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ENVIRONMENTAL RESOURCES AND  
 ENERGY COMMITTEE  
 CHAIRMAN

November 14, 2022

Independent Regulatory Review Commission  
 333 Market Street  
 Harrisburg, PA 17101

Dear Commissioners:

As members of the House Environmental Resources and Energy Committee, we write to you to express our disapproval of final-omitted Environmental Quality Board (EQB) Regulation 7-579.

The Committee voted today, November 14th, in favor of sending you this letter on behalf of the citizens and businesses in our districts who will be negatively impacted if this regulation goes into effect as written. As the standing House Committee with legislative oversight over the Department of Environmental Protection (DEP), it is our role to ensure that regulations proposed by DEP through the EQB are reasonable and consistent with our statutes. This regulation fits neither criteria.

The procedure that this regulation has undergone is extremely unusual and potentially violates a number of laws. 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. We have pointed out to you in past correspondence that this violated the provisions of Act 52 of 2016, which require regulations dealing with conventional oil and gas wells to be undertaken separately. While we are pleased that DEP acknowledged our concerns on this issue and separated the rulemaking packages, the fact that they have done so by means of a final-omitted regulation, skipping the proposed stage and comment period, means that this regulation remains in violation of Act 52, and also violates the Commonwealth Documents Law and the Regulatory Review Act.

Throughout the regulatory documents submitted to us and to you, DEP makes reference to a public comment period held on the previous combined version of this regulation and even includes the comment and response document as part of their regulatory documents. This is inappropriate and even violative of the Regulatory Review Act's requirements to prepare a regulatory analysis form specific to this regulation, as they mention hearings and a public comment period which were not conducted regarding this current regulation before you. It seems obvious due to the nature of final-omitted regulations, but it is important to state clearly that no public comment period or hearings were held on this version of the regulation.

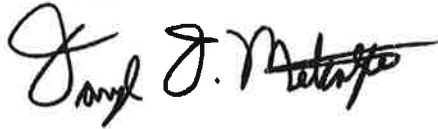
We also believe that this regulation remains in violation of Act 52's requirements that regulations concerning conventional wells be "undertaken separately and independently" from unconventional wells or other subjects and that a regulatory analysis form submitted to you be restricted to conventional wells. It is difficult to claim that this regulation has been separate and independent when it was plucked out of a version of the regulation that was combined with unconventional wells and when the regulation remains essential identical to the unconventional version, meaning that DEP conducted no separate analysis or made any decisions about the content of the regulation that was specific to conventional wells. As we have written to you before, one of the primary purposes of this language in Act 52 was to allow the public, industry, Legislature, and you to all be able to weigh in separately on regulations having to do with conventional wells because they are unique and distinct from unconventional wells. These statutory requirements have not been satisfied during this regulatory process

We also find it inappropriate and violative of the Commonwealth Documents Law for the Department to be using the final-omitted process for this regulation. DEP cites the section of the law stating that the proposed stage and public comment period may be skipped when an agency for good cause finds that the procedures are "impracticable, unnecessary, or contrary to the public interest" and cites the public comment period held on the combined regulation as making another public comment period unnecessary. Despite these claims, it would be very appropriate to have a comment period on this regulation specific to the regulation and impacts on the conventional industry. The public should be able to weigh in on this regulation by itself. There was even confusion evidenced in comments submitted at the proposed stage of the combined regulation because it was unclear to what extent that regulation applied to the conventional industry. We are also unaware of any precedent for pulling a final-omitted regulation out of a different proposed regulation, while relying so heavily on the proposed stage of the separate regulation. This would be a concerning precedent as far as our regulatory process if this regulation would be allowed to move forward unchecked and we do not believe that this meets the proper purposes of the final-omitted process discussed in statute.

We have additional substantive concerns with the regulation, but believe that the procedural flaws and statutory violations already discussed in this letter are enough by themselves to necessitate our disapproval and for us to request your disapproval as well. DEP clearly needs to start over with this regulation at the proposed stage and allow for the proper process to play out.

We respectfully request that IRRC examine the procedural issues and statutory violations we have raised, particularly that DEP has misused the final-omitted process and remains in violation of Act 52 of 2016. We find this regulation to be unacceptable and we therefore ask IRRC to disapprove this regulation in its final form since the provisions of the regulation run contrary to the language and intent of a number of statutes and are patently unreasonable. We, the undersigned members of the House Environmental Resources and Energy Committee, write this letter to draw your attention to our concerns and disapproval of this final form regulation and respectfully ask for your consideration.

Sincerely,



Daryl D. Metcalfe, Chairman  
Environmental Resources & Energy Committee



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75<sup>th</sup> Legislative District



Rep. Stephanie Borowicz  
76<sup>th</sup> Legislative District



Rep. Bud Cook  
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Rep. Ryan Warner  
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CC: Environmental Quality Board  
Department of Environmental Protection