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## **PIOGA’s Response to PADEP’s 2021 Oil and Gas Annual Report and HB 2644 Lapsing Statement Report**

In January 2023, the Pennsylvania Department of Environmental Protection issued two reports that include statistics and information about the oil and gas industry between 2017 and 2021, which purport to provide a snapshot of the industry. The 2021 Oil and Gas Annual Report and the report generated in response to Governor Wolf’s lapsing statement for House Bill 2644 (Act 96 of 2022) (Recommendation Report), however, fail to provide a complete or accurate picture of the industry, in part because they do not explain the realities behind the numbers or include descriptions of the good work of the conventional oil and gas industry to address environmental issues collaboratively.

### *Industry efforts are proactive and ongoing*

PIOGA and its members, including operators, consultants, suppliers and attorneys, meet at least monthly to discuss and understand PADEP and federal regulations, policies and guidance as they evolve over time. PIOGA subcommittees provide quarterly training to members regarding environmental topics and best practices, trainings that are well attended by PIOGA members and PADEP. PIOGA staff provide weekly and monthly newsletters to members to address environmental, health, safety and other issues relevant to the industry.

PIOGA, Pennsylvania Grade Crude Oil Coalition and Pennsylvania Independent Petroleum Producers have representative members on the Crude Oil Advisory Council (Council) who work many volunteer hours to prepare for and participate in the mission and work of the Council, which was formed under Act 52 of 2016. That work includes review of legislative and regulatory matters but also scientific studies and academic evaluations of oil and gas activities.

Contrary to PADEP’s mischaracterization of the Council’s “vigorous opposition” to PADEP’s proposed regulations, the Council members in fact provided regular and constructive suggestions to make regulatory amendments that are practical and consistent with the requirements of the Pennsylvania Regulatory Review Act to consider and

accommodate small businesses.<sup>1</sup> As can be seen in CDAC's comments,<sup>2</sup> it was in fact PADEP that resisted correcting its draft regulations to: 1) address internal inconsistencies and conflict with existing laws, and 2) revise its draft to treat the oil and gas industry on equal footing with other industries.

PIOGA and its members agree that environmental protection is a top priority and continue to promote training, participation, and adherence to the law and best practices.

*PADEP's statistics cannot tell the whole story*

As for the data and statistics regarding regulatory compliance and enforcement, PIOGA agrees that regulatory compliance and the development of reasonable regulation is a goal that benefits the industry and the Commonwealth of Pennsylvania. One must understand, however, that PADEP's online systems multiply single incidents by stacking regulatory citations and keeping "continuing" violations on the record for the duration of corrective action being taken. The PADEP is aware of how this practice is misleading to the public and has placed public notices in two website locations stating:

**\*Please note that an inspection report may cite multiple violations that are related to a single event or incident that occurred at a site, facility, or sub-facility. Also, inspection type codes may vary between different inspections involving a single event or incident as issues are being addressed and resolved to restore the site, facility, or sub-facility back to compliance.<sup>3</sup>**

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<sup>1</sup> See Sections 10.1 and 12.1 for the many considerations legally required for any proposed regulation by PADEP, including a "description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation." "The agency shall consider, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses:

- (i) the establishment of less stringent compliance or reporting requirements for small businesses;
- (ii) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (iii) the consolidation or simplification of compliance or reporting requirements for small businesses;
- (iv) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and
- (v) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

<sup>2</sup>[https://pioga.org/publication file/CDAC Approved Comments Draft Ch 78 proposed regulations Attachments.pdf](https://pioga.org/publication_file/CDAC%20Approved%20Comments%20Draft%20Ch%2078%20proposed%20regulations%20Attachments.pdf)

<sup>3</sup> <https://www.depgreenport.state.pa.us/ReportExtracts/OG/OilComplianceReport>

PADEP's reporting practice affects issues of longer-term action, such as well plugging or Act 2 spill cleanups, more than those that can be corrected while PADEP is on site.

