Testimony

Submitted on behalf of the Pennsylvania Independent Oil & Gas Association

Public hearing on State Government Regulations: Potential Solutions to Improving Oversight and Relieving Regulatory Burdens

Before the: House State Government Committee

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State Capitol

Presented by:
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Mr. Chairman and members of the House State Government Committee:

My name is Carl Carlson, Director of Government Affairs for Range Resources – Appalachia, LLC, and a long-standing member of the Board of Directors of the Pennsylvania Independent Oil & Gas Association (PIOGA). Thank you for the opportunity to comment on the issue of regulatory burdens facing the oil and natural gas industry in Pennsylvania.

As you know, Pennsylvania is at the center of an historic resurgence of the natural gas industry in North America due to the immense natural gas potential of the Marcellus, Utica and upper Devonian Shales that blanket the western and northern portions of the Commonwealth. Pennsylvania is currently the number two natural gas producer in the United States (behind Texas), with natural gas production in 2016 at nearly 14 billion cubic feet per day, a 30-fold increase from 9 years ago when production from the Marcellus Shale began in earnest.

Pennsylvania now produces about five times the amount of natural gas consumed in the Commonwealth. You have all heard about the economic benefits that shale gas has brought to every Pennsylvanian in the form of lower energy prices, cleaner air, high-paying jobs and impact tax revenues. Pennsylvania has also experienced the initial benefits of increased use of natural gas and natural gas liquids that promise to be the biggest long-term benefit.

Pennsylvania is in fierce competition with other states and Canada to be the low-cost producer of natural gas. The regional natural gas oversupply that has plagued the northeast for the past two years is expected to ease in 2017-18, prompting many operators to increase their drilling activity. Actions by the Pennsylvania Department of Environmental Protection (the Department) are severely impeding that effort. Regulatory permitting delays, continued layering of new regulations and policies, and inconsistent interpretations between oil and gas district offices are crippling the industry’s ability to compete with other states that also have enormous shale gas resources. Many of those competing states maintain reasonable permitting timeframes and the predictability necessary to support economic growth while also maintaining environmental protection.

Regulatory certainty is an essential component of business growth in any industry, but is particularly important in the oil and gas industry due to the short cycle times of our well development process. For the week ending June 9, there
were 35 drilling rigs operating in Pennsylvania for 14 different operators, with one operator running 7 rigs and two operators running 5 rigs each. With drilling times now averaging less than 2 weeks per well, there is a constant need for new well permits and erosion and sedimentation control permits to construct new drilling pads and gathering pipelines. The upstream and mid-stream industries in Pennsylvania have invested in excess of $100 billion since 2007, at a pace of $10-15 billion per year in recent years. This level of investment will not continue under the current and projected regulatory burdens and uncertainty that continue to exist in the Commonwealth.

When permits required in Pennsylvania cannot be obtained in a timely manner, operators cannot simply shut down rigs and wait. Operators that have drilling opportunities in other states where they hold permits will allocate capital to those areas. If those other areas are not in proximity to Pennsylvania, rigs can be permanently lost to the region.

To be clear, these comments are not about environmental protection. Companies that have invested heavily in Pennsylvania’s shale gas industry understand that return on their investments is predicated on safe and environmentally responsible conduct. This discussion is about regulatory certainty, an absolute and undeniable requirement for capital investment.

The remainder of my testimony will focus on regulatory permits and processing times that are impeding growth of the natural gas industry in Pennsylvania.

**ESCGP-2 (Erosion and Sediment Control General Permit)**

An ESCGP-2 is a general permit relating to erosion and sediment control that is required prior to commencing any oil and gas-related earth disturbance exceeding 5 contiguous acres. This generally includes all unconventional well pads, access roads, gathering pipelines and compressor sites. ESCGP is a permit program that Pennsylvania developed in 2008 specifically for the natural gas industry. The permit underwent significant overhaul in 2012, resulting in significantly increased complexity. Most other activities require similar permits for land disturbance under a federal permit program that is administered by county conservation districts.
The graph above illustrates that the processing time to review ESCGP-2 permit applications is untenable, particularly in the Department’s Southwest District Office of Oil and Gas where review times for permits issued during the past six months have averaged 263 days, with a maximum of 578 days and a minimum of 28 days during that period. The Northwest District Office review times are about 30% shorter, but still excessive. Only the Eastern District Office has maintained a relatively constant review time of about 90 days for the past three years. All district offices have seen a reduction in permit application volume since 2014 while processing time has increased dramatically. Attachment 1 provides a tabular summary of permit processing statistics for ESCGP-2 permits issued since 2013.

