

Pennsylvania Grade Crude Oil Coalition P.O. Box 149 Mt. Jewett, PA 16740 Phone: (814) 230-3033 Email: <u>admin@pagcoc.org</u> www.pagcoc.org

July 27, 2020

Environmental Quality Board P.O. Box 8477 Harrisburg, PA 17105-8477 JUL 31 2020 Independent Regulatory Review Commission

Submitted online at http://www.ahs.dep.pa.gov/eComment and Via email to http://www.ahs.dep.pa.gov/eComment and http://www.ahs.dep.pa.gov/eComment and http://www.ahs.dep.pa.gov/eComment and https://www.ahs.dep.pa.gov/eComment and https://www.ahs.dep.pa.gov and https://www.ahs.dep.pa.gov and https://www.ahs.dep.gov and <a href="https://www.ahs.dep.gov"//www.ahs.dep.gov"//www.ahs.dep.gov and <a href="https://www.ahs.dep.gov"/https://www.ahs.dep.gov"//www.ahs.dep.gov and <a href="https://www.ahs.dep.gov"//www.ahs.dep.gov"//www.ahs.dep.gov and <a href="https://www.ahs.dep.gov"/www.ahs.dep.gov"/www.ahs.dep.gov and <a href="https://www.ahs.dep.gov"//www.ahs.dep.gov"//www.ahs.dep.gov and <a href="https://www.ahs.dep.gov"//www.ahs.dep.gov"///www.ahs.dep.gov and <a href="https://www.ahs.dep.gov"//www.ahs.dep.gov"//www.ahs.dep.gov and <a href="https://www.ahs.dep.gov"//www.ahs.dep.gov"//ww

Re: Comments regarding Control of VOC Emissions from Oil and Natural Gas Sources, IRRC No. 3256

Thank you for the opportunity to comment on the proposed rulemaking. The Pennsylvania Grade Crude Oil Coalition (PGCC) is a nonprofit trade organization that represents conventional oil and gas producers in Pennsylvania. PGCC's members consist entirely of small businesses, many of which are singleemployee entities or individual operators. PGCC's mission is to advance local economies and engage in regulatory processes that affect conventional oil and gas development. PGCC's members reside and operate in all of western Pennsylvania. PGCC members are appointed to and sit upon the Pennsylvania Grade Crude Oil Development Advisory Council (CDAC).

Inasmuch as PGCC represents only conventional oil and gas operations, PGCC is uncertain as to the necessity of these comments. Specifically, PGCC is uncertain as to whether the proposed rule applies to conventional oil and gas operations in Pennsylvania. These comments, therefore, will examine the factual and legal bases for uncertainty, describe legal flaws in the rulemaking under the authorizing statutes, offer what specific comments can be made in the context of such uncertainty and failings, and note the absence of considerations for small businesses, which is required under Pennsylvania administrative law and federal environmental law. PGCC respectfully asks that the rulemaking be withdrawn with respect to any impacts on the conventional oil and gas operations.

I. The scope of the regulation is unclear.

Section 7(b) of Act 52 of 2016 provides that: "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."

Taking into account that Act, and examining the plain language of the proposed rule, PGCC concludes that the proposed rule must not apply to conventional oil and gas operations. Specifically, in reviewing the language of the proposed rule, it is clear the proposed rule would have applicability to unconventional wells. It is also clear that there has not been a VOC Emission rulemaking, concerning conventional oil and gas wells, that is separate and independent from the rulemaking that concerns unconventional wells. In other words, the proposed rulemaking is applicable to unconventional wells and by virtue of the statutory mandate contained in section 7(b) of Act 52 of 2016, the proposed rule should not also apply to conventional wells. From this syllogism PGCC concludes that the proposed rulemaking does not, or at least should not, apply to conventional oil and gas wells, according to law.

However, PGCC observes that the proposed rule includes the term "storage vessel" and that the rule states its terms would apply to "storage vessels" (1) "installed at a conventional well site" and (2) that have "the potential to emit 6.0 TPY or greater VOC emissions." 25 Pa. Code 129.123(a)(1)(i)(proposed).

Thus, even though the foregoing storage vessel language is not contained in a separate and independent rulemaking as described in Act 52 of 2016, the foregoing language would appear to apply to conventional oil and gas wells inasmuch as the rule refers to a "storage vessel" "installed at a conventional well site."

PGCC has considered the possibility that, even though the foregoing section of the proposed rule refers to a "storage vessel" "at a conventional well site", the foregoing rule section would not apply to conventional oil and gas well operations if the storage vessel emits less than 6.0 TPY VOC emissions. Whether conventional oil and gas storage vessels do or do not emit less than 6.0 TPY VOC per year is not clear to PGCC at this time. As noted below, neither the proposed rule itself nor the Regulatory Analysis Form (RAF) prepared by the DEP, shed light on what type of conventional oil and gas storage vessels, if any, would be subject to the foregoing provision of the proposed rule.

In addition, at its general member meeting conducted on July 9, 2020, PGCC polled its members in attendance to determine whether any member or members had conducted testing to determine the volume or rate of VOC emissions from conventional oil and gas storage vessels. No PGCC member had performed such testing. Further, PGCC polled its members to determine whether any member had knowledge of the EQB or DEP conducting any testing to determine the volume or rate of VOC emissions from storage vessels used in conventional oil and gas operations. No PGCC member had information concerning any such testing by the EQB or the DEP of any PGCC member's conventional oil and gas equipment. For these reasons, a reading of the proposed rule leaves PGCC uncertain as to whether the proposed rule is intended to apply to conventional oil and gas wells in Pennsylvania.

The question of the proposed rule's potential applicability to conventional oil and gas operations appears to be further implicated by language contained in the proposed rule which provides a "fugitive emissions components" requirements that is stated to apply at well sites with a well that "produces, on average, greater than 15 barrels of oil equivalent per day." 25 Pa. Code 129.127(a)(1) (proposed) The rule does not state an exception for conventional oil and gas wells and, in theory, it is possible that a conventional oil and gas well can produce more than 15 barrels of oil equivalent per day, depending upon numerous factors, including the ratio of oil to gas utilized in order to determine equivalency and including the time period during which the average is measured.