With respect to well plugging, DEP continues to count alleged violations for the same well repeatedly, which results in excessive multiplication of violations reported. The more accurate metric would be to count wells subject to the NOV rather than the number of NOVs. By some counts, this method reduces the number of abandoned wells subject to NOVs in the five year period by over 50%. In addition, public records may indicate an open violation that is already addressed under a Consent Order and Agreement with an agreed upon schedule for compliance.

In its discussion of abandoned wells, PADEP notes that pre-1985 wells were not required to have a bond and that recent legislation continued that provision. What PADEP did not acknowledge is that Act 96 of 2022 provided a bond increase provision for conventional wells, raising the blanket bond from \$25,000 to a maximum of \$100,000. And while abandoned wells may have the potential to cause environmental harm or pose risks to persons and property, PADEP is well aware that not all abandoned wells pose the same level of risk.<sup>4</sup> PADEP has prioritized abandoned wells to be addressed with new plugging money grants and conventional oil and gas operators are ready, willing and able to assist in plugging orphan wells for which they have no legal responsibility.

As for production and waste reporting, there are technical difficulties in the PADEP Greenport system that prevent certain entries, due to the drop-down nature of options to fill in the forms. There may also be small operators in remote areas of the Commonwealth where internet connections are scarce and unreliable. As a traditional industry working in remote areas, some conventional operators had requested the ability to file forms in hard copy rather than electronic submission, a request to which the PADEP has not been receptive.

*Compliance is fostered by cooperation and training*

PADEP's Recommendation Report suggests an approach to improving regulatory compliance that is restricted entirely to heightened scrutiny and greater issuance of orders and penalties, noting that it has many and varied enforcement tools. This approach fails to recognize that some compliance issues may be in fact related to conventional wells for which the owners or operators are deceased, a number that the Recommendation Report

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<sup>4</sup> According to PADEP, "[p]lugging priority is determined through site investigations that assign a numeric score based on the abandoned well's risk. Risks associated with abandoned wells that are considered in the prioritization process include oil leakage into water resources, health and safety issues like methane migrating into homes and private water wells, and fugitive methane emissions being released into the atmosphere. Higher risk wells are plugged before lower risk wells." <https://www.dep.pa.gov/OurCommonwealth/pages/Article.aspx?post=91>

does not acknowledge. In addition, orders and penalties may provide deterrence, but they do not provide incentives for improvement.

In 2015, when PADEP revised its technical guidance document (TGD No. 820-4000-001) providing standards for resolving oil and gas violations, it abandoned its prior statement that “All companies are to be treated fairly and equally by the Department” and its prior descriptions of the objectives of the PADEP’s compliance efforts to “identify opportunities for and to provide technical and educational assistance to oil and gas operators and the public.”

In its response to comments, PADEP stated: “Office of Oil and Gas Management staff work every day to provide technical and educational assistance to operators across the Commonwealth and to treat each operator fairly and equally. The Department agrees these are important concepts.” That goal/concept/attitude is entirely missing from the Recommendation Report, which concludes that PADEP enforcement tools “have not made an appreciable dent in compliance rates,” but that “additional resources, streamlined processes, and focused efforts” can be used for effective deterrence. PADEP’s approach to compliance should recognize that the vast majority of owners and operators are conscientious, hard-working, and law-abiding.

PIOGA agrees that streamlining permits and processes is a good idea but streamlining enforcement risks infringement of due process, reduced respect for conventional oil and gas operators, and premature closure of viable businesses.

### *Conclusion*

Far from a culture of non-compliance, PIOGA fosters a culture of hard work and hope, including the hope that PADEP will work with the conventional oil and gas industry to continue to improve compliance and environmental stewardship through education, training, reasonable regulation and practical enforcement.

PIOGA also suggests that PADEP reevaluate its compliance statistics to better reflect the issues created by the nature of its reporting practices and systems. Such reevaluation would benefit the PADEP, the public, and the industry, all of whom have an interest in an accurate characterization of compliance issues to be addressed.