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October 1, 2018

Submitted via online docket at regulations.gov

United States Environmental Protection Agency
Jan Matuszko, Engineering and Analysis Division, Office of Water

Re: USEPA Study of Oil and Gas Extraction Wastewater Management
Docket ID No. EPA-HQ-OW-2018-0618

Dear Ms. Matuszko:

The Pennsylvania Grade Crude Oil Coalition (PGCC) is a non-profit trade organization that represents conventional oil and gas producers in Pennsylvania. PGCC's members consist entirely of small businesses, many of which are single-employee entities or individual operators. PGCC's mission is to advance local economies and engage in regulatory processes that affect conventional oil and gas development. Since 2016, PGCC has been engaging and corresponding with the U.S. Environmental Protection Agency (USEPA) regarding federal regulation of conventional operations as defined under Pennsylvania law.¹

PGCC respectfully submits these comments in response to USEPA's request for input on its *Study of Oil and Gas Extraction Wastewater Management* and its upcoming hearing in Washington, D.C. on October 9, 2018. Wastewater management is a core activity in our industry, and we appreciate USEPA's efforts to consider this issue in a holistic manner. Our concerns as described below are intended to facilitate a cooperative and efficient relationship,

¹ Pennsylvania law has provided separate definitions of conventional and unconventional operations since 2012 in response to the rapid development of the Marcellus Shale in the Commonwealth. "Unconventional" operations are those that target shale formations below the base of the Elk Sandstone or its geologic equivalent that must use hydraulic fracturing or other techniques to produce in economic rates and volumes. 58 Pa. C.S. § 3203 (Definitions). "Conventional" operations include all wells drilled above the Elk Sandstone and all non-shale wells drilled below the Elk Sandstone that do not require completion techniques like hydraulic fracturing. 25 Pa. Code Section 78.1 (Definitions).

one that will enable USEPA to have the information it needs as it develops regulations, policies and practices that affect this industry in the future.

1. EPA Must Develop an Adequate Record in All Rulemaking related to Wastewater, which Includes Consideration of Effects on Conventional Oil and Gas Operators.

USEPA's recent rulemaking experience provides valuable lessons regarding mistakes that must not be repeated in any future developments of regulations, policies or practices. On June 28, 2016, USEPA promulgated the Unconventional Oil and Gas Effluent Limitation Guideline Rule (UOG Rule), with a new definition of unconventional oil and gas, prohibiting the discharge of wastewater from unconventional oil and gas extraction to publicly owned treatment plants (POTWs). Because "unconventional" operators had previously voluntarily stopped sending wastewater to POTWs, USEPA determined a "zero discharge" guideline was not only feasible but would impose no new costs or impacts on the industry.

Conventional operators in Pennsylvania had been lawfully discharging wastewater to POTWs for years, a fact that USEPA did not consider when defining "unconventional oil and gas" as "crude oil and natural gas produced by a well drilled into a shale and/or tight formation (including, but not limited to, shale gas, shale oil, tight gas, tight oil).² By including oil and gas from "tight" formations in its brand new definition that had never been part of any prior law or regulation, USEPA's "zero discharge" rule captured the majority of conventional oil and gas operators in Pennsylvania. In spite of the scope of its rule, USEPA had failed to consider any effects of the ban on conventional operators, resulting in a fundamentally flawed rulemaking.

First, USEPA failed to adequately consider the type of operations that would be captured in the rule. USEPA's own statements demonstrate this. In the preambles for both the proposed and final rules, USEPA stated that it would consider a later rule for discharges to POTWs from conventional operations as appropriate.³ Knowing that they are conventional operators, PGCC members awaited such a rulemaking. And in spite of outreach to many unconventional operators in Pennsylvania, as described in the Technical Development Document, PGCC is unaware of any conventional operator whom USEPA consulted as it developed the UOG Rule.

