

Regulatory Analysis Form

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(1) Agency

ENVIRONMENTAL PROTECTION

2009 FEB -4 AM 10: 28

INDEPENDENT REGULATORY
REVIEW COMMISSION

(2) I.D. Number (Governor's Office Use)

7-430

IRRC Number: 2741

(3) Short Title

MARCELLUS SHALE GAS WELL FEE AMENDMENTS

(4) PA Code Cite

25 Pa. Code Chapter 78

(5) Agency Contacts & Telephone Numbers

Primary Contact: Michele Tate, (717) 783-8727

Secondary Contact: Daniel Lapato, (717) 783-8727

(6) Type of Rulemaking (Check One)

Proposed Rulemaking

Final Order Adopting Regulation

Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

No

Yes: By the Attorney General

Yes: By the Governor

(8) Briefly explain the regulation in clear and non-technical language.

The Oil and Gas Act was passed on December 19, 1984, and established a \$100 fee for oil and gas well permits. Section 201 (d) of the Act allows the Department to increase the fee by regulation, provided the fee bears a reasonable relationship to the cost of administering the act. The Department has never increased the permit fee in nearly 25 years despite escalating program costs. The Department is proposing a regulatory fee increase specific to Marcellus Shale. 25 PA Code § 78.19 would be added. 25 PA Code § 78.19 would have a Marcellus Shale base fee of \$900 with an additional \$100 per 500 feet of well bore drilled past 1,500 feet. The cost for a permit application for a typical Marcellus would be \$2,600. This rulemaking proposes to increase the \$100 permit fee in order to assure funding that bears a reasonable relationship with program expenses for the review and inspections for permit application within the Marcellus Shale formation.

Recent advances in natural gas drilling technology and rising natural gas prices have attracted considerable interest in the previously untapped Marcellus Shale formation. Developing the Marcellus Shale requires new drilling techniques, greater earth disturbance activities, requires more fresh water and generates more waste water than traditional oil and gas well development. Ensuring that the environment is properly protected while this valuable resource is developed requires an extensive amount of staff time. The Oil and Gas Act has a statutory requirement that well permits be issued or denied within 45 days of receipt. Due to a recent significant increase in workload, the \$100 permit fee no longer covers the Department's costs of administering the act.

The complexity of a Marcellus Shale gas well application increases with the depth and length of the well bore in

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addition to the amount of water used in the fracturing of the well. This is the reason for the increase in permit fees based on the length of the well bore.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

This final-form rulemaking is being made under the authority of section 201(d) of the Oil and Gas Act (58 P.S. § 601.201(d)) which authorizes the Department to establish, by regulation, well permit fees that bear a reasonable relationship to the cost of administering the Act, section 604 of the Oil and Gas Act (58 P.S. § 601.604) which directs the Board to adopt regulations necessary to implement the Act, and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), authorizing and directing the Board to adopt regulations necessary for the proper performance of the work of the Department.

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. This final-form rulemaking is being made under the authority of section 201(d) of the Oil and Gas Act (58 P.S. § 601.201(d)) which authorizes the Department to establish, by regulation, well permit fees that bear a reasonable relationship to the cost of administering the Act, section 604 of the Oil and Gas Act (58 P.S. § 601.604) which directs the Board to adopt regulations necessary to implement the Act, and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), authorizing and directing the Board to adopt regulations necessary for the proper performance of the work of the Department. Despite substantial program cost, the permit fee has not been increased in nearly 25 years. The fee increase included in this rulemaking is necessary to assure adequate funding to cover escalating program expenses in particular the additional resources necessary to process the applications for gas development within the Marcellus Shale formation.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

To properly evaluate the permit applications to develop the Marcellus Shale formation, the Department has expended additional staff. A Marcellus Shale well applicant must submit an addendum to the Department, along with their permit application. Review of the permit addendum requires additional staff time to evaluate a Marcellus Shale application because it includes water intake information, hydraulic fracturing and water treatment of the hydraulic fracturing liquid. A Marcellus Shale well will use a million plus gallons of water in the hydraulic fracturing process. This is a much larger volume of water than used in a typical gas well. The current \$100 per permit application fee does not have any "reasonable relationship" to the actual cost to implement this portion of the Oil and Gas Act program covering development of the Marcellus Shale. The Department needs additional resources to properly allow the development of the Marcellus Shale natural gas resources and to protect the environment. This regulatory fee increase is needed to provide the Department with the resources to perform the additional work associated with the review of Marcellus Shale gas well permit applications and with the oversight of the permits that are issued.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

The drilling for and recovery of natural gas within the Marcellus Shale formation is a recent development in Pennsylvania. Technologic improvements and higher energy prices have triggered a rush to develop this energy resource. The use of these technological improvements (hydraulic fracturing and horizontal drilling) present new

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environmental considerations that require prompt Department attention to enable the development to occur in an environmentally protective manner that state law requires. The higher permit application fees contained in this rulemaking are necessary to support the Department's regulation of permitting and development of Marcellus Shale natural gas wells. The public interest is served when the applicants for Marcellus Shale well permits pay application fees that cover the Department's expenses in reviewing and issuing permits in a timely manner. A Marcellus Shale gas well permit applications requires additional staff time to evaluate the water intake, hydraulic fracturing and water treatment of the hydraulic fracturing liquid. A Marcellus Shale well will use a million plus gallons of water in the hydraulic fracturing process. This is a much larger volume of water then used in a typical gas well. Without the additional funds, the Department does not have the staff required to properly review and inspect a Marcellus Shale gas well. Failure to approve these fee-related amendments will result in general environmental degradation and possible cutbacks in the regulatory programs overseeing the drilling of oil and gas wells.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Any person who is affected by activities conducted under the oversight of the Oil and Gas program either directly or indirectly will benefit from this regulation. The residents of the Commonwealth and the regulated community will benefit from this regulation because the Department will be able to continue to permit the optimal development of the oil and gas resources of Pennsylvania consistent with the protection of the health, safety, environment, and property of the citizens of the Commonwealth.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

Those persons to be affected by the regulation include any individual, corporation, institution, or group that applies for a permit from the Department to drill for natural gas in the Marcellus Shale formation. The increase in fee is proportional to the additional work the Department will assume to ensure Marcellus Shale operations are protective of the environment. These fees are part of the normal cost of business and should be recoverable by viable oil and gas companies. The permit fees for a Marcellus Shale gas well is based on the well bore length and the Department's review of the water use addendum. The base fee for any Marcellus Shale well will be \$900 with an additional \$100 per 500 feet of well bore drilled past 1,500 feet. The average cost of a Marcellus Shale gas well based on a 10,000 foot well bore would be \$2,600.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Those persons to be affected by the regulation include any individual, corporation, institution, or a group that applies for a permit from the Department to drill for oil and natural gas. The Department expects 4,000 Marcellus Shale permits applications over the calendar years 2009, 2010 and 2011.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

A draft of this regulation was presented to the Oil and Gas Technical Advisory Board (TAB). The TAB includes representatives from the natural resources consulting firms, energy corporations and academia.

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(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

A base fee of \$900 will be assessed by the Department for any Marcellus Shale well with an additional \$100 per 500 feet of well bore drilled past 1,500 feet. The new permit fees will assess an average of \$2,600 per well on Marcellus Shale formation permit applicants. The Department anticipates 950 Marcellus Shale formation wells applications in the 2009/2010 fiscal year. Based on the average fee, the Department estimates the fees will cost the regulated community \$2,470,000 in the 2009/2010 fiscal year, in comparison to the \$95,000 which would be spent by the regulated community under the \$100 permit fee.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

There are no additional costs or savings for local governments to comply with these regulations.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures which may be required.

