



Testimony of
Patrick Henderson
Marcellus Shale Coalition
Before the
House Environmental Resources and Energy Committee

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Good morning, Chairman Vitali, Chairman Causer and distinguished members of the House Environmental Resources and Energy Committee. My name is Patrick Henderson and I serve as Director of Government Affairs for the Marcellus Shale Coalition (MSC). The MSC is a state-wide trade association representing more than 140 energy companies from the upstream, midstream, and downstream sectors, and those who supply goods and professional services to the industry. Our members are fully committed to working with local, county, state and federal government officials to facilitate the safe development of natural gas resources in the Marcellus, Utica and related geologic formations. On behalf of the MSC and its members, I appreciate the opportunity to appear before you and offer testimony regarding House Bill 652, related to the issuance of permits within burdened communities.

Introduction

Fundamentally, environmental permits are intended to authorize the undertaking of certain activities, and the construction and operation of certain facilities, in a manner that protects our natural resources and the communities in which the facility or activity is located. It is important to recognize that, more often than not, these facilities and activities serve a role in maintaining and enhancing our quality of life. It is also critically important to recognize that, while environmental permitting is principally handled at the state level, the *where* with respect to the location of an activity or facility is most often determined by local government zoning and planning ordinances.

With regard to permitting, we believe the threshold question to answer is whether the proposed activity or facility can be undertaken in a manner that is compliant with the law while ensuring our natural resources and public health are protected. State agency review of permits should be robust and consider all relevant information to inform the decision-making process, and agencies should strive to do so in a manner that includes consistent criteria and predictable timeframes.

Pennsylvania has a robust suite of environmental laws, each of which includes criteria and requirements as to how any permits required under that law ought to be administered. Certainly, permit applicants, including members of the MSC, the broader business community, municipalities and other entities and individuals that regularly navigate this process, have thoughts on how to streamline and improve upon the current permit regimen. To suggest, however, that a one-size-fits-all approach which assumes the process associated with each of

these environmental laws is inadequate, as this bill does, is unnecessary and injects additional delays, confusion and unpredictability into permitting processes while providing little if any tangible environmental benefit.

And while House Bill 652 (HB 652) does not directly impact all activities in the Commonwealth, as prescribed therein, it is important to have this background as you consider the legislation. To that end, there are several issues within HB 652 that we believe are necessary to raise in good faith with this Committee, and I offer them with the understanding that they will be considered in good faith, as well, before simply advancing the legislation.

House Bill 652 Imposes Mandates Upon Burdened Communities

HB 652 requires the identification and cataloging of ‘burdened communities’. A burdened community under the bill is designated as being within the bottom 33% of communities based upon median annual household income.

HB 652 further requires that the governing body of a municipality within a ‘burdened community’ designate a representative of that burdened community. Because burdened communities are based upon census tracts, and not municipal boundary lines, it is possible – if not probable – that many census tracts will be comprised of multiple municipalities. Yet, HB 652 provides no mechanism in which these multiple municipalities are to agree upon the designation of one representative to represent the entire census tract.

Furthermore, HB 652 outlines no qualifications or duties for the representative of the burdened community. This raises several questions for the Committee’s consideration:

- Does ‘representative’ mean an individual person, or can it be an organization?
- Must the representative be an actual resident of the census tract, or can anyone be designated?
- What are the responsibilities of the representative, beyond receiving a copy of the cumulative impacts assessment?

As drafted, HB 652 could potentially promote a cottage industry where well-funded, well-connected non-governmental organizations work to become the designated representative for multiple communities across the Commonwealth and utilize that position to oppose or dissuade the permitting of essential facilities that otherwise would meet statutory requirements to be permitted – even in cases where the community at-large supports the project.

Finally, it is worth noting that the designation of burdened communities has no correlation to that community’s *actual* median income (e.g. does it meet a state or federal poverty threshold?), racial or ethnic composition, or whether the ‘burdened community’ actually hosts or is impacted by a facility that imposes a burden. As constructed in HB 652, by definition one-third of all Pennsylvania census tracts will *always* be designated as burdened communities. A good-faith, simple reading of the language suggests it is an unintended oversight that the definition of ‘burdened community’ contains no threshold or criteria to demonstrate that the community is, in fact, burdened.



House Bill 652 Inappropriately Delegates Permit Review and Process Responsibilities to the Applicant

HB 652 requires a permit applicant for a facility to undertake several actions, including preparing a cumulative impacts assessment. As drafted, the preparation of a cumulative impacts assessment is simply unrealistic as it requires the applicant to have knowledge of information which it could not reasonably possess.

For example, the cumulative impacts assessment must include any public health or environmental risk “or other effect”, including from any environmental pollution emitted or released routinely or accidentally and assessed based on “*combined past, present and reasonably foreseeable emissions and discharges affecting the geological area.*” No permit applicant would reasonably have access to this information. This would be a nearly impossible task for any applicant to undertake.

Furthermore, while the trigger for such an assessment is a proposed facility within a specific census tract, the cumulative assessment would be applied to “*the geographical area.*” This term is not defined in the legislation and its usage infers that the geographical area intended to be evaluated expands beyond the ‘burdened community.’

Additionally, HB 652 requires a permit applicant to conduct a public hearing. Such a public hearing would presumably be in addition to public hearings already required by statute and which are conducted by PA DEP. These provisions, if deemed necessary, are the proper purview of the regulatory agency that makes the ultimate permitting decision, and we would urge the Committee to re-think this duplicative and unnecessary approach.

House Bill 652 Deviates from Governor Shapiro’s Stated Intent of Streamlining Permitting

Governor Shapiro and Acting DEP Secretary Negrin have laid out aggressive proposals to revamp the way permitting is undertaken in Pennsylvania. We are optimistic about the stated goals of both the Governor and Secretary and look forward to forthcoming details and how they will implement these initiatives. It seems clear that both the Governor and Secretary Negrin are looking to increase the efficiencies of Pennsylvania’s unnecessarily time-consuming permitting system and introduce increased accountability and predictability to this process. We share their belief that these improvements can be made while continuing to safeguard our environment, public health, and the communities in which we live.

In contrast, HB 652 would layer additional permitting criteria and extend the timeline of the permit process – all while providing a mechanism for permits to be denied based, in large part, on their popularity. Rather than enhancing our economic competitiveness and improving our processes as is the desire of the Administration, HB 652 sends a signal to the investment community that Pennsylvania is not open for business, while frustrating permit applicants that depend upon a predictable, defined and reasonable permitting process.

In addition, PA DEP currently has an environmental justice policy that provides guidance to Department staff on how the agency is to engage with the public through the permitting process.



This policy has been open for public comment and our understanding is that PA DEP will release a revised version of its environmental justice policy this summer. It is also our understanding that PA DEP is currently evaluating how specifically to define an “environmental justice community”, which, when this effort is overlaid with the ill-defined definition of a “burdened community” as proffered in this bill, will create additional confusion for all parties: the permit applicant, the Department and the local communities.

We are encouraged by the initiatives outlined by Governor Shapiro and Secretary Negrin to improve the efficiency of the permitting process without sacrificing the importance of public input. These efforts will take some time to fully implement. We are committed to working in partnership with the Administration on these goals and encourage this Committee to do the same.

Conclusion

Thank you for the opportunity to provide comments regarding House Bill 652. I look forward to your questions.

