

December 17, 2015

Re: Opposition to House Bill 1327 (and other legislation with the same environmental provisions)

Dear Representative:

On behalf of hundreds of thousands of Pennsylvanians, we write to express our strong opposition to House Bill 1327, the Fiscal Code bill passed by the Senate on December 10. While there are several problems with this legislation, our opposition is based mainly on the eleventh-hour insertion of harmful provisions concerning the Clean Power Plan (CPP) and gas drilling regulations for “conventional” oil and gas well operations. Because these provisions are decidedly hostile to public health and the environment, contrary to public will, and likely unconstitutional, we urge you to vote against HB 1327 *and any other legislation that may come before the House with the same language.*

Clean Power Plan Provisions

By way of background, by September 6, 2016 Pennsylvania must either submit to the EPA a state plan to implement the CPP or request more time to do so. In order to promote regulatory certainty, create a favorable climate for business decisions by the electricity industry, and ensure that the Commonwealth can obtain matching allowances under the EPA’s Clean Energy Incentive Program (among other reasons), the Department of Environmental Protection (DEP) intends to submit a state plan next September. Act 175 of 2014, the state Greenhouse Gas Regulation Implementation Act, currently requires the DEP to submit the plan to the General Assembly 100 days before submitting it to the EPA. The legislature then has an opportunity to suggest revisions.

The CPP provisions in HB 1327 would require the DEP to submit the state plan to the General Assembly a full 180 days before submitting it to the EPA. In light of the September, 2016 deadline, this timeline would give the legislature more time to review the plan than the DEP would have to write it and could prevent the DEP from adequately considering and deploying policies that would benefit communities in the Commonwealth. Other CPP provisions in HB 1327 contain ambiguous and confusing language that could lead to additional delays. Overall, the changes to Act 175 would make it more difficult for the DEP to develop a custom-made plan that works for Pennsylvania’s citizens, its electric power sector, and its economy.

Gas Drilling Provisions

The HB 1327 provisions regarding gas drilling would prohibit the Environmental Quality Board from promulgating critical updates to the DEP’s drilling regulations currently codified at 25 Pa. Code Chapter 78. Some of these updates were required by the General Assembly itself in Act 13 of 2012.¹ While the HB 1327 provisions nominally target “conventional” oil and gas operations, they could also be construed to prevent the adoption of modern regulations for “unconventional” operations, because they declare “invalid” the rulemaking procedure that the DEP has used to develop regulations for *both* kinds of operations. The result? Pennsylvania would have to oversee

¹ See, e.g., section 3215(e), which requires regulations for the permitting of wells, and section 3218(a), which requires the development of measures to protect public and private water supplies.

2015 drilling operations with obsolete standards that largely date to the 1980s and 90s. In addition to endangering the Commonwealth's water and land resources, HB 1327 would throw away thousands of hours of work and millions dollars the state has spent developing new standards over the last three years.

Constitutionality Concerns and Public Opinion

The provisions of HB 1327 concerning the CPP and Chapter 78 are not just irresponsible policy; they are probably also unconstitutional, because Article III, Section 3 of the State Constitution limits the subject matter of statutes implementing Pennsylvania's budget to spending matters, and the HB 1327 provisions plainly exceeds those limits. Moreover, both sets of provisions are contrary to the will of Pennsylvania's voters.

The DEP has conducted extensive public input processes for both Chapter 78 and the CPP to gather ideas and comments from the regulated community and the general public. The Chapter 78 process started in August, 2012 with a request for input on a "Summary of Proposed Conceptual Changes" and after that included 12 public hearings and two written comment periods. During the main comment period in 2014, the DEP received more than 24,000 comments, and they overwhelmingly supported stronger regulations for both conventional and unconventional oil and gas drilling operations.

For the CPP, the DEP conducted an extensive public process this fall seeking input on what the state plan should say. That process included 14 listening sessions in every part of the state and a 60-day written comment period. Based on our review of the comments received by the DEP (in the interest of transparency, the DEP has posted them online),² the great majority of Pennsylvania's citizens, generators, trade associations, environmental organizations, and other interested parties want the Commonwealth to submit a strong state plan emphasizing clean energy to the EPA in September, 2016 – and they oppose delays of the kind contrived by House Bill 1327. Specifically, our review shows that of the approximately 2,040 commenters, more than 94% expressed support for state implementation of the CPP, and over 70% of all comments explicitly stated support for timely submission of a state plan. Less than 3% of the comments stated support for delaying submission beyond 2016.

Conclusion

Pennsylvanians clearly want both modern-day gas drilling regulations and a timely state plan customized for the state's unique power sector, rather than a standardized federal plan designed by the EPA.

House Bill 1327 is bad policy, opposed by the public, and likely unconstitutional. For all these reasons, we strongly urge you to OPPOSE HB 1327 and any other legislation that contains that the same language that it does concerning the Clean Power Plan and regulations for conventional gas drilling activities.

Sincerely,

² See

<http://www.ahs.dep.pa.gov/eComment/ViewComments.aspx?enc=8YWIeHIdijzUAfiG53EkjflnP%2fXgFr0fA3HnfGi1I5Y%3d>