The proposed fees will help cover the cost the Commonwealth incurs permitting and inspecting Marcellus Shale formation wells, including costs associated with the addition of 42 staff positions in FY 2009 to support program operations.

(20) In the table below, provide an estimate of the fiscal savings and cost associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 2008	FY +1 2009	FY +2 2010	FY +3 2011	FY +4 2012	FY +5 2013
SAVINGS:						
Regulated Community	None	None	None	None	None	None
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
Total Savings	None	None	None	None	None	None
COSTS:						
Regulated Community	935,100	2,470,000	4,290,000	7,670,000	10,010,000	10,270,000
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None

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Total Costs	935,100	2,470,000	4,290,000	7,670,000	10,010,000	10,270,000
REVENUE LOSSES:						
Regulated Community	None	None	None	None	None	None
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
Total Revenue Losses	None	None	None	None	None	None

(20a) Explain how the cost estimates listed above were derived.

The cost to the regulated community is calculated using the fee (\$2,600) for typical well bore length of 10,000 feet for a Marcellus Shale well. Those costs are then multiplied by the projected number of Marcellus Shale applications expected through 2013. The Department is anticipating hiring 42 additional staff in fiscal year 2009 to review the increase in Marcellus Shale applications. The revenue generated through the fees included in this rulemaking will cover anticipated program expenses, including costs associated with the hiring of additional personnel.

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY-3	FY-2	FY-1	Current FY
Environmental Program Management	\$37,049,000	\$36,868,000	\$39,909,000	\$41,800,000
Environmental Protection Operations	\$87,897,000	\$89,847,000	\$98,582,000	\$102,149,000
Well Plugging	\$539,000	\$746,000	\$883,000	\$895,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The increase in fee will be a benefit to the Commonwealth by providing the Department the necessary funds to review and process permit applications for Marcellus Shale development. The proposed regulation will allow the Department to continue to permit the optimal development of the Marcellus Shale gas resources of Pennsylvania consistent with the protection of the health, safety, environment, and property of the citizens of the Commonwealth.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There are no equivalent nonregulatory alternatives.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

There are no effective regulatory alternatives.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

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There are no provisions that are more stringent than the federal standards.

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Please reference the fee comparison attachment.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No additional paperwork will be required as a result of this rulemaking. If the rulemaking is implemented, the Department will need to amend its current well permit application form and instructions to incorporate and explain the new permit fee structure.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses and farmers.

No special provisions need to be developed.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The rulemaking will become effective upon publication in the *Pennsylvania Bulletin*, which is anticipated to occur in spring 2009.

(31) Provide the schedule for continual review of the regulation.

With specific reference to the permit fee increases included in this rulemaking, at least every three years, the Department will provide the Environmental Quality Board with an evaluation of the fees in this chapter and recommend regulatory changes to the Environmental Quality Board to address any disparity between the program income generated by the fees and the Department's cost of administering the program with the objective of ensuring fees meet all program costs and programs are self-sustaining.

State Fee Comparison Chart

Marcellus Well

State	Total Tax Burden	Permit Cost	Total
Pennsylvania	N/A	\$2,000	\$2,000
New York*	0.045	\$3,900	\$32,025
West Virginia	0.05	\$900	\$32,150
Ohio**	0.026	\$1,000	\$2,625
Kentucky	0.055	\$300	\$34,675
Texas	0.075	\$300	\$47,175

* Average Oil and Gas Town Assesment Tax

** Based on a township with population over 15,000

Assumptions

Wells are drilled and produce the same as a PA well

Well is 10,000 ft - horizontal.

Production is based on \$625,000 revenue per year or 62,500,000 Cubic Feet (62,500 MCF)

Pa permit fee is based on \$900 Base fee + \$850 Horizontal footage fee + \$250 well plugging surcharge.

Typical Well

State	Total Tax Burden	Permit Cost	Total
Pennsylvania	N/A	\$900	\$900
New York*	0.045	\$1,620	\$3,195
West Virginia	0.05	\$900	\$2,650
Ohio**	0.026	\$1,000	\$1,091
Kentucky	0.055	\$300	\$2,225
Texas	0.075	\$225	\$2,850

* Average Oil and Gas Town Assesment Tax

** Based on a township with population over 15,000

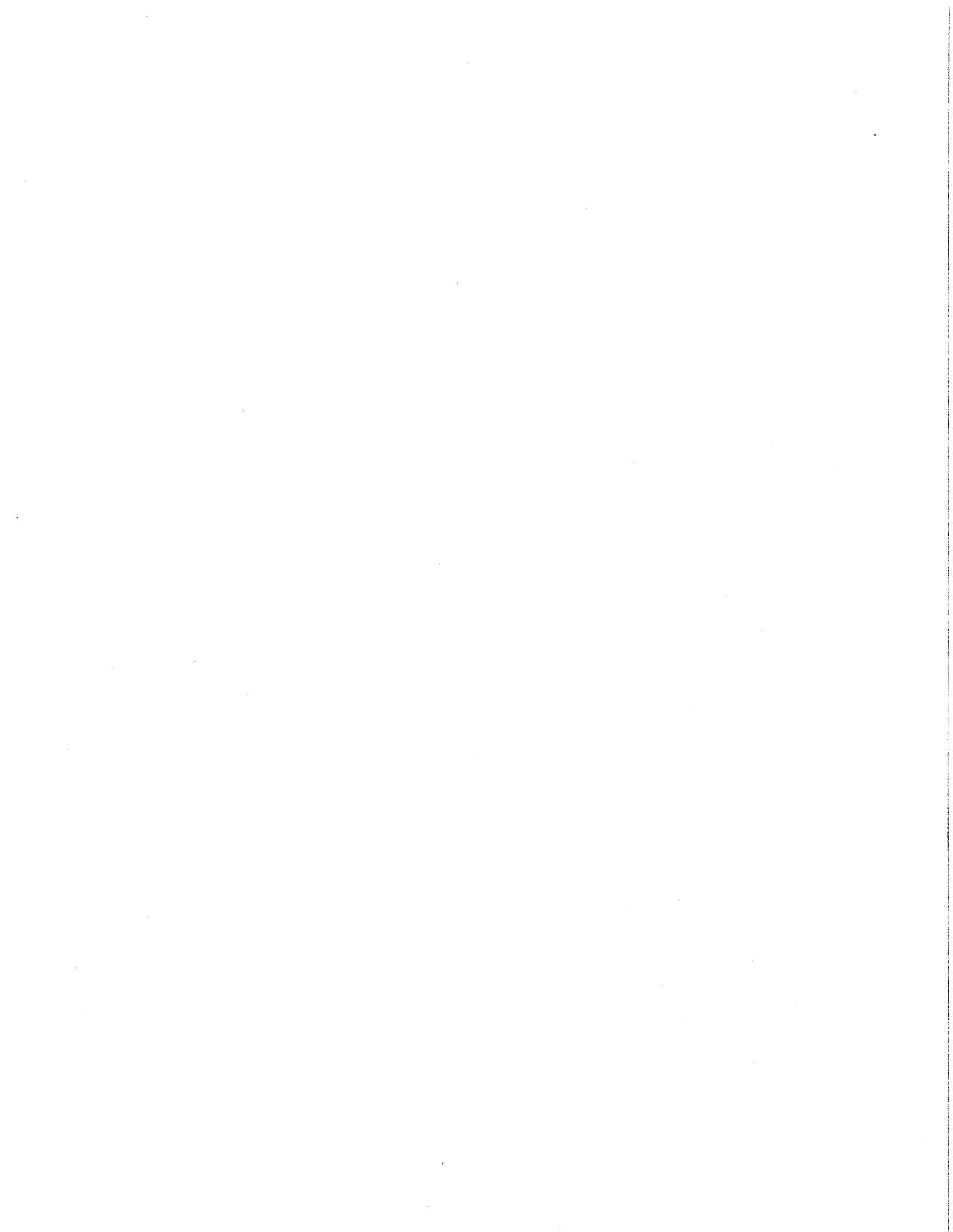
Assumptions

Wells are drilled and produce the same as a PA well

Well is 4,000 feet

Production is based on \$35,000 revenue per year or 3,500,000 Cubic Feet (3,500 MCF)

