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ENVIRONMENTAL RESOURCES AND
ENERGY COMMITTEE
CHAIRMAN

April 26, 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-form Environmental Quality Board (EQB) Regulation 7-544.

The Committee voted today, April 26th, 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.

While we have a number of concerns with the regulation, we will focus in this letter on the violation of law which we believe is a fatal flaw to the regulation. As was discussed in some of the comments you received at the proposed stage, concerns which you echoed in your letter to the EQB, the DEP failed to comply with Act 52 of 2016. This act requires 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... ."

The plain text of the law referenced above indicates that DEP should be submitting two rulemaking packages, to the extent that this regulation concerns conventional oil and gas wells. After reviewing DEP's analysis of this point in the regulatory package, it seems that their tortured argument boils down to the idea that this requirement does not apply here as no regulation that the EQB promulgates "concerns" conventional oil and gas wells as Act 52 contemplates unless it is promulgated under the authority of Title 58. DEP claims this despite this being not stated anywhere in Act 52, nor even hinted at within the language of the text. DEP's argument even declares that it is "not clear what 'any rulemaking'" means, which defies common sense and again the plain text of the law.

Allow us to answer that question for the department. Any rulemaking means any rulemaking, including this one. As discussed at length in the comments submitted by representatives of the conventional oil and gas industry when the regulation was at the proposed stage, and as demonstrated throughout the regulatory package, this regulation clearly concerns the operations and functioning of conventional wells, in ways both direct and indirect.

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It is important to note that this is not merely an inconsequential, semantic point. In actuality, this point goes to the heart of what Act 52 was intended to address. The conventional industry, by the very nature of their operations, should be regulated separately from the unconventional oil and gas industry. Conventional operators already face a nearly impossible situation between the regulatory climate and recent economic conditions. DEP had every opportunity to comply with this law, but chose not to and instead chose to concoct a specious argument to justify their failure instead of addressing the issue.

Though no other points should be necessary considering the egregious nature of the statutory violation just mentioned, we would also briefly note that considering the numerous economic challenges that businesses within our Commonwealth are facing, the regulation is also unacceptable because of the serious financial burden it will place on the businesses within our Commonwealth. In a substantial number of different areas, the regulation goes beyond the standards the federal government has required and what other oil and gas producing states have and are adopting. In particular, the DEP's lack of regard throughout the regulation and regulatory process for our small businesses is unfortunate and unjustified, as they have not shown any willingness to consider less burdensome alternatives for the community.

This regulation is unacceptable, and if implemented would have a severe financial impact on our Commonwealth's businesses, particularly considering the present economic climate. It would also set an improper precedent of rendering a large portion of Act 52 meaningless and would encourage this and other agencies to plow forward with any regulation they would like regardless of statutory text or intent. 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 the Act on which they are based 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

Cc: Environmental Quality Board
Department of Environmental Protection