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House of Representatives
 COMMONWEALTH OF PENNSYLVANIA
 HARRISBURG



July 15, 2022

Independent Regulatory Review Commission
 333 Market Street
 Harrisburg, PA 17101

Dear Commissioners,

On Monday, July 11, 2022, the House Environmental Resources and Energy (ERE) Committee voted 15-9 to submit a letter expressing the intent to review final-form Environmental Quality Board (EQB) Regulation 7-544 under Section 5.1(j.2) of the Regulatory Review Act. We, the undersigned members of the House ERE Committee, believe that the procedural and substantive issues brought up in the letter are largely unfounded and offer the following dissent.

The letter dated July 11 asserts that the updated final-form regulation makes a “serious substantive” change to the previous version, but the only change is to remove the conventional oil and gas industry. The impact on the unconventional industry remains the same, and there is nothing in state law to prevent the Department of Environmental Protection (DEP) from narrowing the scope of a final-form regulation prior to an IRRC vote. An EQB member from the Marcellus Shale Coalition supported the previous version of the final-form regulation and voted to approve it at the EQB meeting on March 15, 2022. The provisions in Regulation 7-544 are cost-effective and easily achievable. Indeed, nearly all unconventional producers will likely already be in compliance, since the requirements are modest and, in some cases, result in the recovery of a valuable product.

The letter also references the DEP’s plans for the conventional industry, which are irrelevant to the matter at hand. That being said, the undersigned members also reject the idea that the previous version of the final-form regulation was contrary to requirements in Act 52 of 2016. Regulation 7-544 is not being promulgated under Title 58, but rather federal law, which does not recognize a difference between “conventional” and “unconventional” wells. At the very least, the debate and uncertainty indicate that this is not yet a matter of settled law.

In addition, DEP has the discretion to promulgate regulations that go beyond the federal Environmental Protection Agency’s (EPA) Control Technique Guidelines (CTGs). CTGs are not the same as regulations. Instead, they provide guidelines and a framework for state agencies to consider as they determine what control measures to apply to sources covered by the CTGs (covered sources). While states cannot adopt rules for covered sources that are less stringent than those recommended by the EPA CTGs, they may be, and often are, more stringent.

Numerous other states have adopted rules for covered sources that go well beyond the federal CTG guidelines. Colorado, a major oil and gas producing state, adopted regulations for CTG covered sources in 2017 that went beyond the federal CTG baseline. In particular, Colorado’s control threshold for storage tanks, like the one contained in the final-form regulation, was well below the CTG recommendation. Today, Colorado’s regulations for all covered sources go further still. California adopted rules in 2018 that contained significantly stronger requirements than what EPA recommended in the CTGs, including a quarterly LDAR requirement. New York


similarly adopted requirements that are stronger than federal CTG guidelines, including a more comprehensive and protective LDAR requirement and more stringent requirements for natural gas-powered pneumatic controllers. New Mexico and Wyoming, two states that are major oil and gas producers, although not required to by federal law, adopted similar regulations for covered sources that go well beyond the federal CTG baseline.

These examples demonstrate the reasonableness and feasibility of the requirements proposed in DEP's final-form regulation. Recently proposed rules by EPA also reflect the fact that modern industry practices can achieve even greater emissions reductions than standards contained in the 2016 CTGs and do so in a cost-effective manner. The July 11 letter suggests that the DEP regulation is burdensome for small businesses. Actions taken by numerous other jurisdictions, including major oil and gas producing states and EPA, flatly contradict this statement.

These regulations are long past due and the procedural and substantive concerns laid out in the July 11 letter are unfounded. Chairman Metcalfe and Republicans on the Committee have repeatedly moved the goal posts on this regulation, and we are unable to find a concrete reason or justification for a disapproval resolution, especially considering that further delays could potentially jeopardize hundreds of millions of dollars in federal highway funding. This regulation did not come out of nowhere as implied at the voting meeting, but rather has been a stated priority for the Wolf Administration since at least 2016 as a modest but important effort to fight climate change. DEP has acted within the law, and the final-form regulation is reasonable and has support from the regulated industry. We therefore urge IRRC to vote yes on Regulation 7-544.

Sincerely,

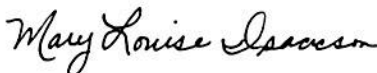

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cc: Environmental Quality Board
Department of Environmental Protection