Pa permit fee is based on \$400 Base Fee + \$250 Footage Fee + \$250 well plugging surcharge



FEE REPORT FORM
Marcellus Shale Gas Well Drilling Permit Application Fee

Environmental Protection / Oil and Gas Management
 Agency

October 22, 2008
 Date

Ron Gilius, Director
 Contact Person

(717) 772-2199

Phone Number

Fee Collection	FY 2006/7	FY 2007/8	FY 2008/9	FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13
Current	730,400 ¹	769,800 ¹	935,100 ²				
Proposed				3,120,000	5,460,000	9,880,000	10,140,000

¹ This is the actual cost for the Oil and Gas Program for that fiscal year cost.

² This is the budget cost for the Oil and Gas Program for that fiscal year cost.

FEE TITLE AND RATE:

Current: 25 PA Code § 78.15 (b) Application requirements includes a fee. The fee was established by the Oil and Gas Act in 1984 and has yet to be adjusted by regulation as specified in Section 201 (d) of the Act. The current application fee is \$100.

Proposed: The Department is proposing a regulatory fee increase specific to Marcellus Shale. 25 PA Code § 78.19 would be added. 25 PA Code § 78.19 would have a Marcellus Shale base fee of \$900 with an additional \$100 per 500 feet of well bore drilled past 1,500 feet. The Department is proposing a final rulemaking with the notice of proposed rulemaking omitted. The cost for a permit application for a typical Marcellus gas well would be \$2,600. Well bore length is as measured from the top of the surface casing.

If the fee submitted with the application does not match the completed well bore length, the applicant will submit the adjusted amount with an additional 10% of the adjustment amount added for administrative processing of the late application fee. A refund will not be provided for wells not completed to proposed total depth or wells not drilled.

FEE OBJECTIVE: To establish a permit fee that bears a reasonable relationship to the cost of administering the act.

FEE RELATED ACTIVITIES AND COSTS

1. Administrative and technical review of permit applications for drilling of Marcellus Shale gas wells and related approvals for alternate methods, water management plans, review and approval of wastewater treatment plant applications for produced fluids, inspection of well sites for drilling rig safety and implementation of environmental controls.
2. Complaint response.
3. Permitting of coal pillars to provide geological support for gas wells through mineable coal seams.
4. Investigating and making determinations on water supply complaints.
5. Repository for oil and gas records and providing industry related information.
6. Emergency response and technical expertise on well related emergencies and gas migration problems.

7. Central Office / Regional Office Supervisory and management oversight.

ANALYSIS

The permit application fee has not been revised since the Oil and Gas Act was passed in 1984. This rulemaking will adjust the application fee to reasonably cover the Department's cost of reviewing and inspecting a Marcellus Shale gas well as required by the Act.

The fees for a Marcellus Shale gas well is based on the well bore length and the review of the water use addendum. The base fee for any Marcellus Shale well to be drilled to a well bore length of 1,500 feet will be \$900 with an additional \$100 per 500 feet of well bore drilled length. The average cost of a Marcellus Shale gas well based on a 10,000 foot well bore would be \$2,600.

To properly evaluate the proposals to develop the Marcellus Shale formation, the Department has expended additional staff resources to review the permit applications and to issue permits in a timely manner. A Marcellus Shale well requires an addendum to be submitted along with the permit application. This requires additional staff time to evaluate a Marcellus Shale well application because it includes water intake information and water treatment of the hydraulic fracturing liquid. A Marcellus Shale well will use a million plus gallons of water in the hydraulic fracturing process. This is a much larger volume of water than used in a typical gas well. The current \$100 per permit application fee does not have any "reasonable relationship" to the actual cost to implement this portion of the Oil and Gas Act program covering development of the Marcellus Shale well. The Department needs additional resources to properly allow the development of the Marcellus Shale natural gas resources and to protect the environment. This regulatory fee increase is needed to provide the Department with the resources to perform the additional work associated with the review of Marcellus Shale gas well permit applications and with the oversight of the permits that are issued.

It is anticipated that with the announcement of the new fee proposal there will be a large upward trend in applications as the well drilling and operation permit is valid for a year after date of issuance. The first year of implementation may be lower than projected revenue which is based on the workload analysis.

Proposed Operation Cost	FY 09/10	FY 10/11	FY 11/12	FY 12/13
Personnel Cost	\$2,747,873	2,906,343	3,015,825	3,099,273
Operating	332,127	435,951	452,374	464,891
Fixed Assets	\$0	\$0	\$0	\$0
Total Cost	\$3,080,000	\$3,342,294	\$3,468,198	\$3,564,164

	FY 09/10	FY 10/11	FY 11/12	FY 12/13
Current fee Amount	\$120,000	\$210,000	\$380,000	\$390,000
Proposed Fee Amount	\$3,120,000	\$5,460,000	\$9,880,000	\$10,140,000
Anticipated Operation Cost	\$7,888,257	\$8,311,307	\$8,153,424	\$8,382,707
Proposed Operation Cost	\$3,080,000	\$3,342,294	\$3,468,198	\$3,564,164
Total Cost of Operation	\$10,968,257	\$11,653,601	\$11,621,622	\$11,946,871

Note:

Current fee Amount: The amount of revenue generated by the current \$100 permit fee.