At its general member meeting conducted on July 9, 2020, PGCC polled its members in attendance to determine whether any member operated or owned a conventional well which produces, on average,

greater than 15 barrels of oil equivalent per day. In response to that query PGCC members stated that, in the main, the answer was "no." However, the members in attendance were unable to provide answers with certainty due to the foregoing questions regarding the ratio utilized to determine "equivalent" and the time period during which the average is measured. Some PGCC members advised that they did not operate or own any wells which produced or were capable of producing 15 barrels of oil equivalent per day at any time. Some members advised that, under certain conditions, newly completed wells might produce greater than 15 barrels of oil equivalent per day for a short period of time (generally meaning days or weeks). However, the PGCC members reporting the possibility of production in excess of 15 barrels per day equivalent cautioned that, in many cases, new wells were connected to common fluid and natural gas collection lines which common lines commingle natural gas and produced fluids from the new well with existing wells, and that such commingled production is not measured at the individual well site but is, instead, measured at a common storage vessel and natural gas meter. Those members went on to report that, therefore it would be difficult to ascertain with certainty the following two things:

- 1) What portion of the fluid and natural gas production was attributable to the new well; and
- 2) What portion of the fluid produced by the new well was water or oil.

For these reasons PGCC is left uncertain as to whether any of Pennsylvania's conventional oil wells would fall within what the rule intends as the "average" of 15 barrels of oil equivalent per day" and, therefore, and more important, PGCC remains uncertain as to whether the proposed rule applies to conventional oil and gas wells, especially as that latter term is used in the context of Act 52 of 2016.

Additionally, the proposed rule contains reference to, and appears to regulate, other items of equipment which, in some instances, can be utilized in conventional oil and gas operations. According to the RAF these would include items such as "natural gas-driven pneumatic controllers, natural gas-driven diaphragm pumps, centrifugal compressors and reciprocating compressors, and fugitive emission components." Again, because the DEP previously advised CDAC that the proposed rule was not applicable to conventional oil and gas operations, and because Act 52 of 2016 requires that a conventional oil and gas operations rulemaking be undertaken "separately and independently" from an unconventional oil and gas operations rulemaking, it remains unclear to PGCC, based upon the conflicts between the contents of the proposed rule and applicable law, whether the proposed rule is intended to apply to conventional oil and gas operations in general and to such pieces of conventional oil and gas equipment in particular.

To further understand the scope of the proposed rule, PGCC has turned to the RAF. PGCC first notes that the RAF contains many references to unconventional oil and gas operations. That fact is an additional source of uncertainty inasmuch as Act 52 of 2016 speaks directly to the subject of the RAF. Section 7(b) of the Act provides: "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 <u>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.</u>" (emphasis added)

Because the RAF deals with the subject of unconventional oil and gas wells, and because Act 52 of 2016 requires that any rulemaking concerning conventional oil and gas wells that the EQB undertakes (after the adoption of the Act in 2016) shall include a regulatory analysis form submitted to the IRRC that is restricted to the subject of conventional oil and gas wells, PGCC concludes that a RAF prepared in

accordance with law would be restricted to the subject of conventional oil and gas wells. Because the RAF submitted by the DEP in conjunction with the proposed rule pertains to the subject of unconventional oil and gas wells, PGCC concludes that the proposed rule does not apply to conventional oil and gas wells.

However, that logic is contradicted by express statements contained in the RAF. For example, at section 16 the RAF answers the following: "List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply." The RAF contains this answer:

This proposed rulemaking would apply statewide to owners and operators of one or more of the following oil and natural gas sources of VOC emissions which were in existence on or before the effective date of this rulemaking: storage vessels in all segments except natural gas distribution, natural gas-driven pneumatic controllers, natural gas-driven diaphragm pumps, centrifugal compressors and reciprocating compressors, and fugitive emission components.

The Department identified 5,039 client ID numbers for owners or operators of facilities in this Commonwealth using the Department's eFACTS database and the NAICS codes covered by the 2016 O&G CTG. These facilities include approximately 89,320 conventional and unconventional oil and natural gas wells, of which the Department estimates that 8,403 unconventional wells and 71,231 conventional wells are currently in production. These facilities also include approximately 435 midstream compressor stations, 120 transmission compressor stations and 10 natural gas processing facilities in this Commonwealth.

The Department estimates that approximately 21 storage vessels, 28,348 pneumatic controllers, and 1,164 pneumatic pumps will have requirements under the proposed rulemaking. Approximately <u>199 conventional wells</u> and 4,913 unconventional well will be required to implement LDAR or increase the current LDAR frequency under this proposed rulemaking. Approximately 278 midstream compressor stations and 5 processing plants will be required to implement LDAR or meet new requirements under this proposed rulemaking. (emphasis added)

PGCC observes the following things. First, in its answer, the DEP specifically states that "conventional wells" will be required to comply with the regulation. Second, the first paragraph of the answer does not restrict the analysis to unconventional oil and gas operations. Like many other paragraphs contained throughout the RAF, the first sentence of the answer states that the proposed rulemaking would apply to "owners and operators of one or more of the following oil and natural gas sources of VOC emissions..." That first sentence (like many other sections of the RAF), is sufficiently broad so as to include both conventional and unconventional oil and natural gas sources, such as storage vessels.

Therefore, the section of the RAF designed to clarify the groups or entities that will be required to comply with the regulation, does not clarify the question of whether the proposed regulation is intended to apply to conventional oil and gas operations.

That question is greatly compounded by the answer set forth at section 14 of the RAF. Section 14 of the RAF requests the following: "Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)"

In response the DEP states: "On January 24, 2019, the Department updated the Department of Community and Economic Development's Pa Grade Crude Development Advisory Council on the status of this proposed rulemaking."

That "update" gave the Council members (including PGCC members) no warning that the proposed rule would impact the conventional oil and gas industry. The minutes from the January 24, 2019 meeting of the Pa Grade Crude Development Advisory Council (CDAC) state: "Chairman Stewart inquired as to whether the methane rule from the Air Quality Board would impact the conventional industry. Mr. Klapkowski stated that his understanding was that it would not since the conventional wells typically do not cross the thresholds in place for methane emissions, and he agreed to procure additional information for the Council to evaluate." Those minutes are available at: https://dced.pa.gov/download/Meeting%20Minutes%2001-24-19/?wpdmdl=90029

CDAC met again in May and November 2019 and the DEP did not provide additional information to the Council.

If we return to the answer contained at paragraph 14 of the RAF, the DEP does not state that, at the January 24, 2019 meeting, it updated CDAC with incorrect or incomplete information. Paragraph 14 of the RAF states that, on January 24, 2019, the DEP provided CDAC with the status of the rulemaking. That seems straightforward.

The intent of Section 14 is to ascertain whether there was appropriate "communication" with and "solicitation of input" from any advisory council in the "development and drafting of the regulation." The exchange provided at Section 14 of the RAF informs that DEP communicated with CDAC and solicited input from CDAC based on the status DEP provided to CDAC.

