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DONNA OBERLANDER, MEMBER
CAUCUS SECRETARY
63RD LEGISLATIVE DISTRICT

HARRISBURG OFFICE:
P.O. Box 202063
Harrisburg, PA 17120-2063
Phone: (717) 772-9908
Fax: (717) 782-2912
Toll-Free: 1-888-497-5100

E-mail: doberlan@pahousegop.com
Web: RepOberlander.com

House of Representatives
Commonwealth of Pennsylvania
Harrisburg

DISTRICT OFFICES:
160 South Second Ave., Suite C
Clarion, PA 16214
Phone: (814) 226-9000
Fax: (814) 226-1614

309 Saltwork Street
P.O. Box 304
Elderton, PA 15736
Phone: (724) 354-3500
Fax: (724) 354-2896

August 10, 2018

The Honorable Patrick McDonnell, Chairman
Environmental Quality Board
16th Floor Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063

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Re: Proposed Rulemaking: Unconventional Well Permit Fee Increase

Dear Chairman McDonnell:

We are writing to share with you our comments and concerns regarding the above-referenced proposed rulemaking, which would drastically increase the application fee for an unconventional well permit from the current $5,000 to $12,500.

Permit Review Timeframes

Under state law, the department must review permit applications within 45 days, unless the review is extended by an additional 15 days for a specific, compelling reason. However, the review timeframes have increased significantly in recent years, despite few permit applications coming into the department due to market difficulties faced by the industry. While permits can be applied for and received in many states in a week or less, it is our understanding that last year the average review time for an unconventional well permit was in excess of 110 days.

While review times have improved in 2018, there are no assurances that the circumstances which led to such drastic delays in prior years will not resurface. The department has referred to this permit fee increase as a 'status quo' increase, meaning that no additional efficiencies or improvement to review times will be realized under this proposal. It is inconceivable that a permit fee increase of 150%, totaling nearly $15 million in new revenue annually, will merely maintain a status quo that currently lags behind other states with which we are competing for capital investment and job creation.

Relevant Statutory Authority

The Oil and Gas Act requires that any permit fee charged by the department bear a reasonable relationship to the cost of overseeing the oil and gas industry. It is our understanding that, while the unconventional natural gas industry accounts for approximately 60% of the workload of the department, it contributes in excess of 99% of the department's oil and gas program budget. This funding inequity is only exacerbated by imposing an additional $15 million in permit fees on the shale gas industry.

More importantly, we do not believe that the statutory authority granted to the Environmental Quality Board by the General Assembly allows for the department to propose such a disproportionate share of funding responsibility upon one segment of industry. The department's current approach ignores the mandate that such a permit fee bear a reasonable relationship to the cost to oversee the shale gas industry.

General Fund and Impact Fee Support

We recognize the significant financial challenges currently faced by the conventional oil and gas industry and certainly do not support any increase in the permit costs of this segment of the industry. However, we do strongly recommend that the department supplement a reasonable amount of the costs to run its oil and gas program from its current General Fund appropriation. This would be consistent with nearly every other program administered by the department, such as the water, waste, air, radiation protection and mining programs, all of which receive some level of General Fund support. The budget recently approved by the General Assembly and signed by the governor provides nearly $140 million in unencumbered General Fund dollars to the department. It is appropriate that some of these funds help support the oil and gas program.

Moreover, it is our understanding that the department does not intend to include its $6 million annual allocation from the Act 13 natural gas impact fee in the oil and gas program's basic operating budget. Instead, the department intends to set these dollars aside either to add new staff or expand policy initiatives. This approach is unacceptable. When crafting Act 13, the General Assembly expressly intended to provide a portion of funding to support the costs of overseeing the growing natural gas industry. These funds were also intended to provide a stable, predictable annual funding stream to supplement the revenue from one-time permit application fees, which are highly volatile depending on the current economic health of the industry. It is our recommendation that the department re-evaluate its budgeting approach and include the $6 million impact fee allocation in its base budget.