Second, USEPA's conclusion that a "zero discharge" limitation was technologically and economically feasible is based on erroneous assumptions. USEPA determined that, because unconventional operators had previously agreed to stop sending wastewater to POTWs, a zero discharge rule would have no extra cost or effect on those operators. While this is true for unconventional operators, USEPA's assumption was not factually accurate for the conventional operations in Pennsylvania. In fact, conventional operators discharged over 1 million barrels of produced water to POTWs in 2015 and 2016. This information was and is publicly available on the Pennsylvania Department of Environmental Protection website.⁴ USEPA admitted this error

² 40 C.F.R. § 435.33(2)(i).

³ See 81 FR 41848 (June 28, 2016) (final rule); 80 FR 18561 (Apr. 7, 2015) (proposed rule).

⁴ See PADEP's Office of Oil and Gas Management Oil and Gas Waste Report at: http://www.depreportingservices.state.pa.us/ReportServer/Pages/ReportViewer.aspx?%2fOil_Gas%2fOil_Gas_Well_Waste.

in its record when it extended compliance with the UOG Rule until August 29, 2019 for existing sources.⁵

The importance of developing a factual record for agency rulemaking cannot be understated. USEPA's failure to access readily available information and the promulgation of an overly broad definition has created serious problems for both industry and agencies, for both enforcement and compliance with the rule. A lack of accuracy and clarity in agency action is inimical to efficient regulations vital to industry, agencies, and local communities.

2. USEPA's Wastewater Rulemaking Affecting Pennsylvania's Conventional Oil and Gas Industry Must Consider Effects on Small Businesses.

Any future regulation must consider significant economic impacts on small businesses like conventional oil and gas operators.⁶ USEPA failed to do so when it issued its UOG Rule, or else it would have realized the severe economic burden wastewater regulations can have on the conventional oil and gas industry. The conventional industry in Pennsylvania is composed primarily of small, single-employee entities or individual operators. Few conventional operators gross more than \$1 million per year. By eliminating discharge to POTWs, the UOG Rule forces conventional operators to find alternate methods of waste water management. But reuse and disposal options in Pennsylvania are extremely limited. To construct an underground injection control well, costs are close to \$1 million dollars and require several years to wade through the federal and state permitting processes. Shipping wastewater into another state for disposal is cost-prohibitive for most operators. PADEP recently stopped authorizing the use of conventional brine as a dust suppressant on dirt roads, a beneficial use that had been available for decades. Plainly, without feasible wastewater options, the conventional industry faces dire economic hardship, where already thin profit margins can be eliminated by unnecessary regulatory burdens.

3. USEPA's Approach to Wastewater Management Should Promote Regulatory Predictability and Flexibility Regarding State Agencies and Local Economies.

USEPA should foster flexibility between federal and state regulators, recognizing that many environmental issues require regional solutions. Pennsylvania has extensive regulations for both conventional and unconventional operators within a comprehensive framework of environmental laws. USEPA's abrogation of this necessary state distinction under its UOG Rule is at odds with cooperative federalism and respect for differences necessitated by local factors. Federal rulemaking is often a blunt instrument that should be exercised with restraint.

PGCC recognizes USEPA's laudable efforts to further consider wastewater handling and its temporary stay of the UOG Rule until August of 2019. A three-year period, however, is not adequate to allow the conventional industry to adapt or accommodate the UOG Rule in its operations. The economic data and realities described above illustrate why the stay provides only temporary relief. Conventional operators may well be forced out of business if required to utilize UIC wells or out-of-state disposal services. PGCC once again asks USEPA to utilize its

⁵ 81 FR 88126 (Dec. 7, 2016).

⁶ The Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*).

enforcement discretion while USEPA determines how to adjust its rulemaking to relieve undue burdens on the conventional oil and gas industry.

PGCC hopes that these comments remind USEPA of the current demographic of Pennsylvania's conventional industry as USEPA pursues a holistic perspective on wastewater management. PGCC will continue to make itself available for continued discourse on these matters.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Clark", with a stylized flourish at the end.

David Clark, President