The status DEP provided to CDAC did not give indication that the proposed regulation would govern conventional oil and gas wells; what DEP did indicate was that DEP would provide additional information for CDAC to evaluate. If that status has changed, in other words, if DEP now intends for the proposed regulation to govern conventional oil and gas operations, PGCC concludes that DEP would have answered Section 14 of the RAF differently. Specifically, at Section 14 of the RAF, the DEP would have said that it gave incorrect or incomplete information at the January 24, 2019 CDAC meeting and that the DEP failed to rectify that incorrect or incomplete status at subsequent CDAC meetings. At Section 14 of the RAF the DEP would have stated that it did not communicate to CDAC the intention that the proposed rule would apply to conventional oil and gas operations, and, in the RAF, the DEP would have noted that "solicitation of input" was not achieved from CDAC relative to the "development and drafting of the regulation." If the DEP intends that the proposed regulation apply to conventional oil and gas well operations the DEP would not have set forth at Section 14 of the RAF that it had communicated such applicability to CDAC and that the DEP had solicited input, on such applicability, from CDAC.

For this additional reason it is logical for PGCC to conclude that the proposed rule does not apply to conventional oil and gas well operations. Moreover, as noted in greater detail below, if the proposed rule is intended to apply to conventional oil and gas well operations, that fact was not timely communicated, and the solicitation of necessary input was thereby thwarted.

Question as to the scope of the proposed rule is also generated by the additional information provided by DEP at Section 14 of the RAF. In further describing its "communications with and solicitation of input from the public, any advisory council/group, small businesses and groups," the DEP stated that it met with "industry and environmental stakeholders." The DEP specified as follows: "On July 8, 2019, the Department met with industry stakeholders, including representatives from the Marcellus Shale Coalition, Penn Energy, Southwestern Energy, Range Resources, and Chesapeake Energy. On August 27, 2019, the Department met with environmental stakeholders, including representatives from PennFuture, Environmental Defense Fund, and the Clean Air Council."

That list of industry stakeholders does not include representatives from the conventional oil and gas industry. If the conventional oil and gas industry is to be regulated by the proposed rule and if the DEP has communicated with and solicited input from the conventional oil and gas industry, then the list of industry members with which DEP communicated would include members of the conventional oil and gas industry such as the undersigned PGCC. The list does not. For this additional reason it is logical for PGCC to conclude that the proposed rule does not apply to conventional oil and gas well operations.

If the proposed rule is not intended to apply to conventional oil and gas operations, then the confusion created by references to "conventional" in the proposed rule and RAF, is moot, and PGCC and its members have no reason to comment on the proposed rule.

If, however, the proposed rule is intended to apply to conventional oil and gas operations, a number of procedural and substantive problems are presented. If the proposed rule is intended to apply to conventional oil and gas operations the overarching procedural problem is that the DEP did not follow the steps, required under law, that would inform both the DEP and the conventional oil and gas industry, about the need for, scope of, impact of, and alternatives to the proposed regulation. The DEP's failure to follow these steps and provide the necessary facts and data corrupts the process, with one of the results of that corruption being PGCC's inability to make informed comments, which, in turn, prevents the EQB and DEP from making informed decisions.

This problem of the conventional industry being overlooked, when in the presence of its larger cousin, the unconventional oil and gas industry, is not new. Indeed, the DEP's overlooking of the concerns unique to conventional oil and gas operations was one of the problems intended to be remediated by the passage of Act 52 of 2016.

II. The Board has failed to comply with Act 52 of 2016.

Act 52 of 2016 was adopted after Pennsylvania's conventional oil and gas industry suffered being overlooked during the development of regulations, at 25 Pa. code Chapter 78, following the passage of the 2012 Oil and Gas Act. While updating the oil and gas regulations to address unconventional well development, the DEP drafted the proposed Chapter 78 regulations in a manner so as to also include Pennsylvania's conventional oil and gas industry. The conventional oil and gas industry grew increasingly concerned that many of the new requirements – while perhaps appropriate for the unconventional industry – were largely unnecessary, overly burdensome, and excessively costly when applied to the conventional oil and gas industry. Despite complaints by the conventional industry, the DEP proceeded to overhaul regulations applicable to both unconventional and conventional oil and gas activities in a single package. This effort began in earnest with a proposed rulemaking package adopted by the Environmental Quality Board ("EQB") on December 14, 2013 (at 43 Pa.B. 7377).

When it became clear to the conventional oil and gas industry that the DEP was not going provide relief requested, the conventional oil and gas industry brought the problem to the attention of the

Pennsylvania legislature. The General Assembly responded by conditioning EQB funding on promulgating separate regulations applicable to only conventional oil and gas activities. Act of July 10, 2014 (P.L. 1053, No. 126 (fiscal)). In turn, DEP created the Conventional Oil and Gas Advisory Committee (*see* 45 Pa.B. 1028) and split the 2013 rulemaking package into two chapters, one applicable to conventional development (Chapter 78) and the other applicable to unconventional development (Chapter 78a). However, although the rulemaking package was bifurcated, the substantive provisions of concern to the conventional oil and gas industry were unchanged, and the "split" rulemaking package proceeded to final rulemaking. *See* Advance Notice of Final Rulemaking, 45 Pa.B. 1615 (Apr. 4, 2015). The conventional industry observed that the bifurcation did not address the conventional oil and gas industry's substantive concerns nor did it remediate the procedural problems which had prevented the meaningful input required under law; for those reasons the conventional industry viewed the joint rulemaking process as unlawful.

At its meeting on February 3, 2016, EQB approved the DEP's final joint rulemaking package for Chapters 78 and 78a. In the meantime, the General Assembly again tried to stop the conventional rulemaking package from proceeding (HB 1327 of 2015), which was vetoed on March 25, 2016. On March 24, 2016, a second conventional oil and gas industry group, the Pennsylvania Independent Oil Producers ("PIPP"), sued PADEP, EQB, the Independent Regulatory Review Commission [IRRC] in Commonwealth Court (Docket No. 219 M.D. 2016) to stop the joint rulemaking package from becoming final. The petition was denied on April 15, 2016 on ripeness grounds.

The conventional industry, by efforts of PIPP, PGCC, and a third trade group, PIOGA, continued to articulate, to the legislature, the differences between Pennsylvania's conventional and unconventional oil and gas operations, and the need for separate regulatory frameworks for the two industries. On June 15, 2016, the General Assembly passed SB 279 (2015 Session), which did two things: 1) created the Pennsylvania Grade Crude Development Advisory Council (CDAC); and 2) abrogated the conventional rulemaking package, and mandated that "any rulemaking concerning conventional oil and gas wells that the [EQB] 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 [IRRC] that is restricted to the subject of conventional oil and gas wells." SB 279 was signed into law by Governor Wolf on June 23, 2016 (Act 52 of 2016), effectively stopping the Chapter 78 final joint rulemaking package, at least as it pertained to the conventional oil and gas industry. DEP eventually concluded that it could proceed with the unconventional rulemaking portion of the package (Chapter 78a), which became effective on October 8, 2016 (at 46 Pa.B. 6431).

