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April 19, 2023

Independent Regulatory Review Commission
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Dear Commissioners,

As Republican Chairman of the House Environmental Resources and Energy (ERE) Committee, I write to you to express my serious concerns and disapproval of final-omitted, emergency certified, Environmental Quality Board (EQB) Regulation 7-580.

I send my letter to again raise concerns the majority of the House ERE Committee expressed in a letter dated 11/14/22 regarding EQB regulation 7-579, a regulation with identical language to this one. While I understand that the Commission voted to approve this regulation, I believe that the necessity for approving a flawed regulation that was cited when this previous version came before you is no longer an immediate concern. The Environmental Protection Agency (EPA) determined that Pennsylvania's revised State Implementation Plan (SIP) was administratively complete last December, so there is no looming deadline with a risk to funds for the Commonwealth any longer.

Because of this, I think it is critically important that we re-examine the numerous procedural defects which leave this regulation wide open to legal challenges. Even from the previous version which you considered at the end of last year, there is a new procedural defect specific to this version of the regulation, which is an improper use of the emergency certified process. I believe that this regulation violates Act 52 of 2016, the Commonwealth Documents Law, and the Regulatory Review Act.

The procedure with which this and previous versions of this regulation have undergone continues to be both unusual and unacceptable. As you are aware, this regulation stems from a previous regulation that combined both the unconventional and conventional VOC emission rules into a single regulatory package. I believe that this violates the provisions of Act 52 of 2016, which requires regulations dealing with conventional oil and gas wells to be undertaken separately, as this regulation has skipped the proposed stage and was plucked out of a previous version of the regulation combined with the unconventional oil and gas industry.

In addition, as the Department of Environmental Protection (DEP) continues to rely on and cite a public process which played out for a different regulation, this violates the requirement that a regulatory analysis form specific to this regulation be prepared. DEP has also inappropriately used the final-omitted process to skip the public comment period without adequate justification under the Commonwealth Documents Law. The precedent of pulling a final-omitted regulation out of a different proposed regulation is extremely concerning and not what the final-omitted process was designed for.

Most of these flaws have been mentioned in past correspondence to you, but I believe it is important to spend some time discussing the inappropriateness of the use of the emergency certified procedure for this regulation. The ability of an Administration to have a regulation published immediately without going through the Commission or any review is an extraordinary provision and power within our law that must be reserved for the most drastic of circumstances.

This regulation never presented an emergency situation, particularly as the DEP and the Environmental Quality Board have known since 2016 that they would have to finalize a regulation to comply with federal requirements. They were provided with more than ample time by the federal government to complete this process, so the inability to do so by the generous deadlines set by the federal government can not constitute an emergency under our law. If this can be considered an emergency, agencies would be encouraged to wait until the last second to complete any regulations required by the federal government so they can utilize the final-omitted and emergency certified processes to easily bypass the burdensome review of the public, this Commission, and General Assembly. I would urge you to make your voices heard now to protect our system of regulatory review, as again, whatever circumstances that existed to allow for the claim that there was an emergency no longer exist since the EPA has accepted our SIP.

I have additional substantive concerns with this regulation, but believe that the procedural flaws and statutory violations already discussed in this letter are enough by themselves to request your disapproval as well. These defects have stripped the public and business community of their right to participate appropriately in this process, which is one of the cornerstones of our entire system of regulatory review. Particularly now that there is no impending deadline or crisis, DEP clearly needs to start over with this regulation at the proposed stage and allow for the proper process to play out.

I also do not believe that it is acceptable to just take an agency at their word that they will not begin using processes like the ones used in this regulation to bypass public participation as a matter of course. The actions that this Commission takes on this regulation set a precedent that can be studied by any agency that wants to take a similar path on a regulation, so an approval of this regulation is a signal to agencies that this is acceptable.

Because of the reasons mentioned above, I would urge disapproval of this regulation and respectfully ask for your consideration.

Sincerely,



Martin T. Causer
Republican Chairman
House Environmental Resources and Energy Committee

MTC/

Cc: Environmental Quality Board