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August 10, 2018

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

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.

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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,



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63rd Legislative District



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State Representative
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10th Legislative District



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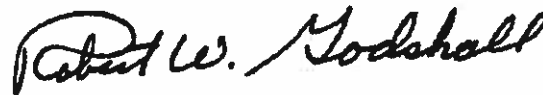
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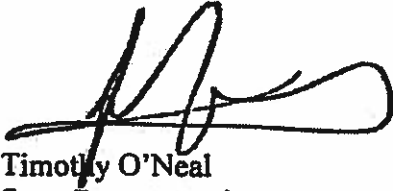


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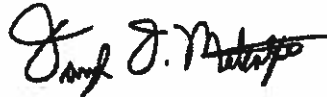


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The Honorable Patrick McDonnell
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Timothy O'Neal
State Representative
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Daryl Metcalfe
State Representative
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cc: Honorable Michael Turzai, Speaker
Honorable Stan Saylor, Appropriations Chair

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