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January 14, 2016

Via email to: ljohnson@irrc.state.pa.us
Leslie Lewis Johnson, Esq.
Chief Counsel
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

2016 JAN 15 AM 9:31

RECEIVED
IRRC

RE: Independent Regulatory Review Commission Proposed Rulemaking
Amendments to 1 Pa. Code Chapters 301, 303, 305, 307, 309, 311, 311a and 315

Dear Chief Counsel Johnson:

On December 28, 2015, I submitted the comments of the Pennsylvania Independent Oil & Gas Association (“PIOGA”) concerning the above-referenced proposed rulemaking.

PIOGA recommended additional regulation language to address the problem of agencies’ submitting regulatory analysis forms (“RAF”) objectively not in compliance with *existing* statutory and regulation requirements. PIOGA highlighted the failure to include with proposed regulations the forms, instructions and “guidance” documents significant for the day-to-day implementation of the proposed regulations – if adopted as final – as an example. In this context, the Regulatory Review Act (“RRA”) definition of “proposed regulation” is significant:

A document **intended for promulgation as a regulation** which an agency submits to the commission and the committees and for which the agency gives notice of proposed rulemaking and holds a public comment period pursuant to the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

RRA, Section 3 (emphasis added).

Our December 28th comments noted that much too frequently forms, instructions and guidance documents critical for effective review and understanding of proposed regulations by all stakeholders, including the Commission, are not submitted as part of the *proposed* rulemaking package as required by RRA Section 5(a)(5) and the Commission’s regulation at 1 Pa. Code § 305.1(b). We also noted that allowing agencies to develop these forms, instructions and guidance documents after the close of the comment periods or provide them only as part of the final-form rulemaking package is clearly contrary to the RRA and the Commission’s *existing* regulations and, as a practical matter, is too late in the rulemaking process to advance the purposes of the RRA with respect to a *proposed* regulation.

The purpose of this letter is to provide the Commission with information that squarely supports this aspect of our comments but was unavailable by the time the comments were due. As this information does not enlarge the scope of our comments, we believe this information is properly considered along with our comments submitted December 28th.

Attachment No. 1 is the Agenda for a January 13, 2016 meeting of an agency advisory committee concerning a final-form rulemaking that may or may not be submitted to the Commission (*see* Attachment No. 2). As the Commission's records show (IRRC #3042), despite the admission that this proposed regulation will impose new reporting, notification and documentation requirements, *the agency included no forms, instructions and guidance documents in the proposed rulemaking package.*

The attached Agenda shows that the agency is only now – one week *after* submitting the final-form rulemaking package to its regulation promulgating board – engaging the regulated community in a public review and discussion of (1) forms required to implement the final-form regulation (2) “technical guidance documents” implementing *new* regulatory requirements.

Any notion that an agency cannot develop and include these types of documents in its proposed regulation package is contrary not only to the specific requirements of RRA Section 5(a)(5) and the Commission's regulation at 1 Pa. Code § 305.1(b), but also the fundamental purpose of the RRA with respect to a proposed regulation and the definition of a “proposed regulation.”

Accordingly, this information clearly shows the need for, and supports, PIOGA's recommended additional regulation language.

On behalf of PIOGA and its members, I thank you for considering this information.

Sincerely,



Kevin J. Moody, General Counsel
PIOGA

cc: Honorable Jake Corman, Chair
Senate Rules and Executive Nominations Committee
Honorable Jay Costa, Democratic Chair
Senate Rules and Executive Nominations Committee
Anna Fitzsimmons, Executive Director
Senate Rules and Executive Nominations Committee
April Coble Weidner, Democratic Executive Director
Senate Rules and Executive Nominations Committee
Ron Jumper, Democratic Executive Director
Senate Rules and Executive Nominations Committee
All via email

COMMONWEALTH OF PENNSYLVANIA

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FOR IMMEDIATE RELEASE

01/6/2016

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DEP Sends Final Oil and Gas Rules to Environmental Quality Board

The Pennsylvania Department of Environmental Protection (DEP) transmitted the final "Environmental Protection Performance Standards at Oil and Gas Well Sites" rulemaking (Chapters 78 and 78a) to the state Environmental Quality Board (EQB) for review today. This step brings the rules closer to enactment, and continues DEP's commitment to modernizing and strengthening the environmental controls employed by both the conventional and unconventional industries to assure the protection of public health, safety, and the environment.

DEP provided EQB with more than 2,800 pages of materials supporting the rulemaking, including the executive summary, the regulatory language, a fact sheet, the order, and regulatory analysis form. The package also includes the comment and response document, in which every one of the almost 28,000 comments were addressed by DEP. Taken together, the order, regulatory analysis form, and comment and response document provide the justification for the final-form rulemaking.

"These regulatory changes are balanced, incremental and appropriate; protecting public health while enabling responsible drilling to proceed," said DEP Secretary John Quigley. "These rules are a long time coming – more than 4 years – and were written with an unprecedented amount of public participation and transparency. We've worked hard to ensure that the health and safety of our citizens are protected, and the needs of industry are being met."

The amendments to the oil and gas regulations address surface activities at well sites, and center on five core areas. The amendments:

- Improve protection of water resources,
- Add public resources considerations,
- Protect public health and safety,
- Address landowner concerns, and
- Enhance transparency and improve data management.

"It's important to emphasize the role of the public and stakeholders in this process. Across a dozen public hearings, two public comment periods that attracted almost 28,000 comments, and 20 meetings with the Oil and Gas Technical Advisory Board and Conventional Oil and Gas Advisory Committee, this has been an exercise in transparency in rulemaking," said Quigley.

"These rules present a distinct, substantive separation of regulatory provisions applicable to conventional and unconventional wells. They will allow the oil and gas industries in Pennsylvania to continue to flourish, while adding additional common-sense environmental and public health safeguards," he added.

The rulemaking revisions are the first since 2001 to update surface impacts of drilling and production activity. The rulemaking package itself has been in development since 2011.

The Environmental Quality Board will now review the final-form rulemaking package, and once adopted will be reviewed by the Independent Regulatory Review Commission.

For more information, or to view the rulemaking, click [here](#) or visit www.penn.gov and click the "Oil and Gas Rulemaking" button.

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**Conventional Oil and Gas Advisory Committee Meeting
Room 105, Rachel Carson State Office Building
Harrisburg, PA
January 13, 2016 10:00 AM**

AGENDA

- 1. 10:00 – 10:15 AM – Introductions, Opening Remarks, Approval of October 29, 2015 Minutes**
- 2. 10:15 – 10:45 AM – Summary/Overview and Discussion of Forms Required to Implement the Final Rulemaking Amending Chapter 78**
- 3. 10:45 – 11:45 AM – Summary/Overview and Discussion of Draft Technical Guidance Documents Implementing Chapter 78 (Area of Review and Water Supply Replacement)**
- 4. 11:45 – 12:00 PM – Seismic Monitoring Network Update**
- 5. 12:00 – 1:00 PM – Lunch**
- 6. 1:00 – 2:00 PM – Presentation and Discussion regarding Pennsylvania Conservation Explorer and PNDI Project Screening**
- 7. 2:00 – 2:30 PM – Clean Power Plan Presentation**
- 8. 2:30 – 2:45 PM – Break**
- 9. 2:45 – 3:15 PM – Oil and Gas/Coal Coordination Issues**
- 10. 3:15 – 3:30 PM – Well Completion Report Update**
- 11. 3:30 – 3:45 PM – Waste Reporting Codes Update**
- 12. 3:45 – 4:00 PM – New Business**