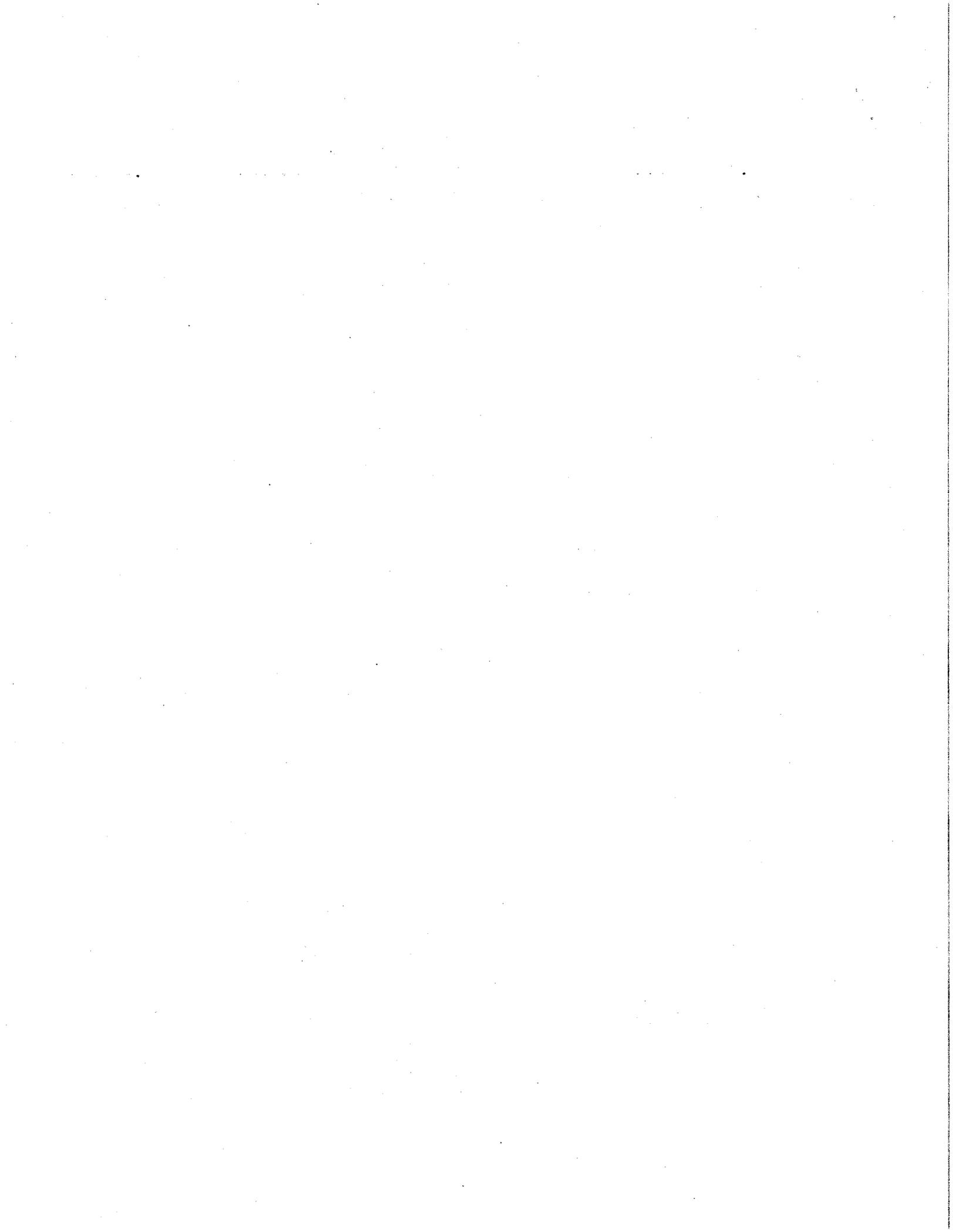
Proposed Fee Amount: The amount of revenue generated by the proposed permit fee schedule.

Anticipated Operation Cost: The cost maintaining the current level staff and operation.

Proposed Operation Cost: The cost of the proposed increase in staff and operation.

Total Cost of Operation: The combined cost of anticipated operational cost and the proposed operational cost.

RECOMMENDATION AND COMMENT: Approve the proposed regulations. A draft of this regulation was presented to the Oil and Gas Technical Advisory Board (TAB). The TAB includes representatives from the natural resources consulting firms, energy corporations and academia.



**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU**

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
REVIEW COMMISSION
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Copy below is hereby approved as to form and legality.
Attorney General

By: _____
(Deputy Attorney General)

DATE OF APPROVAL _____

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

DEPARTMENT OF ENVIRONMENTAL
PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-430

DATE OF ADOPTION December 16, 2008

BY John Hanger

TITLE JOHN HANGER
ACTING CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

BY Andrew C. Clark

DATE OF APPROVAL DEC 19 2008

(Deputy General Counsel)
(Chief Counsel - Independent Agency)
(Strike inapplicable title)

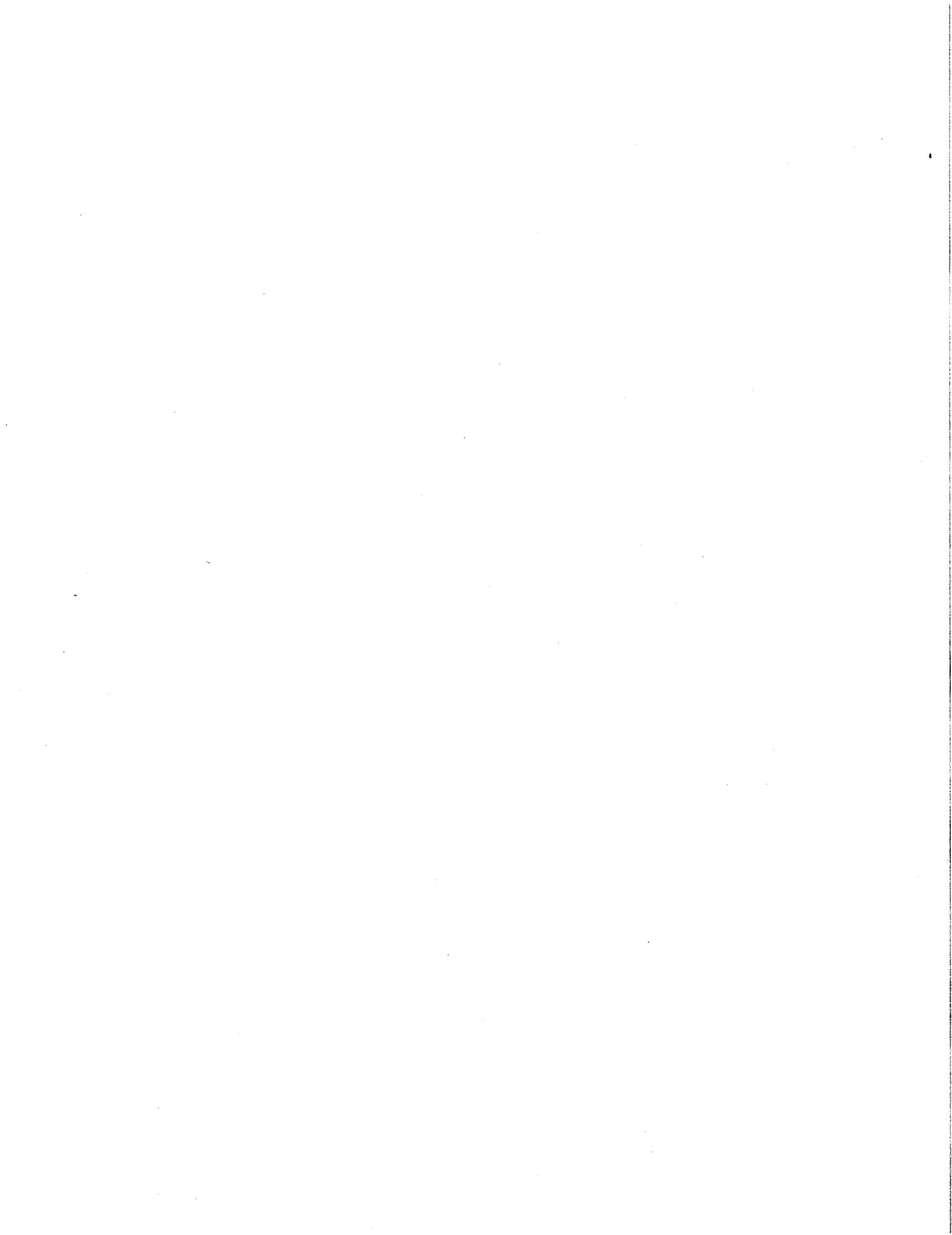
Check if applicable. No Attorney General Approval
or objection within 30 days after submission.

**NOTICE OF FINAL RULEMAKING
(with Notice of Proposed Rulemaking Omitted)**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD**

Marcellus Shale Well Permit Fees

25 Pa. Code, Chapter 78



Notice Of Final Rulemaking
Department of Environmental Protection
Environmental Quality Board
25 PA. Code Chapter 78
(Oil and Gas Wells)

Order

The Environmental Quality Board (Board) by this order amends 25 PA. Code Chapter 78 subchapter B (relating to Oil and Gas Wells) by adding a new section 78.19 relating to permit fees as set forth in Annex A.

Notice of proposed rulemaking is omitted under section 204(3) of the act of July 31, 1968, P.L. 769, No. 240, (45 P.S. §1204(3)). Subsection (3) provides that an agency may omit the notice of proposed rulemaking if the agency finds for good cause that notice of proposed rulemaking is impracticable, unnecessary or contrary to the public interest. In this case using the Notice of Proposed Rulemaking procedure is contrary to the public interest for the reasons set forth below.