Competitiveness with Other States

Under the Regulatory Review Act, agencies are required to consider the negative implications of a proposed rule on the Commonwealth's economic competitiveness. However, in its analysis, the department chose only to look at four adjacent states – two of which (New York and Maryland) have prohibited shale gas development and are therefore completely irrelevant to this statutorily mandated consideration. DEP should have included a survey of other shale-gas producing states with which Pennsylvania is competing for capital investment in order to do an adequate and fair comparison.

Based on our own comparison, it is clear that Pennsylvania's proposed permit application fee of $12,500 will be the highest in the nation, yet another distinction that signifies Pennsylvania is not open for business. In fact, the *current* $5,000 fee is already the highest in the nation (West Virginia charges $10,000 for the first well permit on a pad, but this also includes review of well site construction and stormwater management controls; subsequent permit applications on a well pad are $5,000). Many other states charge several hundred dollars for a shale gas permit, while two states (Colorado and New Mexico) charge nothing.

At a time when Pennsylvania is already losing the competitive race for capital investment to states like Texas and New Mexico, where regulatory and tax climates are stable and therefore return on investment opportunities more predictable, it is impossible to conclude anything except that this proposal will worsen the economic and competitive climate of Pennsylvania. This proposal, combined with a broader agenda of over-regulating and micro-managing the industry's operations, sends a chilling message to anyone contemplating investment in Pennsylvania.

Conclusion

We recognize the need for the department to have adequate staff and resources necessary to meet its statutory obligations. However, the proposed permit fee increase is unwarranted and is unsupported by the statutory authority afforded to the department. We strongly urge the department to reconsider this proposal and instead utilize General Fund dollars already available to the agency to help support the oil and gas program.

Additionally, the $6 million impact fee allocation to the department should be utilized as intended by the General Assembly. Consideration of these steps will significantly alleviate, if not fully address, the need to levy such a significant permit fee increase on an industry that still lags far behind other basins across the country.

Thank you for your consideration of these comments.

Sincerely,

Donna R. Oberlander

Donna Oberlander
Gas & Oil Caucus Chair
63rd Legislative District

Kerry A. Benninghoff

Kerry Benninghoff
State Representative
171st Legislative District

Aaron Bernstine
State Representative
10th Legislative District

Brad Roae

Brad Roae
State Representative
6th Legislative District

Bryan D. Cutler

Bryan Cutler
State Representative
100th Legislative District

Clinton Owlett
State Representative
68th Legislative District

Cris Dush
State Representative
66th Legislative District

Dan Moul
State Representative
91st Legislative District

Dawn Keefer
State Representative
92nd Legislative District

Fred Keller
State Representative
85th Legislative District

George Dunbar
State Representative
56th Legislative District

Jeff Wheeland
State Representative
83rd Legislative District

Curt Sonney
State Representative
4th Legislative District

Dave Reed, Majority Leader
State Representative
62nd Legislative District

Eric Nelson
State Representative
57th Legislative District

Garth Everett
State Representative
84th Legislative District

Jeff Pyle
State Representative
60th Legislative District

John Maher
State Representative
40th Legislative District

Jonathan Fritz
State Representative
111th Legislative District

Kurt Masser
State Representative
107th Legislative District

Martin Causer
State Representative
67th Legislative District

Mike Reese
State Representative
59th Legislative District

R. Lee James
State Representative
64th Legislative District

Seth Grove
State Representative
196th Legislative District

Kathy Rapp
State Representative
65th Legislative District

Mark Mustio
State Representative
44th Legislative District

Matthew Dowling
State Representative
51st Legislative District

Parke Wentling
State Representative
17th Legislative District

Robert Godshall
State Representative
53rd Legislative District

Stephen Bloom
State Representative
199th Legislative District

Timothy O'Neal
State Representative
48th Legislative District

Daryl Metcalfe
State Representative
12th Legislative District

cc: Honorable Michael Turzai, Speaker
Honorable Stan Saylor, Appropriations Chair

DO:kz