From that history, but especially from the plain language of Act 52 of 2016, it is clear that the legislature recognizes Pennsylvania's conventional and unconventional oil and gas operations as two separate industries and that the legislature has mandated a separate regulatory framework for each of the two industries.

Yet, despite that history, the DEP has, in the proposed rulemaking, failed to create a separate regulatory framework for conventional oil and gas operations (if it is the intention of the DEP that the proposed rule apply to conventional oil and gas operations). The DEP failure results in the same problem recounted in the Chapter 78 saga: concerns unique to the conventional industry were not considered or even discovered because necessary interface with and consideration of the conventional oil and gas industry, and its unique concerns, did not occur.

The procedural failure to treat the conventional industry via a separate regulatory framework and the consequential failure to properly interface with the industry, has corrupted the rulemaking process, at least to the extent the process purports to relate to the conventional oil and gas well industry. That corruption is a bell that cannot be unrung no matter what comments PGCC submits today and no matter what response DEP might provide to those comments. Indeed, the substantive comments PGCC submits, below, are necessarily handicapped because PGCC lacks the benefit of interface with DEP to understand the applicability of the proposed rule, its scope, what conditions DEP assumed to arrive at cost estimates, what data, if any, DEP has assembled relative to conventional oil and gas industry emissions, and the like, and DEP lacks the interface with the industry to have appropriately discussed need, costs, prevailing conditions, data, alternatives and the like.

III. The Board has failed its obligations under the federal and state environmental statutes.

Assuming that the proposed rule applies to conventional oil and gas operations even though the EQB failed to adhere to requirements in section 7(b) of Act 52 of 2016, PGCC notes that there are additional legal flaws with the proposed rule based on the EQB's failure to distinguish conventional from unconventional oil and gas operations in the proposed rule's requirements and the rulemaking record.

A. <u>The Board fails to demonstrate that proposed rule's requirements are RACT for conventional</u> operators under the Clean Air Act.

The EQB cites section 5(a)(8) of Pennsylvania's Air Pollution Control Act as authority for the proposed rule. 35 P.S. § 4005(a)(8). Section 5(a)(8) of the APCA grants the EQB authority "to adopt rules to implement the provisions of the Clean Air Act," and requires such rules to be "consistent with the requirements of the Clean Air Act." The Clean Air Act ("CAA") requires each State with a moderate ozone nonattainment area or within the northeast ozone transport region to submit revisions to its State Implementation Plan ("SIP") to implement "reasonably available control technology" ("RACT") for sources of volatile organic compounds ("VOCs") that are covered by a control technique guideline document ("CTG"). See 42 U.S.C. §§ 7511a(b)(2) and 7511c(b). Because EPA issued a CTG that covers existing oil and gas sources in 2016, the CAA requires Pennsylvania's SIP to be revised to impose RACT on sources covered by the CTG.

By its plain terms, however, the CAA does <u>not</u> require an affected State to adopt EPA's CTGrecommended RACT wholesale, much less make EPA's CTG-recommended RACT more stringent, as the EQB proposes to do here.

A CTG includes EPA's recommended RACT for covered sources; it is not a set of "one size fits all" requirements. Rather, EPA recognizes that RACT for a "particular source is determined on a case-by-case basis, considering the technological and economic circumstances of the individual source," with "significant weight [given] to economic efficiency and relative cost-effectiveness." U.S. EPA, Office of Air Quality Planning and Standards, *Implementing Reasonably Available Control Technology Requirements for Sources Covered by the 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry* (Oct. 20, 2016). EPA acknowledges that air agencies are free to adopt alternative RACT rules if the CTG-recommended RACT is "not technologically and economically feasible due to particular circumstances of a specific source (e.g., considering the cost-effectiveness of the control when the VOC content of the gas is very low)." *Id*.

Despite fundamental differences in the (1) production processes, (2) sizes and scales, (3) emission points and rates, and (4) the pressures and VOC content of gases managed by the conventional oil and gas industry on the one hand, and the unconventional oil and gas industry on the other, the EQB proposes to adopt (and make more stringent) EPA's CTG-recommended RACT and apply it to both conventional and unconventional operators. The EQB's failure to distinguish conventional from unconventional operations in the proposed rule may be the product of a fundamental misunderstanding of the CAA requirements that apply to States when U.S. EPA issues CTGs.

Here, the proposed rule and record are devoid of any analysis of the technological and economic feasibility of implementing EPA's CTG-recommended RACT at conventional operations. While the "anticipated costs" per ton of implementing the proposed rule's requirements are listed in the RAF, the EQB appears to have adopted, without analysis, EPA's cost estimates from the CTG. RAF, p. 26, 29. The EQB ignores or overlooks its responsibility to evaluate the technological and economic feasibility of applying the proposed VOC RACT rule to conventional operators. Simply put, a technical feasibility and cost-effectiveness analysis must be performed before any VOC RACT rule can be proposed for conventional oil and gas operators.

B. <u>The proposed rule is an improper exercise of the Board's authority under section 5(a)(1) of the APCA.</u>

The EQB's reliance on section 5(a)(1) of the APCA as the authority for the proposed rule is similarly flawed. Section 5(a)(1) of the APCA grants the EQB authority to "adopt rules and regulations, for the prevention, control, reduction and abatement of air pollution." 35 P.S. § 4005(a)(1). This same section gives the EQB authority to "regulate any process or source or class of processes or sources" in such rules and regulations. *Id.*

Contrary to what the EQB proposes now, the APCA expressly grants EQB the authority to treat classes of sources differently. This includes the different classes or categories of operations within the broader oil and gas industry, namely the conventional oil and gas industry on the one hand, and the unconventional oil and gas industry on the other. The EQB's failure to differentiate between conventional and unconventional oil and gas operations in the proposed rule itself, and throughout the process for developing the proposed rule, is an improper exercise of the EQB's authority under section 5(a)(1) of the APCA. It is also inconsistent with recent actions the DEP has taken to regulate air emissions from both conventional and unconventional operations.

As the DEP did in in 2018 when it revised the *Air Permit Exemptions* list, revised GP-5, and issued GP-5A, the EQB must regulate VOC emissions from conventional and unconventional operations differently. In 2018, the DEP unconditionally exempted conventional well sites from air permitting requirements. Notably, the DEP did so after receiving comments pointing to the significant differences between emissions and sources at conventional and unconventional well sites, *e.g.*, the differences in scale and duration of the post-stimulation flowback periods, arrangement of compressors and storage tanks on or near well sites, and pressures of the gas in the wellheads.

