

December 18, 2015

**Re: Opposition to House Bill 1327 (P.N. 2650)**

Dear Governor Wolf:

On behalf of more than one hundred thousand Pennsylvanians, we write to express our strong opposition to House Bill 1327, the Fiscal Code bill that the Senate passed on December 10 and that the House may pass tomorrow. 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 activities. Because these provisions are hostile to public health and the environment, contrary to public will, and likely unconstitutional, we urge you to veto HB 1327 – and any other legislation that may come before you containing the same language.

**Clean Power Plan Provisions**

By way of background, by September 6, 2016 Pennsylvania must either submit to the U.S. Environmental Protection Agency (EPA) a state plan to implement the CPP or request more time to do so. To your administration’s credit, within one month after the date the CPP was finalized this summer, your Department of Environmental Protection (DEP) announced that it intended to submit a plan to the EPA by next September’s deadline, rather than seek an extension. This course of action enjoys support from not just from Pennsylvania’s citizens and environmental organizations, but also from much of its business community, which recognizes that timely submission of a state plan would 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..

The CPP provisions in HB 1327 would amend Act 175 of 2014, the state Greenhouse Gas Regulation Implementation Act. Currently, Act 175 requires the DEP to submit the state plan to the General Assembly 100 days before submitting it to the EPA, giving the legislature an opportunity to recommend revisions. HB 1327 would require the DEP to submit the state plan to the General Assembly 180 days before submitting it to the EPA, giving the legislature more time to review the plan than the DEP would have to write it and hampering the DEP’s ability to adequately consider and deploy policies that would benefit communities in the Commonwealth. The CPP provisions in HB 1327 also contain ambiguous language that could further complicate development of the state plan. Overall, the CPP provisions in HB 1327 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.<sup>1</sup> While the HB 1327 provisions nominally target “conventional” oil and gas operations,

---

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

they could also have implications for 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. Currently, Pennsylvania is in the untenable position of having to oversee 2015 drilling operations with standards that largely date to the 1980s and 90s. By maintaining this status quo, HB 1327 would endanger the Commonwealth’s water and land resources – and throw away thousands of hours of work and millions of dollars the state has spent developing new standards during the last three years.

### **Constitutionality Concerns and Public Opinion**

The provisions of HB 1327 concerning the CPP and Chapter 78 are not just bad 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.

Your DEP has conducted extensive public processes for both Chapter 78 and the CPP to gather input from the regulated community and the general public. The Chapter 78 process started in August, 2012 with a request for feedback on a “Summary of Proposed Conceptual Changes,” and subsequently featured 12 public hearings and 2 written comment periods. During the main comment period in 2014, the DEP received more than 24,000 comments, which overwhelmingly supported stronger regulations for both conventional and unconventional oil and gas drilling operations.

For the CPP, your 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),<sup>2</sup> 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 that HB 1327 could create. Specifically, our review shows that of 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 supported delaying submission beyond 2016.

### **Conclusion**

Pennsylvanians clearly want both modern gas drilling regulations and a strong and timely CPP state plan customized for the state’s unique power sector. The provisions in House Bill 1327 concerning the CPP and conventional gas drilling activities are irresponsible policy because they are inimical to these goals and likely unconstitutional. Consequently, we strongly urge you to VETO HB 1327 and any other legislation that comes before you with the same language.

---

<sup>2</sup> See

<http://www.ahs.dep.pa.gov/eComment/ViewComments.aspx?enc=8YWleHIdijzUAfiG53EkjflnP%2fXgFr0fA3HnfGi1I5Y%3d>

Sincerely,

Jordan Ford, Political Director  
**Action United**

Khari Mosley  
**BlueGreen Alliance**

Steve Hvozdovich, Pennsylvania  
Campaigns Coordinator  
**Clean Water Action**

Rachel Filippini, Executive Director  
**Group Against Smog and Air Pollution**

Jackson Morris, Director Eastern Energy  
Mark Szybist, Senior Program Advocate  
**Natural Resources Defense Council**

David Masur, Executive Director  
**PennEnvironment**

Thomas Bartnik, Executive Director  
**Pittsburgh Green Innovators**

Court Gould, Executive Director  
**Sustainable Pittsburgh**

Phil Wallis, Executive Director  
**Audubon Pennsylvania**

Joseph Otis Minott, Executive Director  
**Clean Air Council**

Nadia Steinzor, Eastern Program  
Coordinator, Oil & Gas Accountability  
Project, Earthworks

Gretchen Dahlkemper, National Field  
Manager  
**Moms Clean Air Force**

Mary Booth, Director  
**Partnership for Policy Integrity**

Matthew Stepp, Policy Director  
**PennFuture**

Joanne Kilgour, Chapter Director  
**Sierra Club, Pennsylvania Chapter**