This order was adopted by the Board at its meeting of December 16, 2008.

A. Effective Date

The amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information contact Ronald Gilius, Director, Bureau of Oil and Gas Management, Rachel Carson State Office Building, 5th floor, 400 Market Street, P.O. Box 8765 Harrisburg, PA 17105-8461, 717-772-2199; or Scott Perry, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) Web site: www.depweb.state.pa.us.

C. Statutory Authority

This final-form rulemaking is being made under the authority of section 201(d) of the Oil and Gas Act (58 P.S. § 601.201(d)) which authorizes the Department to establish, by regulation, well permit fees that bear a reasonable relationship to the cost of administering the Act, section 604 of the Oil and Gas Act (58 P.S. § 601.604) which directs the Board to adopt regulations necessary to implement the Act, and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), authorizing and directing the Board to adopt regulations necessary for the proper performance of the work of the Department.

D. Background of the Amendments

The Oil and Gas Act was passed on December 19, 1984, and established a \$100 fee for oil and gas well permits. Section 201 (d) of the Act allows the Department to increase the fee by regulation. Under this provision, fees must be set at a level that "bears a reasonable relationship to the cost of administering" the act. The Department has never increased the current \$100 permit fee.

There is significant and recent interest in the development and recovery of natural gas resources in the Marcellus Shale formation that underlies much of Pennsylvania. The development of this geologic formation, which also extends beneath portions of West Virginia and New York, has long been considered prohibitively expensive. Recent advances in natural gas drilling technology and rising natural gas prices have attracted considerable interest in this previously untapped formation.

The recent technological advances that allow recovery of natural gas found in the Marcellus Shale present new and expanded environmental considerations that the Department must evaluate properly to ensure the gas is recovered in the most environmentally sensitive manner feasible. Many of the new or expanded environmental considerations are directly related to the size of the well drilling site and the use of water to recover natural gas from the Marcellus Shale formation. Extracting natural gas from the Marcellus Shale formation is enhanced by horizontal drilling within the formation after vertical drilling reaches the formation. Horizontal drilling and a process known as "hydraulic fracturing" are used to allow the natural gas to flow freely from the Marcellus Shale formation. Hydraulically fracturing the Marcellus Shale uses far greater amounts of water than traditional natural gas exploration. Large volumes of water are pumped into the formation, along with sand and other materials under high pressure, to fracture the rock surrounding the horizontal well bore. A single well can use millions of gallons of water to hydraulically fracture the rock. After the hydraulic fracturing process is completed, the wastewater must be properly managed.

The significantly greater use of water at Marcellus Shale wells creates a series of environmental issues during the drilling and development of a Marcellus Shale well. First, there are a number of considerations associated with withdrawal of water, including the need to monitor and restrict the amount of withdrawal to avoid dewatering streams and causing pollution. Under state water law, a person who withdraws water in the amounts generally associated with Marcellus Shale well development must register the withdrawal with the Department. Second, there are a number of considerations associated with the use and storage of the water used for hydraulic fracturing at the well site or at other locations. Third, there are a number of considerations associated with the proper management, treatment, and discharge of the wastewater.

To address these additional environmental considerations associated with development of Marcellus Shale, the Department prepared a permit application addendum specifically for Marcellus Shale gas well development. The Department expends considerable staff resources to review the additional information in the Marcellus Shale permit addendum. Because the Department's review of the addendum includes several water quality and quantity issues not normally associated with gas well permit application reviews, the Department needs to

coordinate its Marcellus Shale permit application review among several water resource related program areas. Within the Susquehanna and Delaware River Basins, the Department also needs to coordinate its review with the Susquehanna and Delaware River Basin Commissions which have regulatory authority over water withdrawals within their respective river basins.

To properly evaluate the permit applications to recover gas from the Marcellus Shale formation, the Department has expended additional staff resources. The current \$100 per permit application fee does not have any "reasonable relationship" to the actual cost to implement this portion of the Oil and Gas Act program covering development of the Marcellus Shale. The Department needs additional resources to properly allow the development of the Marcellus Shale natural gas resources and to protect the environment. This regulatory fee increase is needed to provide the Department with the resources to perform the additional work associated with the review of Marcellus Shale gas well permit applications and with the oversight of any permits that are issued.

Use of the omission of the notice of proposed rulemaking procedures is appropriate to increase the permit application fee for Marcellus Shale Well permit applications under section 204 of the Commonwealth Documents Law (45 P.S. § 1204), for the reasons set forth below. Under Section 204 (3) an agency can avoid the use of the notice of proposed rulemaking if the agency finds for good cause that the use of this procedure is unnecessary, impractical, or contrary to the public interest.

The drilling for and recovery of the Marcellus Shale natural gas resources is a recent development in Pennsylvania. Recent technologic improvements and higher energy prices have triggered a rush to develop this energy resource. The use of these technological improvements (hydraulic fracturing and horizontal drilling) present new environmental considerations that require prompt and thorough Department review to ensure the development of gas in this specific area occurs in an environmentally protective manner that state law requires. It is in the public interest to quickly establish and collect permit application fees from the regulated community for the review of a Marcellus Shale permit application. These higher permit application fees are necessary to support the Department's recently developed program initiative to regulate the permitting and development of Marcellus Shale natural gas wells. The public interest is served when the applicants for Marcellus Shale well permits pay application fees that cover the Department's additional program implementation costs for the review of these permit applications.

E. Summary of Final Rulemaking

This final rulemaking establishes oil and gas well permit fees in new section 78.19. Section 78.19(a) includes a \$100 permit application fee all applications except for Marcellus Shale permit applications. The \$100 amount is the statutory amount established by Section 201 of the Oil and Gas Act.

Under Section 78.19(b) Marcellus Shale well permit applicants will pay a base fee of \$900 with an additional \$100 for every 500 feet the well bore extends beyond 1,500 feet. The fees are rounded to the nearest foot interval. If the applicant drills a well longer than what was applied

for, they must remit the difference along with a processing fee equivalent to 10% of the correct fee amount.

Sections 78.15 is amended to include cross references to new section 78.19.

F. Relationship to Proposed Rulemaking to Increase Fees

This final-omit rulemaking is intended to quickly increase permits application fees for permits that are issued for the Marcellus Shale formation. For the reasons stated above, the Department needs these higher fees quickly. At the same meeting that the Board approved this rulemaking the Board also approved a proposed rulemaking to increase permit application fees for other non-Marcellus Shale permits. The Board also included the new Marcellus Shale permit application fees in this proposed rulemaking to allow interested persons the opportunity to provide comments on the new Marcellus Shale fees as part of that proposed rulemaking. When that proposed rulemaking is adopted as final, the board will make appropriate changes to the Marcellus Shale fees in that rulemaking in response to comments. The final-omit fees will therefore only be in effect until that proposed rulemaking is adopted as final.

G. Benefits and Costs

Benefits

The residents of this Commonwealth and the regulated community will benefit from this regulation because the Department will be able to continue to uphold the purposes of the Oil and Gas Act. The purposes of the act are:

- (1) Permit the optimal development of the oil and gas resources of Pennsylvania consistent with the protection of the health, safety, environment and property of the citizens of the Commonwealth.
- (2) Protect the safety of personnel and facilities employed in the exploration, development, storage and production of natural gas or oil or the mining of coal.
- (3) Protect the safety and property rights of persons residing in areas where such exploration, development, storage or production occurs.
- (4) Protect the natural resources, environmental rights and values secured by the Pennsylvania Constitution. (58 P.S. §601.102)

The public will benefit in two general ways. The public will benefit from a fiscal perspective when the costs of the regulatory program are imposed on the regulated community, as the Oil and Gas Act provides. For Marcellus Shale gas well development, the need for timely and special reviews has significantly increased the Department's cost of implementation of the program and it is in the public interest to impose these costs on the regulated community. The public also benefits from an environmental perspective since the review of the Marcellus Shale permit applications require new and extensive reviews to ensure that the development of this

natural gas resource occurs in an environmentally protective manner which Pennsylvania state law requires. The higher fees will support the Department's newly developed and extensive efforts to review Marcellus Shale permit applications.