Departing from the DEP's recent air permitting actions, and commingling the regulatory requirements for conventional operations with those of unconventional operators, is a misuse and abuse of the EQB's authority under the APCA.

With these flaws and limitations in mind, and always with the question as to whether the DEP even intends the proposed rule to apply to conventional oil and gas operations, PGCC offers the more specific comments below. By offering the specific comments below, PGCC does not intend to admit that is has the necessary understanding of the proposed rule to provide fully informed comment.

IV. The need for additional regulations for conventional oil and gas operations has not been demonstrated.

The RAF sets forth the benefits of reduced VOC emissions: "(reduction) would benefit the health and welfare of the approximately 12.8 million residents and the numerous animals, crops, vegetation and natural areas of this Commonwealth by reducing the amount of ground-level ozone air pollution resulting from these sources."

What is Pennsylvania's conventional natural gas production from which the new regulations seek to reduce emissions? Pennsylvania's conventional industry is not Pennsylvania's major contributor of natural gas. Per the DEP 2019 conventional oil and gas production reporting, Pennsylvania's conventional industry produced 163,508,932 mcf of natural gas, in all of 2019; that translates to 447,969 mcf, or roughly ½ million mcf per day. In comparison, Pennsylvania's major gas contributor, the unconventional industry, produced 601,926,903 mcf in December 2019. This translates to 19,416,997 mcf, or roughly 20 million mcf, per day. Stated another way, Pennsylvania's conventional oil and gas industry produces 1/40 of the amount of natural gas produced by Pennsylvania's unconventional industry.

Whatever need might be represented in the RAF, the fact prevails that Pennsylvania's conventional oil and gas industry is a very minor contributor to the supply of natural gas in Pennsylvania. Reduction of emissions from the conventional oil and gas industry is, therefore, destined to have a minimal impact on emissions. In other words, Pennsylvania's conventional oil and gas industry does not have the horsepower to contribute significantly to any need.

With that limitation in mind, what are the specifics of the needs cited in the RAF? Unfortunately, such detail is entirely lacking as to the conventional oil and gas industry. The RAF contains generalizations to the effect that ozone can have negative impact upon agriculture and upon human health. The closest the RAF comes to evidence of harm, to either, is the observation that "the economic value of crop yield loss due to high concentration of ground-level ozone can be calculated from both reduced seed production and visible injury to some leaf crops, including lettuce, spinach and tobacco, as well as visible injury to ornamental plants, including grass, flowers and shrubs."

Remarkably, nowhere does the RAF tie any of the generalized harms, or even the sparse specific observations such as "leaf crop injury," to emissions from conventional oil and gas operations. This omission is significant because Pennsylvania's conventional oil and gas industry has been present in Pennsylvania for over a century and a half. Pennsylvania's conventional industry's long production history would, for a lack of a better term, be a baseline of emissions impact from which empirical observations would yield the type of scientific data that is supposed to be contained in an RAF.

The advent of the unconventional oil and gas industry in Pennsylvania in the last ten years, and the remarkable growth of unconventional natural gas production, would provide opportunity to make empirical observations of natural gas emission impacts. Indeed, the "baseline" of the conventional oil and gas industry, compared to the dramatic difference represented by 40 x's greater natural gas

production by the unconventional oil and gas industry, is an obvious difference and opportunity to understand emissions in relative terms between the two industries. From that understanding could flow the kind of data that is supposed to be contained in an RAF concerning need. As to the conventional oil and gas industry such data is entirely absent.

Indeed, the RAF goes on at some length about the impact of emissions on forests. This might suggest that the DEP is aware of some adverse impact that conventional oil and gas emissions is yielding upon the forests of the Commonwealth. Such data would support the need for new regulations upon the conventional oil and gas industry.

Concerning forests and need, here is what the RAF states:

This Commonwealth is forested over a total of 16.8 million acres, which represents 58% of its land area. Federal, state, and local government hold 5.1 million acres in public ownership, with the remaining 11.7 million acres in private ownership.2 The forest product industry only owns 0.4 million acres of forest, with the remainder held by an estimated 750,000 individuals, families, partnerships, or corporations.3 This Commonwealth leads the Nation in volume of hardwood with over 120.5 billion board feet of standing sawtimber.4 Recent data shows that the state's forest growth-to-harvest rate is better than 2 to 1.5 As the leading producer of hardwood lumber in the United States, this Commonwealth also leads in the export of hardwood lumber, exporting nearly \$560 million in 2017, and over \$1.3 billion in lumber, logs, furniture and paper products to more than 70 countries around the world. Production is estimated at 1 billion board feet of lumber annually.6 This vast renewable resource puts the hardwoods industry at the forefront of manufacturing in this Commonwealth. Forestry production and processing account for 64,515 direct jobs and \$27.7 billion in direct economic output and direct value added to Pennsylvania's economy.7 Reducing ground-level ozone concentrations will serve to protect the Commonwealth's position as the leader of growing volume of hardwood species and producer of hardwood lumber in Nation.

This RAF statement is not data that supports the need for new regulations imposed upon the conventional oil and gas industry. This RAF commentary is rank speculation that, somehow, there may be a connection, of some sort, maybe bad, between emissions and the hardwoods industry. In fact, the conventional oil and gas industry isn't even specifically mentioned within this chamber of speculation.

What is the value of such rank speculation in the RAF? And does the DEP need to speculate? Or instead, is there not a way for the DEP to examine whether there is a connection between Pennsylvania's conventional oil and gas industry and a potential threat to Pennsylvania's hardwoods? In other words, is there not a way for the DEP to measure the "need" for new regulations upon the conventional oil and gas industry because emissions from that industry are or are not harming hardwoods?

While the unconventional oil and gas industry is relatively new to Pennsylvania, the conventional oil and gas industry has been present in Pennsylvania for a century and a half. Much of the conventional industry's activity has occurred in the heart of the Commonwealth's prime forests. It is not necessary to speculate about the impact of VOC emissions, from the conventional oil and gas industry, upon the Commonwealth's forests. Instead, where the conventional oil and gas industry is active, the health of

the surrounding forests is instructive as to the above forest concerns, expressed by the DEP, in the "needs" section of the RAF.

Pennsylvania's most valuable forest, the Allegheny Hardwood Forest is located coterminous with some of the most intensive conventional oil and gas activity in the Commonwealth.



