

**INDEPENDENT REGULATORY REVIEW COMMISSION
PUBLIC MEETING MINUTES**

10:00 A.M.

Thursday, April 20, 2023
14th Floor Conference Room
333 Market Street

I. CALL OF THE MEETING

The April 20, 2023 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Bedwick at 10:05 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg, PA.

Commissioners Present: George D. Bedwick, Chairman
 John F. Mizner, Esq., Vice Chairman
 John J. Soroko, Esq.
 Murray Ufberg, Esq.

Telephone: Dennis A. Watson, Esq.

II. CONDOLENCE RESOLUTION

Chairman Bedwick asked for a motion for approval for the condolence resolution for Gary Hoffman, former director of the Pennsylvania Code and Bulletin and Legislative Reference Bureau. Vice Chairman Mizner made the motion for approval and Commissioner Ufberg seconded, and the motion passed 5-0.

III. APPROVAL OF THE DECEMBER 8, 2022 PUBLIC MEETING MINUTES

Chairman Bedwick asked for a motion for approval of the December 8, 2022 public meeting minutes, as submitted. Vice Chairman Mizner made the motion for approval and Commissioner Ufberg seconded, and the motion passed 5-0.

IV. NEW BUSINESS

A. ACTION ITEMS

1. No. 3363 Environmental Quality Board #7-580: Control of VOC Emissions from Conventional Oil and Natural Gas Sources

Chairman Bedwick stated that due to the change of administration and *sine die*, agencies cannot deliver any final regulations until the Standing Committees in the House and Senate are designated. This year, those designations were not made and published until March 18, 2023.

Corinne Brandt, Regulatory Analyst, explained the regulation adopts reasonably available control technology (RACT) requirements and RACT emission limitations provided by the federal Environmental Protection Agency (EPA) for conventional oil and natural gas sources of volatile organic compounds. She noted the regulation is identical to IRRC No. 3359, which was approved on November 17, 2022.

Ms. Brandt indicated that the Commission received a letter from the House Environmental Resources and Energy Committee (HEREC) Minority Chairman Martin Causer (R-McKean) as well as a letter from seven members of the Senate Environmental Resources and Energy Committee (SEREC), including Majority Chairman Gene Yaw (R-Lycoming). She added that a joint statement from the Pennsylvania Independent Oil & Gas Association (PIOGA), the Pennsylvania Grade Crude Oil Coalition (PGCC), and the Pennsylvania Independent Petroleum Producers (PIPP) was also received. She concluded the House and Senate standing committees deem the regulation approved.

Ali Tarquino Morris, Deputy Secretary for Waste, Air, Radiation, and Remediation, Department of Environmental Protection (DEP), and Robert Reiley, Director, Bureau of Regulatory Counsel, were present to answer any questions.

Ms. Tarquino Morris outlined DEP's reasoning for the regulation's approval. She reiterated that the emergency certified regulation is identical to the final-omitted regulation approved by the Commission on November 17, 2022. She stated that both regulations comply with the Regulatory Review Act, the Commonwealth Documents Law, and the Pennsylvania Grade Crude Development Act (Act 52). She continued that the Commission found the identical regulation from last November complied with state law and approved it.

Ms. Tarquino Morris noted that the emergency certified regulation is required under the Clean Air Act to reduce air pollution caused by the conventional oil and gas industry. She added the Commonwealth could potentially lose hundreds of millions of dollars in federal highway funds if the regulation fails. Ms. Tarquino Morris asserted HEREK's disapproval of the emergency certified regulation during the last legislative session did not affect DEP's obligation to submit the regulation to the EPA last December. She continued that trade associations representing the industry sued DEP and the Environmental Quality Board (EQB) and the litigation is currently ongoing. She argued the court should determine the lawsuit, not the Commission.

Mr. Reiley produced a booklet of emails and other documents prepared by DEP in response to a Right-to-Know Law request pursuant to the law. He claimed the booklet demonstrates how DEP sought the conventional oil and gas industry's feedback and that industry representatives opted to not meet with the department. He reiterated that DEP reached out to stakeholders and met with organizations like PIOGA to obtain relevant information to the regulation. Mr. Reiley affirmed the regulation's goal is to set an industry standard.

Upon Commissioner Soroko's request, Mr. Reiley presented several exhibits from DEP's booklet to demonstrate their open communication with the regulated community. The exhibits discussed included several meetings and communications with PIOGA, as well as

communications between DEP and the Pennsylvania Grade Crude Development Advisory Council (CDAC) regarding the 15 barrels per day production threshold for traditional oil wells, prior to the regulation taking effect.