The regulated community will also benefit because the regulated community wants timely reviews of permit applications, which state law also requires. Having the staff to evaluate these Marcellus Shale permit applications in a timely and environmentally protective manner will benefit the regulated community and the public.

Costs

This rulemaking will not impose any additional costs on the Department. This proposal will help the Department offset the greater implementation costs to support new and extensive reviews of oil and gas permit applications. The new Marcellus Shale permit fee will impose a base permit fee of \$ 900 with an additional \$100 for every 500 feet the well bore extends beyond 1,500 feet.

Compliance Assistance Plan

A compliance assistance plan is not necessary because the new fee structure does not create a situation where a well operator will be out of compliance with the regulation. Well permits that do not contain the appropriate fee will be deemed incomplete. The Department will return the application to the applicant and tell the applicant what the appropriate fee is. In order to minimize this circumstance from occurring, the Department will publicize the new permit fee requirements on its website and inform potential applicants of the new fee structure at upcoming industry trainings.

Paperwork requirements

No additional paperwork will be required as a result of this rulemaking. However, the Department will need to amend its well permit application form and instructions to incorporate and explain the new permit fee structure.

H. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), on February 4, 2009, the Department submitted a copy of this final rulemaking with notice of proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. On the same date, the Department also submitted this rulemaking to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101-732-506). In addition to

the final rulemaking, IRRC and the Committees were provided with a copy of a detailed regulatory analysis form prepared by the Department.

J. Findings of the Board

The Board finds that:

(1) Use of the omission of notice of proposed rulemaking procedure is appropriate because the notice of proposed rulemaking procedure specified in sections 201 and 202 of the Commonwealth Documents Law (45 P.S. §§1201 and 1202) is, under the circumstances, contrary to the public interest. The current permit fee of \$100 is inadequate. Absent additional permit fees, the Department will not be able to uphold the purposes of the Oil and Gas Act by permitting the optimal development of the Commonwealth's oil and gas resources while protecting the health and safety of the Commonwealth's citizens and environment.

(2) Use of the notice of proposed rulemaking procedures is not in the public interest because higher permit application fees are necessary to support the Department's recently developed program initiative to regulate the permitting and development of Marcellus Shale natural gas wells. The public interest is served when the applicants for Marcellus Shale well permits pay applications fees that cover the Department's additional program implementation cost for these permits requiring special and timely reviews.

(3) These amendments are necessary and appropriate for administration of the authorizing acts identified in section C of this preamble and in the public interest.

K. Order of the Board

The Environmental Quality Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department of Environmental Protection, *25 Pa. Code* Chapter 78 are amended by adding section 78.19 and amending sections 78.15 to include cross references to new section 78.19.

(b) The Chairperson shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form as required by law.

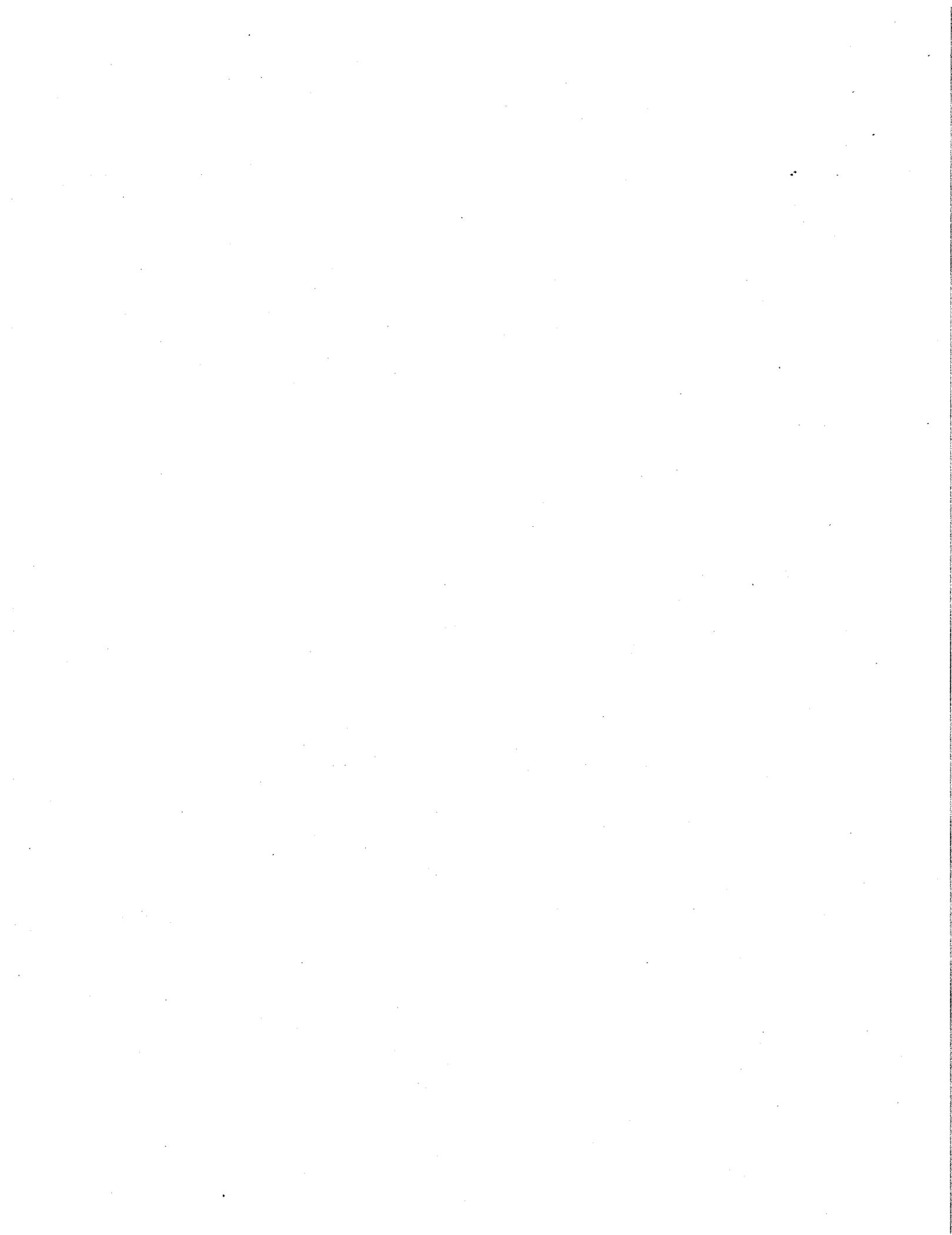
(c) The Chairperson shall submit this Order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

BY:

JOHN HANGER
Acting Chairperson
Environmental Quality Board



Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 78. OIL AND GAS WELLS

SUBCHAPTER B. PERMITS, TRANSFERS, AND OBJECTIONS

§ 78.15. Application requirements.

(b) The permit application will not be considered complete until the applicant submits a complete and accurate plat, an approvable bond or other means of complying with section 215 of the act (58 P. S. § 601.215), the fee **in compliance with § 78.19. (relating to permit application fee schedule)**, proof of notification, necessary requests for variance or waivers or other documents required to be furnished by law or the Department. The person named in the permit shall be the same person named in the bond or other security.

