



Pennsylvania Grade Crude Oil Coalition
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Pennsylvania Department of Environmental Protection
Laura Edinger
Regulatory Coordinator
Email: ledinger@pa.gov and ecomment@pa.gov
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101

Re: TGD 012-0820-001 Development and Review of Regulations

Dear Ms. Edinger,

The Pennsylvania Grade Crude Oil Coalition (PGCC) respectfully submits the following comments regarding the Department's proposed changes to the Department's policy concerning the development and review of regulations. The mission of the PGCC is to advance local economies and energy independence by promoting conventional oil and gas production in a safe and environmentally sound manner. PGCC was formed in the summer of 2013 by producers and refiners of conventional oil and gas; part of the reason for our group's formation was to respond to new Chapter 78 regulations which were then being promulgated by the Department.

Through its involvement in that Chapter 78 process PGCC became very familiar with the process used by the Department to formulate and receive comment upon proposed regulations. PGCC found that the Department's process failed, in many material respects, to comport with the Regulatory Review Act (RRA). While the following list is certainly not a summary of all the failures cited by PGCC, it illustrates some of the serious concerns:

- 1) The statement of need for the new package of regulations dwelt on issues concerning Pennsylvania's new unconventional oil and gas industry; this statement of need had no meaningful connection to Pennsylvania's long-standing conventional industry.
- 2) Of 13 new regulatory sections the Department only analyzed the costs as to 2 (either ignoring the other 11 or stating "no cost").
- 3) The Department's compliance cost estimate was \$5 million to \$12 million; PGCC's compliance cost estimate was \$.5 billion to \$1.5 billion.
- 4) The Department had scant supporting material for its cost estimates; PGCC provided numerous schedules and data assembled from over one thousand conventional oil and gas wells.
- 5) The "regulatory flexibility analysis" was nothing more than a perfunctory reference to same.

- 6) There were no alternatives considered for small businesses, which was especially conspicuous given that virtually all Pennsylvania oil and gas wells are owned by small businesses.
- 7) There was no accounting in the Department's analysis for the history of excellent water quality and high-ranking streams which exist within the heart of the areas where conventional oil and gas have been developed for over a century.

PGCC spent thousands of volunteer hours assembling data and comments, participating in site visits to educate as to the circumstances and history of conventional oil and gas production, and the like. Despite these efforts the process did not play out well. The Department continued with regulations which PGCC insisted were wholly unfitting, unnecessary, and burdensomely expensive (without corresponding benefit). In 2014 the Legislature intervened with legislation that required regulations for conventional oil and gas to be promulgated separately from regulations for unconventional oil and gas. That legislation did not change the course of action which the Department had determined to take. In 2015 Act 52 was adopted which abrogated the Chapter 78 regulations as to conventional oil and gas and created the Crude Oil Development Advisory Council (CDAC).

All of this unfolded under the current policy, which is 58 pages long, and which contains a fair amount of detail and checkpoints designed to address some of the concerns that PGCC complained about during the Chapter 78 process.

The proposed policy is 18 pages long and gets rid of most of the detail and checkpoints that speak to the concerns raised by PGCC during the Chapter 78 process. PGCC regards the proposed policy as a terrible mistake. Indeed, it is a step backward. The policy is written as though the Chapter 78 process never unfolded and as though there were no lessons to be learned from it.

That is ironic because both in conversations and in public meetings, members of the Department have acknowledged that the Chapter 78 process was flawed. In the face of those acknowledgments, and the abrogation of the Chapter 78 regulations as to conventional oil and gas, one would look to a new policy as an opportunity to memorialize improved practices.

Indeed, in writing about the purpose behind the new policy, a well-placed Department employee said this: "I want to assure everyone that the intent of the revisions to these documents is to simply update them..."

What is the purpose of an update? The need to revise is born from new events. Here are some new events since the old policy was written:

- 1) In 2011 the legislature inserted into the RRA the requirement for "applicable data".
- 2) In 2012 the legislature cited the need to "reform" the regulatory process due to a list of problems, including regulations not supported by need and regulations bearing an unreasonably burdensome cost.
- 3) In 2012 the legislature created a new requirement that alternative regulations be considered for small businesses and that certain analytical steps be documented showing the considerations that unfolded.
- 4) The Department has acknowledged certain flaws in the Chapter 78 process as to conventional oil and gas.

The new policy never mentions any of these items. What kind of an update is that?

Following all that has transpired over the last four years PGCC would have looked to a new policy with hope that the reform talked about by the legislature was taking shape, that mutual trust and participation would be fostered and memorialized in a new policy, and that a new policy would be a symbol of meaningful change and a fresh start. Surely PGCC's members have demonstrated that they are able and willing to put in the time to fulfill that cooperative role and bring meaningful input on where regulations should be modified, bring real-world data concerning costs, bring new ideas and technologies for the mutual benefit of the environment and efficient operation, bring ideas and energy to the study of alternatives for small businesses, and bring applicable data such as testing done at PGCC expense. These are all items which PGCC is already bringing to the table.

But the new policy doesn't go to school on these efforts, cite these efforts, or memorialize them for use in other situations. The existing policy isn't the best, because a lot of new events have happened since it was written nearly 20 years ago including the changes to the RRA. But the proposed policy is much worse because it goes the wrong direction! Not only does the new policy ignore all the legislative changes to the RRA, thus failing in the fundamental purpose of achieving an update, but it goes on to strip out the kind of detail and checkpoints that PGCC found were missing in the Chapter 78 process.

Over the course of my nearly forty-year career in the conventional oil and gas industry I have seen different approaches to the regulatory environment. My father was president of the industry trade group that worked with the Department's predecessor to develop the first regulations for conventional oil and gas, and policies for things such as hiring inspectors. And I've been the beneficiary of working with inspectors whose attitude is one of mutual respect and using interactions as teaching moments, rather than top-down "gotcha" moments. And then I've lived through the Chapter 78 experience where I spent half or more of every work week fighting what I regarded as ill-informed "top-down" "cram-down" regulations that would have put my already struggling business on its last legs. And then we moved to the environment after Act 52 where I thought we were returning to some of the good practices of working with the Department, not unlike the early days of my father.

I speak on behalf of all PGCC members when I say that this proposed policy represents the prototypical "top-down" "cram-down" approach that has benefitted not one iota from all the blood, sweat and tears, PGCC has put into trying to work with the Department. We can take that big step backward...because we've already been there...and we know how to slug it out on that front. But we thought we were headed in a different more positive direction. If PGCC had to boil its comments about this new policy down to one word it would be "disheartening."

Sincerely,



David Clark
PGCC President