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August 13, 2018

RECEIVED
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Independent Regulatory Review Commission

Via email: RegComments@pa.gov
Environmental Quality Board
Rachel Carson State Office Building
16th Floor
400 Market Street
Harrisburg, PA 17101-2063

Re: Comments on Proposed Rulemaking
Unconventional Well Permit Application Fee Amendments

On July 14, 2014, 2018, the Environmental Quality Board (EQB) published notice in the Pennsylvania Bulletin seeking public comment on the proposed revisions to 25 Pa. Code §§ 78a.1 and 78a.19 to increase the current Pennsylvania Department of Environmental Protection (PADEP) Unconventional Gas Well Permit Application fees from $5,000 for nonvertical unconventional wells and $4,200 for vertical unconventional wells to $12,500 for all unconventional well permit applications. The proposed increase to the nonvertical well permit application fee is a 150% increase over the current $5,000 fee and a nearly 200% increase over the current $4,200 fee for a vertical well. This is an estimated $15 million annual increase on Pennsylvania's unconventional oil and natural gas industry's regulatory burden and would be the highest permit fee in the nation.

In response, the Pennsylvania Independent Oil & Gas Association (PIOGA) respectfully submits the following comments. PIOGA is a nonprofit trade association representing Pennsylvania independent oil and natural gas producers both conventional and unconventional as well as marketers, service companies and related businesses including engineering companies, landowners, and royalty owners. PIOGA currently has nearly 500 members, all interested in the safe and environmentally responsible development of Pennsylvania's oil and natural gas resources to support local economies and national energy independence.

General Comment

The EQB states that "[t]his proposed rulemaking **complies with [PADEP's] obligation . . . to provide the Board with an evaluation of the well permit application fees** in Chapters 78 and 78a (relating to oil and gas wells; and unconventional wells) and recommend regulatory amendments to address any disparity between income generated by the well permit application fees and the cost of administering 58 Pa.C.S. Chapter 32 . . . by the Department's Office of Oil and Gas Management (collectively, the Oil and Gas Program (Program))." (Emphasis added).

As explained below and in the comments of the Marcellus Shale Coalition (MSC), an objective analysis of the proposed rulemaking and information submitted in the Regulatory Analysis Form (RAF) shows that PADEP's evaluation is inadequate to support the requested fee increases.

Initially, PADEP's exclusion from the Oil and Gas Program operating budget of ***all*** of the $6 million Impact Fee allocation cannot be justified. Secondly, as pointed out by the MSC, ***none*** of the $140 million allocated from the General Fund to PADEP in the current fiscal year including the $2.5 million for thirty-five (35) additional employees for permit review and environmental enforcement has been allocated to the Oil and Gas Program. Allocating a reasonable portion of these General Fund revenues to the Program would significantly reduce the portion of the $15 million annual increase sought by PADEP from the unconventional oil and natural gas industry. By excluding these revenues, which simply cannot be viewed as ***not related*** to the Oil and Gas Program, it is readily apparent that PADEP is looking at the unconventional industry as a "cash cow," especially considering its prediction in Section 10 of the RAF: "It is entirely foreseeable that the current fee proposal will not be adequate to fund the Program."

A proper evaluation would also include analysis and quantification of the total fees paid by industry for all PADEP development and operation approvals and authorizations until the product has passed past the gate. Without a proper and adequate evaluation, it is impossible for anyone to accurately assess if these proposed increases are truly "minimal" as claimed by the Department. PADEP's evaluation is woefully inadequate and should not be accepted by the EQB as justification for the requested fee increases.

<u>Specific Comments</u>

In the RAF for this proposal, as well as in most, if not all, of its other RAFs, PADEP justifies proposed regulations based upon broad and unquantified, and unquantifiable, generic benefits to the "general public." At the same time, PADEP uniformly reports the costs to the State of the same regulations as $0. Immeasurable benefits and no costs limit legitimate debate, criticism and review of the proposals during the promulgation process, and they severely limit the ability of the agency to make logical and reasonable requests for appropriations. It's difficult for PADEP to ask for more money to administer its programs if it doesn't have more costs.

PADEP sought and secured Unconventional Well Permit Application fee increases in 2010 and 2014 premised upon the same rationale used to justify this proposal – that the fee increase is necessary to fully fund the Oil and Gas Program while also enabling timely processing of permit applications submitted by the segment of the public required to do so – the oil and gas industry. However, in both past cases, the agency failed to control costs to administer the program and failed to provide timely processing of permit applications. This is no way to treat a regulated industry that the Department agrees provides broad and immeasurable benefits to the public at large.

Instead of taking steps to actually reduce permit review times, PADEP used the increased fee monies promulgate revisions to 25 Pa Code Chapters 78 and 78a. In the RAF for that proposal, PADEP stated the costs to the State were $0, despite the significant increase required in PADEP's workload to oversee the implementation of the new regulations. Now in 2018, the PADEP is seeking an additional $15 million annually to, in part, continue to oversee that implementation. Obviously, the $0 costs were absurdly wrong. In the same RAF for the Chapter 78 revisions PADEP estimated the burden on the regulated public as $100 million annually. But since PADEP is now seeking an additional $15 million annually from the proposed fee increase it is also apparent that the $100 million burden on the regulated public to comply with those regulations was also absurdly wrong.

As DEP apparently can't accurately account for its regulatory costs, an independent professional audit is necessary to document both the broad public benefits claimed (but not quantified) by PADEP for its proposals as well as the actual costs to provide those benefits.[1] This would provide PADEP with the evidence to show the governor, the General Assembly and the public that appropriations from the General Fund to the Oil and Gas Program are necessary for PADEP to continue providing those public benefits. This would also provide PADEP with data to determine the amounts of its costs related to administering the Oil and Gas Act with respect to (i) the unconventional and (ii) the conventional industry.[2]

Not having a complete picture of PADEP's Office of Oil & Gas Management's financial situation makes it impossible for the public, including the regulated community, as well as any other stakeholders and IRRC to accurately assess the proposed increases.

PIOGA requests that the EQB reject the proposed fee increases and send the matter back to PADEP for a proper and adequate evaluation, as required by the Oil and Gas Act.

Sincerely,

Kevin J. Moody

Kevin J. Moody
General Counsel
PIOGA

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[1] PIOGA notes that PADEP has had access to the services of the Office of the Budget's Bureau of Audits and the Pennsylvania Auditor General to obtain this information.

[2] At the same time, PADEP also failed to take action on its widely publicized intent to reduce Oil and Gas Program permit review times until earlier in 2018. While that was a welcome step in the right direction, the fact remains that the average length of a well permit review in Pennsylvania remains over three (3) months longer than the average seen in other oil and gas producing states.