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ENVIRONMENTAL RESOURCES AND
ENERGY COMMITTEE
CHAIRMAN

September 15, 2020

Independent Regulatory Review Commission
333 Market St
Harrisburg, PA 17101

Dear Commissioners:

As members of the House Environmental Resources and Energy Committee, we write to you to express our disapproval of final Environmental Quality Board (EQB) Regulation #7-536.

The Committee voted today, September 15, in favor of sending you this letter disapproving of the regulation regarding the Air Quality Fee Schedule on behalf of our constituents and businesses. As the standing House Committee with legislative oversight over the Department of Environmental Protection (DEP), it is our role to ensure that regulations proposed by DEP through the EQB are reasonable, consistent with the intent of the Acts on which they are based, and proposed in a manner consistent with the law.

This letter will be somewhat repetitive of the letter the Committee sent to you when the regulation was open for comment at the proposed stage, as DEP failed to adequately address our comments, and the comments of other legislators who participated in the process, when producing this final regulation. There is, however, one significant difference between the world when we write you today and the time when we wrote to you at the proposed stage. Almost every part of our economy, including the businesses that would be impacted by these new fees and fee increases, has been utterly devastated by the COVID-19 outbreak.

Businesses in this industry are making decisions right now about whether they will be permanently closing their doors and laying off their employees. Companies in this industry are making decisions right now about what facilities to attempt to save, facilities in Pennsylvania or facilities in other states. Companies in this industry are making decisions right now about where to invest, in Pennsylvania's economy or in the economies of our neighboring states.

DEP's decision to plow forward with these new fees and fee increases at this moment when so many Pennsylvanians are hurting and unemployed and when so many of our businesses are struggling to survive and these vital decisions are being made is completely unacceptable. It is the role of government to do everything it can to aid in our economic recovery by doing everything it can to help the business community at this time. This regulation would do the absolute opposite at this critical time by putting up clear signs that Pennsylvania is not open for businesses and investment. The Pennsylvania Chamber noted in their comments on this regulation that operating expenses for complying with Air Quality fees will increase by as much as 30%. It would be difficult for the industry to accept these costs

with a robust economy, but with our current economic situation, it is nearly impossible.

As the Committee stated previously, the state's Air Pollution Control Act, Act 787 of 1959, does authorize DEP to set some specific fees by regulation. DEP's proposal to introduce a number of new fees and astronomically increase existing fees is inappropriate and does not comply with the Act. DEP notes that it needs to generate more revenue because the primary fees it is currently collecting are based on the amount of emissions of regulated pollutants, which have decreased by 41% since 2000 and are continuing to decrease. This decrease in emissions demonstrates that Pennsylvania's business community has been successfully improving the air quality within our state over the past decades.

As this regulation seeks to move funding for DEP's program away from solely the emissions fee, it breaks the basic bargain laid out in the federal Clean Air Act and state Air Pollution Control Act that provides a positive incentive structure for the business community. Fees collected under these Acts should be based on emissions, so that as a business cleans up its process and emits less pollutants, it gets rewarded by having to pay less in fees. The new fees and fee increases proposed by DEP will not lead to more compliance and improvement in air quality, it will harm innovation and investment in Pennsylvania, at the worst possible time, all in an effort to sustain bureaucracy. At a fundamental level, if DEP believes it needs more funding for this program, this is a policy decision which must be made through changes to the statute or by an increase in appropriations through the budgetary process. DEP must involve the General Assembly.

IRRC's role is to analyze the economic and fiscal impacts of a regulation, and with the current state of the economy, this could not be clearer. The burden that this regulation will impose on our business community which must pay these fees and make business decisions at this moment of economic crisis will be devastating. As we stated before, the regulation would apply universally, so smaller businesses with limited resources would be disproportionately impacted by these excessive increases should the proposed regulation take effect.

This final regulation is unacceptable, and if implemented would have a severe financial impact on our business and economy. We therefore ask IRRC to disapprove this regulation in its final form since the provisions of the regulation are unreasonable. We urge the EQB and DEP to withdraw this final regulation. We, the undersigned members of the House Environmental Resources and Energy Committee, write this letter to draw your attention to our concerns and disapproval of this final regulation and respectfully ask for your consideration.

Sincerely,

Signatories to letter:

Rep. Daryl Metcalfe

Rep. Stephanie Borowicz

Rep. Cris Dush

Rep. Jonathan Fritz

Rep. R. Lee James

Rep. Ryan Mackenzie

Rep. Carl Walker Metzgar

Rep. Tim O'Neal

Rep. Jason Ortity

Rep. Jeff Pyle

Rep. Kathy Rapp

Rep. Thomas Sankey

Rep. Paul Schemel

Rep. Ryan Warner

Rep. Dave Zimmerman

Rep. Pam Snyder

Cc: Environmental Quality Board

Department of Environmental Protection