According to a publication by the USDA Kane Experimental Forest:

The area occupied by Allegheny hardwoods is a heavily forested region. It is one of the major contiguous blocks of commercial forest land in the Northeast. Forests in the Allegheny Plateau region include the half-million-acre Allegheny National Forest, several districts from Pennsylvania's 2.1-million-acre State Forest System, several gamelands managed by the Pennsylvania Game Commission, municipal watersheds, hundreds of thousands of acres of industrially owned forest, and a similar acreage of non-industrial private forest. All of these forests are used for a variety of purposes, including timber production, wildlife habitat, outdoor recreation, and watershed management. They are important for conservation of biological diversity, for safeguarding the region's water supply, and for providing people with the experience of large blocks of contiguous working forest.

https://www.fs.fed.us/ne/newtown_square/publications/brochures/pdfs/experimental_forests /kane.pdf

The portion of the Allegheny Hardwoods Forest occupied by the Allegheny National Forest (ANF) is a prime area to examine the need for regulation of VOC emissions for the conventional oil and gas industry. According to the ANF Land and Resource Management Plan the ANF is comprised of 517,000 acres, situate in Warren, Forest, Elk and McKean Counties. Those four counties also happen to be in the heart of Pennsylvania's most intensive conventional oil and gas activity, and according to the ANF, there are over 8000 active conventional oil and gas wells located upon the ANF. 8000 conventional oil and gas

wells is a highly representative sample inasmuch as 8000 wells is over 12% of the number of conventional wells for which production is reported in Pennsylvania.

In its Land and Resource Management Plan the ANF describes the enviable environmental conditions which exist in the ANF:

(The Northern Forest Hardwood Type) includes Allegheny hardwood, oak and aspen forest types that require open forest canopies and/or burning for their regeneration and growth. Eastern hemlocks and other conifer species are well distributed throughout the ANF to provide wildlife cover. A diversity of forest structural stages exists across the landscape. The current even-aged forest dominated by trees 90 to110 years old transitions to one with a much greater share of old, larger trees along with an increased amount of younger structural stages. Snags and large down wood are present throughout the ANF and provide important habitat for plants and animals.

The ANF contains both vertical and horizontal vegetative diversity: an understory of plants, woody shrubs, and tree seedlings; a midstory of tree saplings and an overstory of large mature trees provide a complete vertical structure that supports a variety of mammals, birds, invertebrates, reptiles and amphibians. Large blocks of contiguous and connected mature forest provide habitat for raptors, timber rattlesnakes, northern flying squirrels, and wood turtles. Maintained openings and early structural habitat created through timber harvest add important habitat components. Habitat conditions on the ANF contribute to the recovery of threatened and endangered species. This diversity of vegetative communities increases the resiliency of the forest ecosystem to withstand threats from insects or diseases, fire, wind, or other major disturbances.

Aquatic and riparian ecosystems are primarily free-flowing with some impoundments for recreation and wildlife. Riparian dependent vegetation, animals and their habitats, such as seeps, springs, vernal ponds and other unique areas are conserved. A majority of cold water streams provide suitable habitat and water quality for aquatic species including the propagation of brook trout and other headwater species. Allegheny River flows are maintained at levels necessary to support viable populations of freshwater mussels, fish and other aquatic species.

Aquatic conditions on the ANF contribute to the recovery of the northern riffleshell and clubshell mussels. Air, soil and water resources provide for watershed health, public health and safety, long-term productivity and ecosystem sustainability. The ANF continues to provide quality water to the municipalities of Ridgway and Bradford, as well as a variety of users who obtain their water directly from sources originating on the ANF.

USDA, ANF Record of Decision for Final Environmental Impact Station and Land and Resource Management Plan (March 2007) ("Land and Resource Management Plan"), p. 23, available at https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5044088.pdf.

While the Land and Resource Management Plan lists various threats to the health of the ANF including beech bark disease, hemlock woolly adelgid, and sugar maple decline, the Land and Resource Management Plan does not identify emissions from the thousands of conventional oil and gas wells, located upon the ANF, as a threat to the ANF in general or a threat to any particular habitat or species located upon the ANF.

Moreover, the ANF story is one of a forest which has blossomed contemporaneously with heavy conventional oil and gas activity upon the ANF. The Land and Resource Management Plan notes that when the ANF was created in 1923, the ANF was a biological wasteland: "the once extensive forest was almost completely logged, leaving barren, brush covered hillsides as far as the eye could see. Deer and their predators were almost completely eliminated due to unregulated hunting and loss of habitat." *Land and Resource Management Plan*, p. 21. The dense forest that we see today has grown in conjunction with the conventional oil and gas activity that results in 8000 conventional oil and gas wells situate upon that forest.

The ANF is a heavily monitored habitat. Indeed, it is home to the USDA Kane Experimental Forest in which there are numerous conventional oil and gas wells. The ANF a prime laboratory in which to measure the need for whether additional regulations should be imposed upon Pennsylvania's conventional oil and gas industry to address the concerns articulated by the DEP, in the RAF, regarding the impact of emissions upon vegetation. That laboratory result does not point to any need.

The failure to demonstrate need is not limited to the ANF region. The RAF is silent about need, as evidenced by forest health, anywhere in Pennsylvania. If emissions are resulting in declining forest health, the RAF should cite that evidence as the basis for need. However, what the RAF actually says about all Pennsylvania forests is that they are thriving. The RAF cites the growth to harvest ratio of all Pennsylvania forests as being in excess of 2:1. A positive ratio means that Pennsylvania's forests are growing more timber than is being harvested. Below is the most recent USDA data for Pennsylvania. The timber amount grown (719,750,863) exceeds the amount harvested (310,206,446) by a factor greater than 2 to 1. The data does not support the need for new regulations—certainly not the need for regulations upon an industry that contributes 1/40th of the natural gas produced in the Commonwealth.

Current forest estimates (coincide with graph i	below)
Pennsylvania	
Estimate	Value (State proportion within map %)
Forest land:	16,753,784 (9.2%)
Number live trees:	8,004,790,472 (6.6%)
Number of standing dead trees:	272,957,094 (8,43)
Aboveground live biomass:	1,111,513, 653 (12.1%)
Aboveground live carbon:	555,756,826 (12.1%)
Net live volume:	39,187,046,805 (11.5%)
 Net volume sawtimber (Intl. 1/4-rule board feet): 	: 128,099,554,950 (12.61)
Net growth volume:	719,750,863 (10.8%)
Mortality volume:	412,911,13 1 (9.6%)
Harvest removals volume:	310,206,446 (9.5%)
Other removals volume:	10,695,743 (4.9%)
Net growth to total removals ratio:	2.2
Net growth to harvest removals rate:	2.3
Net growth to volume percent:	1.8
Total removals to volume percent:	0.8
Mortality to volume percent:	1.1
*Estimates are based on trees at least 1- (numbe	r live, biomass and carbon) and 5-inches (volumes and motality trees) in
diameter.	

https://public.tableau.com/views/NRS-FIAAnnualReport/ForestIntroduction?:showVizHome=no

Continuing the examination of whether there is need to enact new conventional oil and gas regulations, it is observed that the RAF states that a minimal number of conventional wells will be impacted by the new regulations. The RAF cites that 71,229 conventional wells are currently reporting production in Pennsylvania. The RAF does not speculate how many additional conventional wells are not reporting production. However, the DEP database currently reports 128,485 "active" wells in Pennsylvania, of which "11,867" are reported as unconventional, leaving 116,618 active conventional oil and gas wells.