Additional exhibits, Mr. Reiley explained, demonstrated further proof of the conventional oil and gas industry was aware of the regulation and was able to meet with DEP.

Glendon King, Republican Executive Director, HEREC, outlined Rep. Causer's letter in opposition to the proposed regulation. He stated that the emergency certification process does not allow for review by the legislature, that the certification is not suited for DEP's needs, and that DEP would not have to worry anymore about sanctions. He added the emergency certification should not be used to circumvent any process or to set a precedent. He concluded by stating the previously approved final-omitted version of the regulation would be preferable, as it was deemed complete by EPA and would not financially harm the Commonwealth.

Chairman Bedwick inquired if HEREC submitted a concurrent resolution to block publication of the regulation. Mr. King answered the regulation could be published as the HEREC did not report a disapproval resolution within the statutory timeframe.

Chairman Bedwick explained the regulation approved on November 17, 2022 would be effective on the date of its publication. He wondered if there is a significant gap between when the regulation is approved and when it is published. Mr. King responded that a clear deadline was set by EPA last December and that it is his belief that the gap of a few weeks would not constitute a threat to the Commonwealth's funds.

Jean M. Mosites, Attorney, Babst Calland Attorneys at Law, representing PIOGA, PGCC, and PIPP, articulated the joint statement provided by the oil and gas associations. She cited Act 52, which states that conventional oil and gas wells and unconventional oil and gas wells are to be addressed separately. She claimed that DEP violated Act 52 by using identical language for both types of oil and gas well regulations and not providing an individual regulatory analysis form (RAF) for only conventional oil and gas wells. She further criticized DEP for violating the Commonwealth Documents Law, by not sufficiently reaching out to garner stakeholder input on the regulation, and the Regulatory Review Act, for multiple procedural errors and a failure to secure a consensus or resolve objections.

Arthur Stewart, Secretary, PGCC, stated that conventional oil and gas well companies were unsure of whether the public comment period for the combined regulation was relevant since conventional and unconventional wells were included within the same regulation. He added that PGCC still submitted comments on the combined regulation, but wonders how a comment period for a regulation that has already gone through the regulatory process for unconventional gas and oil wells count as a comment period for the conventional equivalent. He explained CDAC told him that wells under the 15 barrels per day threshold would not be affected by the rulemaking.

Mr. Stewart wondered about the relevance of the November 17, 2022 regulation and its public comment period to the emergency certified regulation. He asked how the EQB could

claim it had discussions with stakeholders. He indicated the 15-barrel limit is frightening to him and his community, due to how the 15-barrel per day limit is defined and calculated, and he urged the Commission to review feedback recently collected by PGCC in a survey.

Mr. Stewart commented that unconventional oil and gas wells would be affected more than conventional wells. He noted the industry's fear centers around the regulation's definition of a well site, which would now apply to tens of thousands of conventional oil and gas wells across the state instead of a select few. He asserted if the regulation is approved, there will be a much higher than estimated associated cost for operating a conventional well site than the RAF estimated.

Mr. Stewart detailed the history of the emergency certified regulation and its evolution into separate rulemakings for both conventional and unconventional wells. He claimed that the EQB and DEP did not contact PGCC for input on the costs and impacts of small businesses in relation to the regulation's effect on conventional well sites and wasted six months that could have been used to obtain public comments. He criticized the regulation for not going through the regulatory process, and encouraged the Commission to disapprove the proposed regulation.

Ms. Tarquino Morris affirmed the sanctions are still an issue if the regulation were to be disapproved. Mr. Reiley explained there is an uncertainty for when the sanctions would take effect again because the situation is unprecedented. He noted that the EPA guidelines do not account for this type of situation.

Vice Chairman Mizner asked how the EPA would decide upon guidelines for this situation and what laws or regulations they would use as a basis for these guidelines. Mr. Reiley suggested that the regional EPA would have to contact headquarters for input. Ms. Tarquino Morris added that the EPA is reviewing the substance of the State Systemic Improvement Plan (SSIP), and as of right now DEP has only received an acceptance of administrative completeness from the EPA, not an approval.

Chairman Bedwick noted that the legislature had not come to a concurrent resolution at the end of last session for the final-omitted regulation, and questioned if it can now be published. Mr. Reiley answered in the affirmative. Chairman Bedwick then followed up and asked if the requirements of the regulation(s) would still be implemented on the oil and gas industry, regardless of if the emergency certified regulation is disapproved. Mr. Reiley answered in the affirmative.

Vice Chairman Mizner asked why an emergency certification is still necessary today. Mr. Reiley stated that former Governor Tom Wolf identified there was an emergency due to the supplemental appropriations of \$1 million or more, as specified by the Regulatory Review Act. He reiterated that if the Commission disapproves the regulation, he is uncertain of what happens.