Lengthy delays in issuing ESCGP-2 permits have resulted in operators drilling additional wells on existing well pads rather than constructing new pads. While this is a desirable outcome from a land use standpoint, the practice has physical limitations, and it can create economic hardship for operators by limiting the ability to validate expiring leases or to drill in the most economically viable areas.
Well Permit (To Drill and Operate an Oil and Gas Well)

A Well Permit is required to drill and operate a new well, or to rework or recompletes an existing well. A well permit is prescribed by Pennsylvania’s Oil and Gas Act (Act 13 of 2012) at $3211, with reasonably clear application requirements. Subparagraph (e) of that section provides:

(e) Issuance of permit.--The department shall issue a permit within 45 days of submission of a permit application unless the department denies the permit application for one or more of the reasons set forth in subsection (e.1), except that the department shall have the right to extend the period for 15 days for cause shown upon notification to the applicant of the reasons for the extension. The department may impose permit terms and conditions necessary to assure compliance with this chapter or other laws administered by the department.

Operators put forth substantial efforts to prepare accurate and complete permit applications. For unconventional well permit applications since 2010, totaling over 18,000, only 0.4% of applications were denied.

Notes:
1) Drilling and Operating permits for the Northwest and North Central regions are all issued from the NWRO.
2) During the past several months, the NWRO has reviewed an unknown number of applications from the SWRO that are indicated as being issued from SWRO. This has likely contributed to recent delays in permit review for the NW and NC regions.
The graphs above show average review times for well permits issued each month by each oil and gas district office between 2010 and present, as well as the number of permits issued by month. The Southwest and Northwest district offices issue all well permits for Pennsylvania, with the latter issuing all permits for the Eastern District.

These statistics are alarming. Despite the clear, 45-day statutory time limit for the Department to issue well permits, both district offices issuing permits are regularly exceeding that threshold. In the Southwest District Office, permit review times in recent months have regularly been 2 to 3 times the statutory timeframe.

GP-5 Air Permit (for Gas Compressors and Gas Processing Plants)

This general permit and plan approval is available for midstream activities. Such activities may be conducted by the well operator, but are frequently conducted by independent midstream operators. The activities are an essential element of the oil and gas industry, as no production can occur without midstream infrastructure.

Based on information supplied by several large mid-stream operators, typical review times for GP-5 permit applications are six months or more, in clear violation of Pennsylvania’s Air Pollution Control Act and the regulations promulgated thereunder that require the Department to take action within 30 days of receipt of an application.

In February, 2017, the Department published proposed revisions to the GP-5 permit that add significant complexity to the application process. It is a near certainty that these proposed changes will increase permit application review time.

Proposed GP-5A Air Permit (for Well Pads)

Historically, oil and gas wells and associated equipment were exempt from air quality Plan Approvals and Operating Permits under the Department’s list of sources of minor significance. In 2013, the Department amended exemption 38
by adding numerous conditions that must be met by unconventional well operators to qualify for exemption from permitting. In February, 2017, the Department proposed to revise the exemption by removing unconventional well facilities from the list and made the GP-5A permit available for new or modified unconventional well facilities.

Upstream operators and trade associations have met repeatedly with the Department’s Bureau of Air Quality and have submitted extensive comments expressing concerns with the proposed GP-5A.

Major concerns with the proposed permit include:

1. It is a 43-page permit, with a 26-page application form and issuance would be required before any construction activity could begin. As evidenced by long delays in issuing the existing GP-5 permits for mid-stream activities, there is near certainty that the Department will be unable to adequately review and act on the hundreds of new applications that would be submitted by this industry each year. **Such delays will likely result in a de facto moratorium on drilling.**

2. It establishes an arbitrary threshold for emission of methane, a substance that currently has no ambient air quality standard, has been traditionally exempt from permitting, and is not designated as a pollutant. Attempting to create this standard through a permit process circumvents the well-established regulatory process and will likely result in legal challenges to the proposed permit.

3. It requires submittal of extensive information with the application and exhaustive reporting on temporary activities such as site construction, drilling and completion activities, where emissions are mainly from non-road engines which are not regulated by the Department.

In addition to the specific permits identified above, many upstream and midstream oil and gas activities require a variety of other permits or clearances including stream crossing permits (for roads and pipelines), road crossing permits (for pipelines), Pennsylvania Natural Diversity Inventory (PNDI) coordination with multiple agencies (for threatened and endangered species and species of special concern).
In summary, review times for the ESCGP-2 permit, well permit and GP-5 midstream air quality permit, the worsening trend of permit review times, and the prospect of more delays with the proposed GP-5A air quality permit for well sites represent an unsustainable environment for continued oil and gas development. If Pennsylvania wants the economic bounty that will come from the safe and responsible development and use of its natural gas resources, it must provide much more certainty and predictability in its permitting and regulation of those activities. The alternative will lead to a decline of the industry in Pennsylvania as capital and economic bounty flow to other states that better understand the need for regulatory certainty.

Thank you for allowing PIOGA to comment on these important issues to Pennsylvania’s natural gas industry.