The RAF cites that of those many conventional oil and gas wells, approximately 199 conventional wells will be required to implement LDAR under the proposed rulemaking. Elsewhere the RAF cites that of the 71,229 conventional wells reporting production, only 303 are above the 15 barrel of oil equivalent per day production threshold as reported in the Department's 2017 oil and gas production database and will have fugitive emissions component requirements. These are the only specific references contained, in the RAF, as to the number of conventional oil and gas wells that will be impacted by the proposed regulations.

That said, how do such numbers justify a need? Of over 116,000 active conventional wells, two or three hundred conventional wells represents less than one-third of one percent. The conventional industry generates less than 1/40th of the natural gas that is the potential emitter. Therefore, the proposed regulation would subject an entire industry (the entire conventional oil and gas industry) to the burden of a new regulation, to gain the benefit of reducing emissions from up to 1/3 of one percent the wells which produce 1/40th of the natural gas in Pennsylvania. That is a stunningly unimpressive quantitative statement of need.

How would such regulation translate to emissions? The RAF states:

The Department estimates that implementation of the proposed control measures could reduce VOC emissions by as much as 983 TPY from fugitive emissions components through the performance of quarterly LDAR inspections, by as much as 121 TPY from the installation of controls for storage vessels with actual emissions based on the Department's more stringent applicability thresholds, 109 TPY from pneumatic pumps and 3,191 TPY from pneumatic controllers. As noted above, these reductions would benefit the health and welfare of all Pennsylvania residents.

Here the RAF fails, remarkably, to articulate the positive benefit that would be yielded by imposing the new regulation upon the conventional oil and gas industry. How may TPY would be removed by regulation that impacts 300 of the 116,000 active conventional oil and gas wells? By the DEP's own data, not much. Per the DEP's data, the average production from an unconventional well is 1,636 mcf per day (19,416,997 mcf per day divided by 11,867 wells). The average production from a conventional well is 6 mcf per day (447,969 mcf per day divided by 71,229 conventional wells reporting production). Thus, the average unconventional well produces 272 times more natural gas per day than the average conventional well. Clearly, reducing emissions from two or three hundred conventional wells is going to have infinitesimal impact. Indeed, if we employ the average data, the imposition of a new regulatory scheme upon the entire conventional industry would have the same impact as regulating ONE average unconventional oil and gas well.

How does an infinitesimal impact justify need? It does not.

V. The costs of implementation have not been properly analyzed.

The conventional industry is gravely concerned about the DEP's failure to interface with the conventional industry concerning the costs of implementation. That failure leaves many unanswered questions, which greatly handicaps the conventional industry's ability to comment upon the subject of costs.

That said, some general comments can be made. The RAF predicts an annual cost of \$4,220 to implement a quarterly LDAR program. The conventional oil and gas industry is not familiar with the required steps, equipment used in, or training required for, an LDAR program. Based upon the polling done at the PGCC July 9, 2020 general member meeting, no PGCC member owns or has utilized LDAR equipment. Therefore, the cost to obtain the equipment and the cost to be trained to utilize the equipment would all be costs new to the conventional industry.

This is in distinct contrast to the DEP assumption articulated in the RAF, that most industry members are already performing quarterly LDAR inspections. That RAF statement is quite possibly true as to members of the unconventional oil and gas industry. The DEP's overlooking of the conventional industry is, of course, another example of the hazards of the DEP's failure to follow the legislative direction contained in Act 52 of 2016, to prepare a regulatory analysis form "that is restricted to the subject of conventional oil and gas wells."

The DEP's failure to interface with the conventional industry also leads to concern about what wells and equipment will be subject to the quarterly LDAR inspection requirements, and the remediation that will be required if certain levels of emissions are found. The rule appears to impose the inspection obligation upon numerous facilities, some of which can exist in conventional oil and gas operations. The rule addresses: wells, natural gas-driven pneumatic controllers, natural gas-driven diaphragm pumps, centrifugal compressors and reciprocating compressors, and fugitive emission components. This portion of the rule appears to exclude wells which produce less than an average of 15 barrels equivalent per day.

Numerous questions prevail. For example, are all compressors used in conventional oil and gas well operations subject to the proposed rule? How will the DEP regard conventional well production, which is commingled in common collection lines and storage vessels? Specifically, will any aspect of the collective production be the measuring stick for the applicability of the proposed regulation, or will the measuring stick be constrained to single wells, even though in many conventional operations production from single wells is estimated because of the commingling? What accounts for the seeming conflict in numbers set forth by the DEP, both in the RAF and in an accompanying DEP Power Point presentation made available on the EQB website, wherein the DEP estimates that "approximately 71,229 conventional wells, 8,403 unconventional wells, 435 midstream compressor stations, 120 transmission stations, and 10 natural gas processing plants may have sources that will be affected by this proposed rulemaking;" yet at other places in those documents, the DEP estimates that only 200 or 300 conventional wells will be affected by the proposed rulemaking. If the DEP estimates that only 435 midstream compressor stations will be affected by the proposed rulemaking, is the DEP communicating that compressors used in conventional oil and gas operations that are not midstream units are not affected by the proposed rulemaking; that such compressors used in the conventional oil and gas operations will be affected by the proposed rulemaking but that the DEP was unable to provide an estimate as to the number of such compressors; or is the DEP intending to communicate something else?

To restate the concern in its simplest form:

- 1) Who will have to test?
- 2) How many things will they have to test?

Perhaps in some circles these conventional industry questions are viewed as unreasonable pushback. From the perspective of PGCC however, it is not unreasonable, after being left in the dark, to then be fearful of the unknown.

The fear of the unknown is bad enough in any context. But it is supremely frightening in the Covid-19 context that prevails in 2020. The conventional oil and gas industry has been ravaged by the energy demand destruction wrought by Covid-19. Layoffs and business closures in the conventional oil and gas industry have been rampant. Oil and natural gas storage inventories are obscenely high. Even when the world economy begins to regain its footing, the conventional oil and gas industry will not enjoy recovery; that recovery will have to wait until world inventories of stored oil and natural gas are whittled down.

