



April 18, 2023

Independent Regulatory Review Commission
333 Market Street
Harrisburg, PA 17101

Re: IRRC #3363 / Environmental Quality Board #7-580: Control of VOC emissions
from Conventional Oil and Natural Gas Sources (Emergency Certified)

Mr. Chairman and Honorable Members of the Commission:

On behalf of the Pennsylvania Independent Oil & Gas Association (PIOGA), the Pennsylvania Grade Crude Oil Coalition (PGCC) and the Pennsylvania Independent Petroleum Producers (PIPP), I am submitting this statement regarding the Conventional VOC Regulation referenced above. PIOGA, PGCC and PIPP are trade associations whose members are conventional oil and natural gas producers in the Commonwealth of Pennsylvania, members who have conducted such activities for generations.

The Conventional VOC Regulation should be disapproved by the Commission for numerous reasons, including but not limited to procedural violations of the Regulatory Review Act (RRA), the Commonwealth Documents Law (CDL), and Act 52 of 2016, which created the Pennsylvania Grade Crude Development Advisory Council (CDAC).

Section 7(b) of Act 52 states:

(b) Future rulemaking.--Any rulemaking concerning conventional oil and gas wells that the Environmental Quality Board undertakes after the effective date of this act shall be undertaken separately and independently of unconventional wells or other subjects and shall include a regulatory analysis form submitted to the Independent Regulatory Review Commission that is restricted to the subject of conventional oil and gas wells.

The plain language is clear and unambiguous. The Conventional VOC Regulation resulted from a rulemaking concerning conventional oil and gas wells. The Environmental Quality Board (EQB) undertook the rulemaking after the effective date of the Act.

1. The Department of Environmental Protection (DEP) and the EQB (collectively the Agencies) violated Section 7(b) of Act 52 by:

- Failing to undertake the rulemaking separately and independently of unconventional wells, and
- Failing to include a regulatory analysis form submitted to IRRC that is restricted to the subject of conventional oil and gas wells.

The Conventional VOC Regulation, by DEP's admission, is identical to the Unconventional VOC Regulation.

The Comment Response Document for the Conventional VOC Regulation was derived from and revised from the CRD for the Unconventional VOC Regulation.

The Regulatory Analysis Form (RAF) for the Conventional VOC Regulation was derived from and revised from the RAF for the Unconventional VOC Regulation. No new data was obtained; no new analysis was conducted.

The rulemaking was neither separate nor independent.

The Commission comments to the Agencies in May 2022 asked them to explain how the regulation complied with Act 52. The Agencies responded that it did not apply but they would separate the regulation. Duplication of the regulation is not what the General Assembly required. The House ERE committee disapproved of both the combined VOC Regulation and the final omitted VOC Regulation, emphasizing the failure to comply with Section 7(b) of Act 52.

2. The Agencies violated the CDL by failing to publish a proposed Conventional VOC Regulation for public comment, when such public comment was necessary, practicable and in the public interest.

Public comment is necessary because the Agencies did not have data or information upon which they could develop RACT for emissions sources on conventional well sites. The industry is unique, as noted by the General Assembly when it adopted Act 126 of 2012 and Act 52 of 2016, and when the House ERE committee disapproved both the combined VOC Regulation and the final-omitted Conventional VOC Regulation. None of the data upon which DEP relied—from EPA's 2016 Control Techniques Guideline or from DEP's Technical Support Document for the general permits—included data from Pennsylvania's conventional industry.

PIOGA, PGCC and PIPP, each of which has two members on CDAC, sought information from the DEP regarding the scope and impact of the VOC regulation but were told it likely would not apply to their activities. DEP said they would return to CDAC with more information. They did not. Each RAF explains who DEP met—unconventional operators and an unconventional trade association. The DEP did not engage with the conventional industry, seek information from the conventional industry, or respond to offers from the conventional industry to assist in the rulemaking.

Public comment was practicable because the Agencies had six years since the 2016 CTG was issued to undertake the rulemaking separately and independently but chose not to do so.

Public comment is in the public interest because DEP made RACT determinations in the complete absence of engagement with the regulated community, imposing its estimated \$9 million in compliance costs within two days of the EQB approving the emergency certified regulation.

With no proposed regulation, no RAF, no public comment, no engagement, and CDAC misdirection, the omission of public comment violated the CDL and disserves the industry, the Agencies and the public.

3. The Agencies violated the RRA because they:

- made no attempt to develop consensus or resolve objections to the regulation. In response to IRRC's 2020 comments, DEP said "the Board and the Department have and will continue to actively seek input from all interested parties..." They did not;
- failed to provide the required forms with the RAF;
- failed to consider alternatives for small businesses;
- developed cost estimates based on data concerning emission sources at unconventional well sites;
- failed to obtain relevant data concerning emission sources at conventional well sites to make their RACT determinations;
- failed to provide a clear and unambiguous regulation; and
- failed to provide sufficient time to implement and comply with a regulation that imposes drastically new and different obligations on the conventional oil and natural gas industry.

DEP chose to ignore the conventional industry throughout the entire rulemaking process. The Agencies had time to proceed in accordance with RRA, CDL and Act 52 but chose not to do so.

The Commission should disapprove the Conventional VOC Regulation.

Sincerely,



Jean M. Mosites