



Senate Environmental Resources and Energy Committee

Senator Gene Yaw
Chairman

Adam Pankake, Executive Director

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April 12, 2016

Honorable George D. Bedwick, Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Honorable John Quigley, Chairman
Environmental Quality Board
15th Floor Rachel Carson Building
Harrisburg, PA 17105

Re: Final Rulemaking: Environmental Protection Performance Standards at Oil and Gas Well Sites (#7-484)

Dear Chairman Bedwick & Chairman Quigley:

The Senate Environmental Resources and Energy Committee met on Tuesday, April 12, 2016, to consider final-form rulemaking #7-484 (Environmental Protection Performance Standards at Oil and Gas Well Sites) submitted by the Environmental Quality Board (EQB). In accordance with §5.1 (j.2) of Act 181 of 1982, as amended, known as the Regulatory Review Act, the Committee, by a 9-2 vote, disapproved the Board's rulemaking for the following reason(s):

1. Regulatory Review Act. The Committee believes that the Department circumvented various requirements of the Regulatory Review Act, including an incomplete Regulatory Analysis Form (RAF), a lack of financial analysis with acceptable data to support the Department's findings, a failure to state a compelling need for the regulation and a failure to provide appropriate forms and guidance documents. There is no doubt that this rulemaking will have a direct impact on small businesses throughout Pennsylvania, yet the Department also failed to take into consideration the small business compliance provisions of the Regulatory Review Act.
2. Technical deficiencies. At the EQB meeting held on February 3, 2016, multiple members of the board, in a bipartisan effort, offered technical amendments recommended by the Oil and Gas Technical Advisory Board to provide minor fixes to the rulemaking. The amendments would have provided uniformity and clarity to the regulated community. Unfortunately, at the request of the Department, each amendment was disapproved. In fact, in some cases, the Department stated that they agreed with the intent of the amendments. The Committee believes the Commission should consider these amendments while reviewing this rulemaking procedure.
3. Violation of Supreme Court opinion and State law. We believe the rulemaking is in violation of the Supreme Court opinion of Act 13 of 2012. On December 19, 2013, the Pennsylvania Supreme Court invalidated sections of Act 13 pertaining to public

resources. The Department used the invalidated sections to justify expanding protections of public resources.

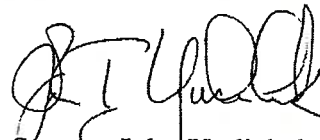
In addition, Act 126 of 2014 required the Environmental Quality Board to promulgate separate rulemakings for conventional and unconventional oil and gas operations. Unfortunately, the Department simply copied and pasted the regulations into separate chapters in the rulemaking. The two industries are different in size and scope, and should be treated accordingly through separate rulemakings. The Committee believes the intent of Act 126 of 2014 has not been met with this rulemaking.

The committee supports strong regulations that protect the environment and allows for development of our natural resources. We appreciate the Department's efforts over the last several years in formulating this rulemaking; however, we believe that any rulemaking should comply with all pertinent case law and laws of Pennsylvania. We believe that any revision to the final-form rulemaking consider our comments. If the Commission or Department needs clarification on this action, please contact our offices.

Sincerely,



Senator Gene Yaw, Chairman
Senate Environmental Resources
& Energy Committee



Senator John Yudichak, Democratic Chairman
Senate Environmental Resources
& Energy Committee

Attachment(s)