§ 78.19 Permit application fee schedule

(a) Except as provided in subsection b, an applicant shall pay a permit application fee of \$100.00.

(b) An applicant proposing to drill a well to produce gas from the Marcellus shale formation shall pay a permit application fee according to the following schedule:

<u>New Marcellus Shale Wells</u>			
<u>Total Wellbore Length in Feet</u>			<u>Total Fee</u>
<u>0</u>	<u>To</u>	<u>1,500</u>	<u>\$900</u>
<u>1,501</u>	<u>To</u>	<u>2,000</u>	<u>\$1,000</u>
<u>2,001</u>	<u>To</u>	<u>2,500</u>	<u>\$1,100</u>
<u>2,501</u>	<u>To</u>	<u>3,000</u>	<u>\$1,200</u>

<u>3,001</u>	<u>To</u>	<u>3,500</u>	<u>\$1,300</u>
<u>3,501</u>	<u>To</u>	<u>4,000</u>	<u>\$1,400</u>
<u>4,001</u>	<u>To</u>	<u>4,500</u>	<u>\$1,500</u>
<u>4,501</u>	<u>To</u>	<u>5,000</u>	<u>\$1,600</u>
<u>5,001</u>	<u>To</u>	<u>5,500</u>	<u>\$1,700</u>
<u>5,501</u>	<u>To</u>	<u>6,000</u>	<u>\$1,800</u>
<u>6,001</u>	<u>To</u>	<u>6,500</u>	<u>\$1,900</u>
<u>6,501</u>	<u>To</u>	<u>7,000</u>	<u>\$2,000</u>
<u>7,001</u>	<u>To</u>	<u>7,500</u>	<u>\$2,100</u>
<u>7,501</u>	<u>To</u>	<u>8,000</u>	<u>\$2,200</u>
<u>8,001</u>	<u>To</u>	<u>8,500</u>	<u>\$2,300</u>
<u>8,501</u>	<u>To</u>	<u>9,000</u>	<u>\$2,400</u>
<u>9,001</u>	<u>To</u>	<u>9,500</u>	<u>\$2,500</u>
<u>9,501</u>	<u>To</u>	<u>10,000</u>	<u>\$2,600</u>
<u>10,001</u>	<u>To</u>	<u>10,500</u>	<u>\$2,700</u>
<u>10,501</u>	<u>To</u>	<u>11,000</u>	<u>\$2,800</u>
<u>11,001</u>	<u>To</u>	<u>11,500</u>	<u>\$2,900</u>
<u>11,501</u>	<u>To</u>	<u>12,000</u>	<u>\$3,000</u>

(c) An applicant for a Marcellus shale well exceeding 12,000 feet in total well bore length shall pay a permit application fee of \$3,000 + \$100 for every 500 feet the well bore extends over 12,000 feet. Fees shall be rounded to the foot interval.

(d) If, when drilled, the total well bore length of a Marcellus shale well exceeds the length specified in the permit application, the operator shall pay the difference between the amount paid as part of the permit application and the amount required by subsection b plus 10% of the total amount required by subsection b.

(e) Fees are non-refundable.

(f) At least every three years, the department will provide the Environmental Quality Board with an evaluation of the fees in this chapter and recommend regulatory changes to the Environmental Quality Board to address any disparity between the program income generated by the fees and the department's cost of administering the program with the objective of ensuring fees meet all program costs and programs are self-sustaining.



Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
February 4, 2009

Policy Office

717-783-8727

Kim Kaufman, Executive Director
Independent Regulatory Review Commission
14th Floor
333 Market Street
Harrisburg, PA 17101

RE: Final – Form Rulemaking (with notice of proposed rulemaking omitted): Marcellus Shale Well Permit Fees (#7-430)

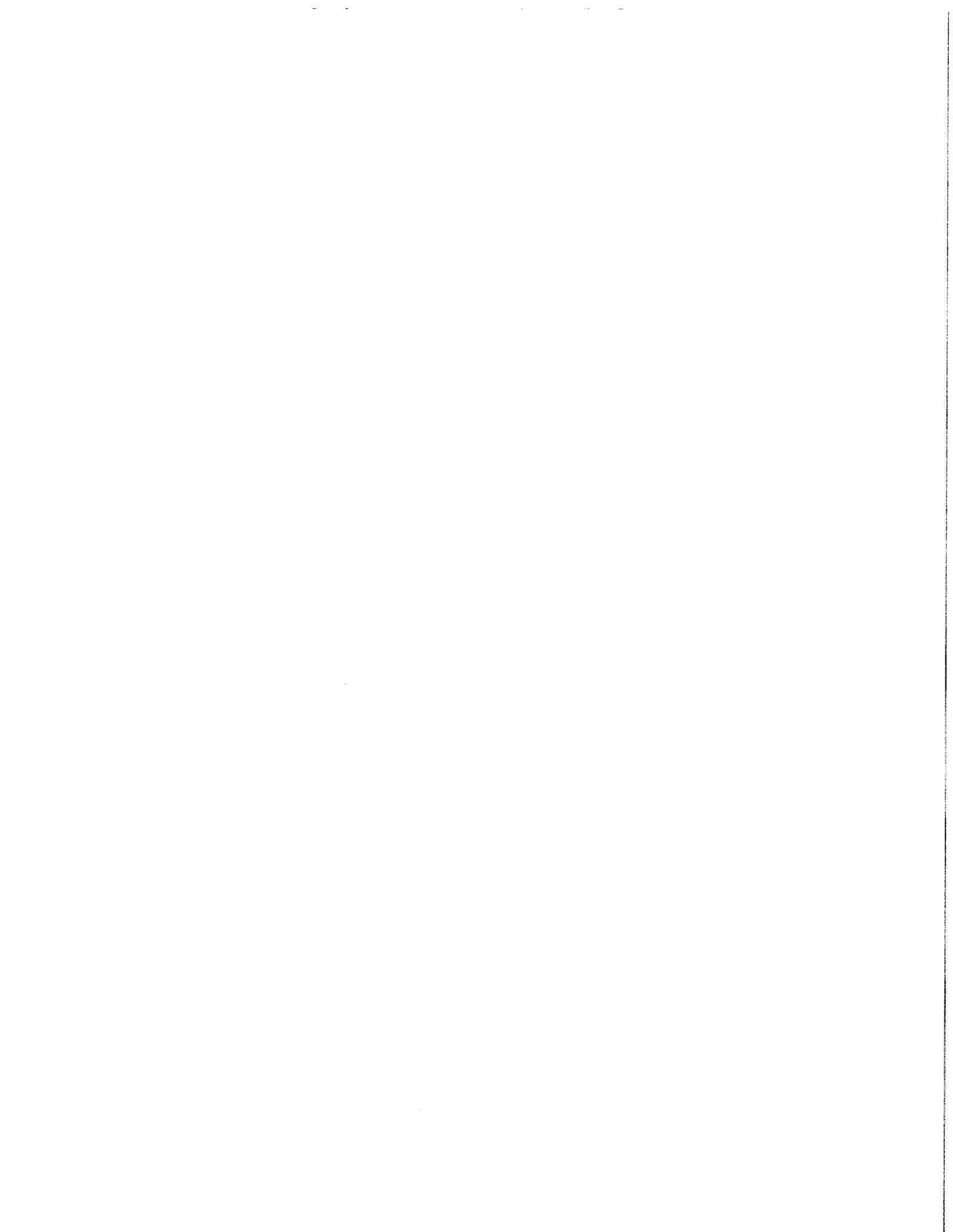
Dear Mr. Kaufmann:

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed copies of a final-form rulemaking for review and comment by the Independent Regulatory Review Commission. The Environmental Quality Board (EQB) approved this final-form rulemaking at its December 16, 2008, meeting.

