulatory Review Commission on April 14, 2014, the IRRC made the following recommendation;

RRA Section 5.2(b)(3)(iii) - Need for the regulation.

Section D of the Preamble to this rulemaking relates to background and purpose. It notes the following: "The 2012 Oil and Gas Act contains new environmental protections for unconventional wells and directs the Board to promulgate specific regulations. For these reasons, the [EQB] initiated this proposed rulemaking." (Emphasis added.)" Commentators representing the conventional oil and gas industry believe this rulemaking will have a serious negative impact on their businesses. While we understand that EQB has the authority to amend its regulations relating to conventional wells, we ask for a detailed explanation of why more stringent regulations for the conventional oil and gas industry are needed at this time. Has EQB witnessed an increase in environmental mishaps or violations from conventional well operators? What problem is EQB attempting to correct through this proposal with respect to conventional wells?

Once again in the comments to the proposed rule provided by the Independent Regulatory Review Commission on April 14, 2014, the IRRC made the following recommendation;

RRA Sections 5(a)(12.1) and 5.2(b)(8) - Whether a less costly or less intrusive alternative method of achieving the goal of the regulation has been considered for regulations impacting small business.

Section 5(a)(12.1) of the RRA (71 P.S. § 745.5(a)(12.1)) requires promulgating agencies to provide a regulatory flexibility analysis and to consider various methods of reducing the impact of the proposed regulation on small business. Commentators, including legislators, do not believe that EQB has met its statutory requirement of providing a regulatory flexibility analysis or considering various methods of reducing the impact the proposed

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regulation will have on small business in its responses to various sections and questions on the RAF. While we appreciate the effort put forth by EQB to meet its "small business" obligations under the RRA, we agree that more information is needed in the RAF. We ask EQB to provide the required regulatory flexibility analysis for each section of the proposed rulemaking.

2. The Department has not complied with Act 126 of 2014.

The Act requires the Department to "promulgate proposed regulations and regulations under 58 Pa. C.S. (relating to oil and gas) or other laws of this Commonwealth relating to conventional oil and gas wells separately from proposed regulations and regulations relating to unconventional gas wells." Act 126 also requires that all regulations under Pa C.S. 58 differentiate between Conventional oil and gas wells and Unconventional gas wells. The General Assembly adopted Act 126 to address the impropriety of regulating conventional and unconventional oil and gas operations as a single industry. Simply dividing the rule into separate subchapters in the middle of the current rulemaking process did not follow the mandatory statutory procedures for the promulgation of a separate rule for conventional oil and gas operations.

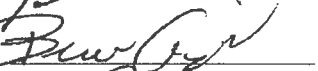
For all of these reasons, the voting members of COGAC will not be able to support the Department's submission of the regulatory package to the EQB for adoption as a final rule, regardless of revisions that DEP may or may not make before that submission.

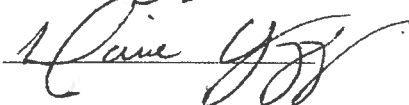
Sincerely,

Dave Ochs 

Mark Cline 

Burt Waite 

Bruce Grindle 

Dave Yingling 

CC: IRRRC, EQB, non-voting Members of COGAC, TAB and members of the PA Senate and House Environmental Resources and Energy Committees