Meantime, finding \$4,220 to implement a new testing program will be impossible. \$4,220 used to be 40 barrels of oil. Now it's 100. And what does that \$4,220 represent? Is that the cost of the testing machine? Or is that the cost of a testing machine amortized across a large number of wells or compressors? If the latter, how does a mom and pop oil producer, who owns five wells and one compressor, afford a testing machine? And does that \$4,220 include the costs of training and record keeping? And what are those costs? Does the machine have to be calibrated?

Separate, but related, are questions about the remediation. What remediation is required? What emission standard must be achieved by the remediation? Who is responsible for testing that achievement? What record keeping is required? What are the estimated costs of remediation and record keeping?

All of these and numerous other questions are unknowns. They are unknowns because the DEP did not interface with the conventional oil and gas industry.

But all of that fear is secondary to the fear generated by the silence in the RAF about the impact of the proposed rule for routing emissions, that exceed 6.0 TPY, from a storage vessel. The annual cost estimate for that accommodation is \$25,194 per year per storage vessel. The conventional oil and gas industry has tens of thousands of storage vessels.

The logical question is, how many of those thousands of storage vessels will be impacted by the new regulation? In other words, in how many instances will the conventional oil and gas industry be expected to bear the impossibly huge sum of \$25,194?

Here is the remarkable thing. The RAF doesn't say.

There is not a single estimate in the RAF of how many conventional oil and gas storage vessels will have to be accommodated. The purpose of the RAF is to inform about that very thing. Yet the RAF is frighteningly silent.

Once the rule goes into effect it becomes, frankly, the rule. Before that happens, the entity that makes the rule should know whether it's likely to be 1 storage vessel or 20,000 storage vessels that will fall within the parameters of the rule; certainly, the industry members that are expected to comply with the rule are entitled to know.

If the DEP were willing to interface to provide answers to that fundamental question, there would be a forum to discuss other highly relevant questions:

- 1) Does the \$25,194 assume the operator has access to electricity at the storage vessel to power the re-routing device? If "yes", the DEP should be informed that there is not electricity at many conventional oil and gas storage vessel sites.
- 2) If electricity is required and is not present, what alternatives can be employed?
- 3) If an electricity alternative involves a generator, how are the emissions from the generator factored into the benefits and costs analyses?
- 4) What if a group of wells is served by a single storage vessel? Will the 6.0 TPY be adjusted upward to account for the number of wells served?
- 5) How is the testing conducted to ascertain whether the 6.0 TPY threshold is implicated?
 - a. Will every storage vessel need to be tested?
 - b. Must an outside contractor be employed to test?
 - c. Must the tester be certified?
 - d. How much does a testing device cost?
 - e. How many man hours are required to perform a test?
 - f. What training is required?
 - g. What record keeping is involved?
- 6) What factors are considered in realizing an average?

Again, these are but some of the questions that generate the fear of the unknown, and that the RAF is intended to answer and allay. That interface has not happened. Instead the process has been corrupted by the DEP's failure to follow the very process designed to provide information and conquer the unknown. Because of that failure, PGCC is unable to provide informed comment, IRRC is unable to evaluate the regulation, and the legislative oversight committees are unable to provide the intended input to the regulatory process.

VI. The proposed rulemaking entirely lacks small business considerations.

As part of the process of promulgating the proposed regulations the DEP is required to provide a regulatory flexibility analysis and to consider various methods of reducing the impact of the proposed regulation on small business. Specifically, the Regulatory Review Act, at Sections 5(a)(12.1) and 5.2(b)(8), requires consideration of the following:

1) less stringent compliance or reporting requirements;

2) less stringent schedules or deadlines for compliance or reporting requirements;

3) consolidation or simplification of compliance or reporting requirements;

4) establishment of performance standards to replace design or operational standards; and5) the exemption of small businesses from all or any part of the requirements contained in the rule.

The vast majority of conventional oil and gas operators, and indeed, all of PGCC's members, are small businesses. The proposed regulations do not contain any accommodation for small business. Such omission, therefore, fails to comply with the obligations imposed under the Regulatory Review Act and greatly impacts PGCC members.

The omission also reveals the fatal procedural oversights which have poisoned the process. The DEP's failure to separately examine the needs presented by the conventional oil and gas industry renders it impossible to consider whether, for example, less stringent alternatives meet a legitimate regulatory need. Similarly, it is impossible to analyze or comment upon whether alternative performance or operational standards will meet a legitimate regulatory need when the regulatory agency fails to state the data, unique to the conventional oil and gas industry, that underlies the regulatory need.

To facilitate meaningful comment on small business alternatives, such alternatives needed to be introduced by the regulatory agency long ago. In that way, commenting bodies such as PGCC could have retained experts or utilized the expertise of its own members to gather data and to consider alternatives unique to the conditions of the conventional oil and gas industry.

One example of a potential alternative is the plugging of orphan wells. The DEP currently holds an inventory of approximately 10,000 such wells, and one of the problems associated with such wells is their potential for unchecked release of methane to the atmosphere. The conventional oil and gas industry is uniquely poised with the equipment and skilled personnel to plug orphan wells.

The implementation of the proposed rule will impose upon small business owners' costs in the form of testing and accommodations. It may well be that, in the context of the potentially small emissions yielded by conventional oil and gas wells, such costs will yield little environmental benefit. A more meaningful alternative, having potentially greater environmental benefit, might be to plug an orphan well, in lieu of the implementation of the testing and accommodations called for under the proposed rule.

It is, however, impossible to assess the viability of such alternative because the RAF does not contain the data and analysis necessary to meaningfully implement Sections 5(a)(12.1) and 5.2(b)(8) of the Regulatory Review Act, nor does the RAF contain the data and analysis necessary to allow PGCC to meaningfully comment on this alternative in particular or on small business alternatives in general. In other words, the orphan well plugging alternative may or may not be meaningful, and there may or may not be more alternatives that meet the dictates of the Regulatory Review Act. However, that answer cannot be known, because the process and outcome contemplated under Act 52 and the Regulatory Review Act is not achieved until the DEP meets: its obligation to treat the conventional oil and gas industry separately; its duty to consult with the industry; its duty to provide data meaningful to that industry; its duty to assess the need relative to that industry; and its duty to provide for meaningful comment and exchange that results in the consensus contemplated in the Regulatory Review Act.



PA Orphan Well emitting unchecked methane (methane lit in order to depict)

VII. Conclusion.

PGCC appreciates the opportunity to comment on the proposed VOC rule but believes that the rulemaking cannot legally apply to conventional oil and gas operations in Pennsylvania. The Board should revise the rule to clarify the scope and to remove any ambiguity regarding applicability to conventional oil and gas operations.

Sincerely,

David Clark, President

CC: The Honorable Gene Yaw The Honorable Daryl D. Metcalfe