Vice Chairman Mizner stated that, to his understanding, Gov. Wolf anticipated the EPA would assess financial accountability of the Commonwealth. Mr. Reiley replied in the affirmative. Vice Chairman Mizner followed up and asked if the emergency still exists because it is unknown if that those financial burdens will still be implemented by the EPA if this

regulation is disapproved. Mr. Reiley replied in the affirmative.

Vice Chairman Mizner requested details on the 15 barrels per day limit raised by Mr. Stewart. Mr. Reiley indicated the panel's technical expert could not attend the meeting, so they are unable to answer the specifics of the question, but they are willing to assist with any questions related to compliance.

Vice Chairman Mizner questioned whether those in the oil and gas industry should be able to read and fully understand the regulations affecting their jobs, especially with the knowledge from many years of experience in the field. Mr. Reiley voiced his agreement. He contended regulations, like statutes, do not always identify specific nuances on an issue.

Vice Chairman Mizner stated that the purpose of the public comment period is to foster discussions between stakeholders and state agencies to address problems with regulations. Mr. Reiley stated that, in their opinion, the combined rulemaking's public comment period did allow for that exchange between involved parties.

Chairman Bedwick requested a recess at 11:30 am. The meeting resumed at 11:40 am.

Commissioner Ufberg commented that he understands DEP's concerns toward sanctions. Since the department representatives are unable to respond to questions today, he asked if DEP would commit to meeting with stakeholders in good faith to determine if the regulation should be modified. He recommended that the department return to the Commission no later than 60 days from the meeting to gather oil and gas industry feedback and report its findings. The department's representatives agreed to do so.

Commissioner Soroko expressed concern about the efficacy and legal effect of stakeholder input once the regulation is already approved. Mr. Reiley detailed that DEP would meet with stakeholders like Mr. Stewart and Ms. Mosites to identify any outstanding issues and amend the regulation if necessary.

Commissioner Soroko expressed concern that even in the event that the DEP would devote attention to such stakeholders once the regulation is approved. DEP would be under no actual obligation to take any action based on such discussions.

Commissioner Soroko again focused on discussions between DEP and oil and gas well companies that are required by law if the regulation passes. He outlined how an oil and gas representative like Mr. Stewart would be left empty-handed after talks with DEP if the regulation is passed. Mr. Reiley explained that DEP would meet with individuals like Mr. Stewart and the regulation would be re-examined. He added that DEP would make it a priority to help stakeholders with compliance.

Commissioner Ufberg shared his appreciation for Commissioner Soroko's concerns. He contended though clarity is needed, the emergency of financial harm to the Commonwealth has not ceased. He repeated his call to include members of the regulated community like Mr. Stewart in the regulatory process to give credence to the industry's views. He indicated he would

vote to approve the regulation, though he noted he would like to see discussions held in good faith.

Chairman Bedwick remarked that the Commission could not obligate a state agency to do anything. He noted that this regulation has evolved from a series of unique circumstances, but commented on his disappointment on a lack of answers from department representatives to certain questions about the regulation.

Commissioner Watson stated that DEP demonstrated the regulation's positive impact on the Commonwealth's environmental well-being. He asserted that the EQB held numerous hearings and provided enough time for stakeholders to offer comments.

Commissioner Soroko stated there is no real emergency that would require the emergency certification. He reiterated his belief the regulation's approval would set a bad precedent. He further stated that the regulation does not comply with the appropriate state laws and it works to avoid the regulatory process.

Commissioner Ufberg shared his hope that DEP truly works to incorporate the recommendations from the conventional oil and gas industry.

Chairman Bedwick commented that the Commission does not have the authority to determine what is considered an emergency and that the unique situation should not result in a precedent for the future. He agreed that the public should be more involved in the process.

Commissioner Watson made a motion for approval. Commissioner Ufberg seconded, and the motion passed 3-2, with Vice Chairman Mizner and Commissioner Soroko dissenting.

V. OTHER BUSINESS

Approval of Vouchers

Vice Chairman Mizner made motions to approve vouchers and expenses for the period November 17, 2022 through December 8, 2022. Chairman Bedwick seconded, and the motions passed 5-0.

VI. DATE AND PLACE OF SUBSEQUENT MEETING

Chairman Bedwick announced the next public meeting is scheduled for Thursday, May 18, 2023, at 10:00 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg.

VII. EXECUTIVE SESSION ANNOUNCEMENTS

Chairman Bedwick announced that no executive session would be held.

VIII. ADJOURNMENT

Chairman Bedwick adjourned the meeting at 12:19 pm.