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Associated Petroleum Industries of **Pennsylvania**

A Division of the American Petroleum Institute

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Independent Regulatory Review Commission

August 13, 2018

The Honorable Secretary Patrick McDonnell
Chairperson, Environmental Quality Board
Rachel Carson State Office Building, 16th Floor
400 Market Street
Harrisburg, PA 17101-2301

Re: Comments on proposed 25 Pa. Code Chapter 78a Unconventional Well Permit Application Fee Increase

Dear Secretary McDonnell:

Associated Petroleum Industries of Pennsylvania (API-PA) is pleased to offer comments on the proposed 25 Pa. Code Chapter 78a Unconventional Well Permit Application Fee Increase. Accordingly, please find our comments and suggestions below.

API-PA is a division of the American Petroleum Institute (API), a national trade association that represents all segments of America's technology-driven oil and natural gas industry. API is the only national trade association representing all facets of the oil and natural gas industry, which supports 10.3 million U.S. jobs and nearly 8 percent of the U.S. economy. Many of our members have a direct interest in this notice of a proposed increase in the unconventional well permit application fee at 25 Pa. Code 78a.19.

API is also a standard setting organization. For 89 years, API has led the development of petroleum and petrochemical equipment and operating standards. These standards represent the industry's collective wisdom on everything from drill bits to environmental protection, and embrace proven, sound, engineering and operating practices and safe, interchangeable equipment and materials for delivery of this important resource to our nation. API maintains more than 650 standards and recommended practices. Many of these are incorporated into state and federal regulations; and increasingly are being adopted by the International Organization for Standardization. API encourages and participates in the development of state regulations and other regulatory documents that are protective of public health and safety, the environment and the industry workforce. In this context, API-PA offers the following comments and looks forward to continuing to work with DEP and the Board in the development of any final regulation.

Thank you for the opportunity to offer comments on this proposed regulatory amendment. Please contact me if you have any questions or if additional information is needed regarding our comments.

Sincerely,

Stephanie C. Wissman

Stephanie Catarino Wissman
Executive Director

API-PA Comments

As the Environmental Quality Board proposes to amend §§ 78a.1 and 78a.19 (relating to definitions; and permit application fee schedule) to increase unconventional well permit application fees, as adopted at the Board's May 16, 2018 meeting, API PA is pleased to offer the following comments:

While we understand the need for additional revenues to support the Department of Environmental Protection's Office of Oil and Gas Management (Office), a fee increase of 150%, lift it to one of the nation's highest such levies naturally raises both questions and comments about the need for such an expansive increase as well as the department's ability to manage costs and implement efficiency measures to control budgetary difficulties.

First, how will the additional revenues generated through this proposed fee increase be utilized within the Office? Is there a specific plan to direct the use of this additional funding throughout the program?

The current fees were established based on a set of assumptions regarding permit application levels. Those assumptions were flawed as the number of applications received was never realized. Consequently, this proposal requests a 150% per application fee increase while the workload associated with reviewing and processing permit applications has actually decreased.

- In order to better explain this nuance, the department should conduct a more detailed workload analysis or develop other data to support the need for more money at a time when permit applications have been decreasing.

As staffing costs are the vast majority of the Office's expenditures, and while we recognize that the complement within the Office has been reduced and electronic inspections and ePermitting are taking shape, how are these savings reflected in the office's budget?

- Secretary McDonnell, in his 2018-2019 budget hearing testimony, noted that the Office of Oil and Gas Management expects to realize a 30% reduction in permit review times through ePermitting, and that ePermitting is anticipated to result in more than $600,000 in savings across the department. Furthermore, he noted that eInspections are estimated to save the department almost $12 million by 2020. Realizing that these figures include savings in other programs, none of cost reductions appear to be reflected in the 3-Year Regulatory Fee report used to buttress the need for this increase. The department should clarify how these cost saving measures are impacting the office's budget.

- Has the department identified other efficiencies and cost saving measures that have not been implemented?

The department has shown an increase in forms, Technical Guidance, regulations, and policies that often offer little or no environmental benefit, introduce extensive costs to both the industry and the department, go beyond statutory requirements, and exceed the abilities of the Office to manage them appropriately.

- In conjunction with the aforementioned workload analysis, as a more realistic approach to determining real program needs, has the Office conducted a workload analysis that identifies activities that are 1) mandated by statute, 2) in response to regulatory requirements, 3) driven by policy, and 4) characterized as discretionary? Has the Office prioritized those identified and characterized activities? Again, such an approach would provide both the public and the industry with a more thorough understanding of the proposed 150% increase in unconventional well permit fees.

- We strongly encourage the department to continually seek and employ other measures to reduce costs and ensure that permittees are receiving the greatest value. Further, we encourage the department to establish a working group to assist in the development and deployment of such measures.

While we appreciate recent progress in permit review periods, the need for a timely and predictable review process cannot be understated. We recognize the relationship between staffing levels and timely review completions, yet staff expertise and overall workload cannot be ignored.

- Permit reviews demand specific skills; accordingly, the Office must increase staff training and otherwise enhance staff qualifications to better process permits.

- In addition, we recommend that the department establish specific timeframes consistent with statutory mandates within which permit approvals must be completed or be deemed approved, and use best practices learned from programs such as the "Pittsburgh 100." The use of phone calls and emails between staff and applicants to clarify permitting questions, for example, has shown to be much more effective than the cumbersome development of comment letters.

Finally, the Office's budgetary shortfall can be partially explained by a downturn in commodity prices internationally and a pricing discount that has been extremely difficult for producers operating in the commonwealth. These factors have resulted in a decline in rig activity and correspondingly, a decline in permit fees received by the Office.

- As the current proposal rests on the same projections and premises, we recommend that the department work with stakeholders to develop a more stable means by which to fund the Office. While we understand that some options like an annual active well fee would require legislative action, fees for activities such as withdrawals, permit transfers, alternate practices reviews could also be considered.

- The 102/105 permitting program generates roughly $4M/year, all of which goes to water programs. Is there a way to retain these fees in the Office of Oil and Gas Management since those reviews for oil and gas related activities are performed by Office staff?

- As this program is one of very few within the department that is fully funded by the industry, is there an opportunity to move General Fund dollars to help support the Office?