This rulemaking, which is processed with notice of proposed rulemaking omitted, establishes increases in permit fees relative to the development of Marcellus Shale gas wells in Pennsylvania. The Oil and Gas Act, which was passed on December 19, 1984, established a \$100 permit fee for oil and gas well permits in the Commonwealth. Section 201 (d) of the Act provides the Department with the authority to increase the fee by regulation so that it may bear “a reasonable relationship to the cost of administering” the Act. Despite escalating program costs, the Department has never increased the permit fee in nearly 25 years.

The development of Marcellus Shale gas wells present unique environmental factors that the Department must thoroughly evaluate before issuing a permit. Extracting natural gas from the Marcellus Shale formation requires significant amounts of water to hydraulically fracture the gas from the shale formation. Because of the volume of water that is used in the hydraulic fracturing of the Marcellus Shale, the Department requires permit applicants to submit a water management plan. The review of the water management plan requires additional Department staff time, beyond the review of a typical gas well permit application, because it requires staff to evaluate water intake information associated with the hydraulic fracturing of the shale, including review of the management, treatment and discharge of the wastewater. The current \$100 per permit application fee does not cover the actual cost to the Department to review and issue a Marcellus Shale gas well permit. To address this disparity, the final-form rulemaking adds Section 78.19 to Chapter 78 of 25 *Pennsylvania Code* to include a Marcellus Shale base permit fee of \$900 with an additional \$100 per 500 feet of well bore drilled past 1,500 feet. This permit fee increase will assure adequate funding to the Department to cover program expenses for the review and inspections of permit applications within the Marcellus Shale formation. A draft of the





regulation was presented to the Oil and Gas Technical Advisory Board (TAB) on October 30, 2008. The TAB includes representatives from the natural resources consulting firms, energy corporations and academia.

Please note, although this final-form rulemaking is intended to increase Marcellus Shale gas well permit application fees expeditiously to cover program administration costs, the Department is also including the new Marcellus Shale gas well permit fees as a component of the Proposed Oil and Gas Well Permit Fees rulemaking, which will be published in the *Pennsylvania Bulletin* on February 14, 2009, commencing a 30-day public comment period. The Department has included the new Marcellus Shale permit application fees in the proposed rulemaking to allow interested persons the opportunity to provide comments on the new Marcellus Shale fees as part of the proposed rulemaking. When the proposed rulemaking is adopted as final, the Department will make appropriate changes to the Marcellus Shale gas well permit fees in that rulemaking in response to comments. Therefore, the fees contained in the final-omitted rulemaking will only be in effect until the proposed Oil and Gas Well Permit Fees rulemaking is adopted as final.

The Department will provide assistance as necessary to facilitate the Commission's review of the above final-form rulemakings under Section 5.1(e) of the Regulatory Review Act.

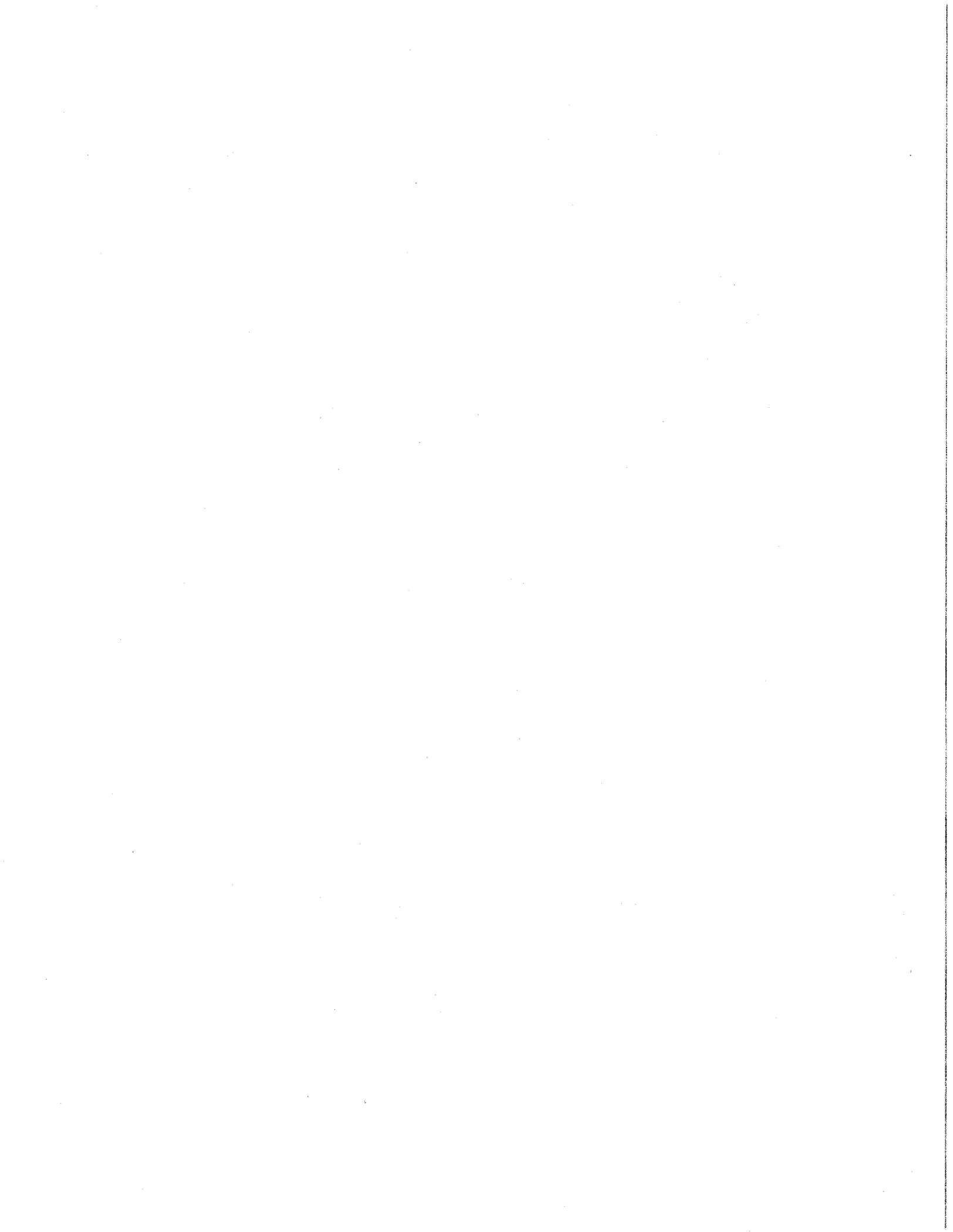
Please contact me at 717-783-8727 if you have any questions or need additional information.

Sincerely,



Michele L. Tate
Regulatory Coordinator

Enclosures





**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO
 THE REGULATORY REVIEW ACT**

I.D. NUMBER: 7-430
 SUBJECT: Marcellus Shale Well Permit Fees
 AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 2009 FEB -4 AM 10:28
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
<u>2-4-09</u>	<u><i>John Neundorfer</i></u>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<u>2-4-9</u>	<u><i>Al Beason-Held</i></u>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<u>2-4-9</u>	<u><i>D. Ladd</i></u>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<u>2-4-9</u>	<u><i>A. Rybarczyk</i></u>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<u>2/4/09</u>	<u><i>Kathy Cooper</i></u>	INDEPENDENT REGULATORY REVIEW COMMISSION
<u>2-4-09</u>	<u><i>Jeffrey Novis</i></u>	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

