TO: All Honorable Members of the Senate Environmental Resources and Energy Committee

FROM: Kevin Sunday, Director of Government Affairs

DATE: October 22, 2019

RE: Support Regulatory Reform: Senate Bills 726, 727 and 891

On behalf of the Pennsylvania Chamber of Business and Industry, the largest, broad-based business advocacy organization in the Commonwealth, I am writing to ask for your support for Senate Bills 726, 727 and 891, which provide substantial reforms to the review and appeals process of environmental permits.

Both chambers of the General Assembly have shown a keen interest in passing regulatory reform legislation this session, citing the common experience of constituents and businesses who have faced delays and uncertainty through the permitting process. Governor Wolf has also made it a priority to both improve the permit process and, through the appropriations process and various proposed fee increases, provide the department with the necessary resources to protect the environment. The business community supports both the bipartisan spirit of reform and DEP having the funding necessary to implement a predictable, consistent permit process.

There is more work to be done, and these bills do just that. SB 891 provides the administration with the option of contracting with licensed professionals for the technical review of permits. DEP will retain final say in the issuance of the permit and the bill also provides for avoiding conflicts of interest. Currently, the private sector assists state government in a number of important matters, from providing health care to designing roads and bridges to managing hazardous site reclamation to providing IT services. We believe the private sector can also benefit the department by providing technical consulting services on permits, giving the agency additional confidence in its decisions.

SB 726 provides for reforms to the appeals processes for parties challenging the issuance or denial of permits before the Environmental Hearing Board, an administrative court which reviews DEP’s decisions. This bill limits the scope of review in such appeals to the “record of decision,” or all correspondence between state government, the public and the applicant, in cases where DEP develops a final document outlining the reasons for its decision, which may include a letter to the applicant informing them of the approval or rejection of a permit. The bill does not obligate DEP to produce such a decision document for all permits or authorizations; however, the bill would provide DEP and the regulated community the certainty that, when DEP does on its own accord develop such a document ahead of issuing or denying a permit, the only appealable issues are those that were raised during public comment and the permit review. In order to have standing, litigants who want to challenge permits will have to raise these issues during public comment, which is standard
practice for the review of federal permits. This bill will result in DEP having more certainty in its decisions and less public resources expended defending permits. In cases where there is not a record of decision, the current de novo standard of review would apply.

Finally, SB 727 limits the terms of EHB judges’ terms. At present, judges serve until replaced by the Governor. We believe it is reasonable that the executive branch periodically review the standing appointments of the judges managing such an important administrative court.

In closing, thank you for your consideration of our comments on these bills. Please reach out to Kevin Sunday, Director of Government Affairs, at ksunday@pachamber.org or (717) 645-2071 with any questions.