

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE

(1) Agency:

ENVIRONMENTAL PROTECTION

(2) Agency Number:

Identification Number: 7-431

IRRC Number: 2742

(3) Short Title:

OIL AND GAS WELL FEE AMENDMENTS

(4) PA Code Cite:

25 Pa. Code Chapter 78

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Michele Tate, V (717) 783-8727 F (717) 783-8926
Rachel Carson State Office Building
Harrisburg PA, 17105
mtate@state.pa.us

Secondary Contact: Daniel Lapato, V (717) 783-8727 F (717) 783-8926
Rachel Carson State Office Building
Harrisburg PA, 17105
dlapato@state.pa.us

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
 - Certification by the Governor
 - Certification by the Attorney General

INDEPENDENT REGULATORY
REVIEW COMMISSION

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(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

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 fees bear 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. Due to a recent significant increase in workload, the \$100 permit fee no longer covers the Department's costs of administering the act. The Department is proposing a regulatory fee increase for oil and gas wells. The fee increase would include a vertical well base fee of \$250 with an additional \$50 per 500 feet of well bore drilled from 2,000 feet to 5,000 feet and an additional \$100 per 500 feet for the well bore drilled past 5,001 feet. Non-vertical wells, which are also called horizontal wells, would have a base fee of \$900 with an additional \$100 per 500 feet of well bore drilled past 1,500 feet. An applicant for a vertical well with a well bore length of 1,500 feet or less for home use shall pay a permit application fee of \$200.

(9) Include a schedule for review of the regulation including:

- | | |
|---|------------|
| A. The date by which the agency must receive public comments: | March 2009 |
| B. The date or dates on which public meetings or hearings will be held: | N/A |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | Fall 2009 |
| D. The expected effective date of the final-form regulation: | Fall 2009 |
| E. The date by which compliance with the final-form regulation will be required: | Fall 2009 |
| F. The date by which required permits, licenses or other approvals must be obtained: | Fall 2009 |

(10) 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.

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SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

This proposed 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), which authorizes and directs the Board to adopt regulations necessary for the proper performance of the work of the Department. Despite substantial program cost, the oil and gas well 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.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Yes. Section 201(d) of the Oil and Gas Act (58 P.S. § 601.201(d)) authorizes the Department to establish, by regulation, well permit fees that bear a reasonable relationship to the cost of administering the Act and, 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. Despite substantial program cost increases, the \$100 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.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

To properly evaluate the increase in permit applications to develop oil and gas wells, the Department has expended additional staff resources. A non-vertical well, including Marcellus Shale wells, must submit an addendum to the Department, along with their permit application. Review of the permit addendum requires additional staff time to evaluate because it includes water intake information, hydraulic fracturing, and water treatment of the hydraulic fracturing liquid. A non-vertical well could 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 Department is anticipating an increased number of both vertical and non-vertical well applications which will require more staff to handle the increased workload. 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. The Department needs additional resources to properly allow the development of oil and gas resources and to protect the environment.

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This regulatory fee increase is needed to provide the Department with the resources to perform the additional work associated with the review of oil and gas well permit applications and with the oversight of the permits that are issued.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

Please reference the fee comparison attachment

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

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 in Pennsylvania. The increase in permit fees is proportional to the additional work the Department will assume to ensure oil and natural gas 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.

(16) 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 group that applies for a permit from the Department to drill for oil and natural gas. The Department expects 40,000 oil and gas permit applications over the calendar years of 2009, 2010 and 2011.

SECTION III: COST AND IMPACT ANALYSIS

(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. Explain how the dollar estimates were derived.

The fee increase would include a vertical well base fee of \$250 with an additional \$50 per 500 feet of well bore drilled from 2,000 feet to 5,000 feet and an additional \$100 per 500 feet for the well bore drilled past 5,001 feet. Non-vertical wells, which are also called horizontal wells, would have a base fee of \$900 with an additional \$100 per 500 feet of well bore drilled past 1,500 feet. An applicant for a vertical well with a well bore length of 1,500 feet or less for home use shall pay a permit application fee of \$200. The Department anticipates 11,144 vertical well applications and 950 non-vertical well applications in the 2009/2010 fiscal year. Based on the average fees, the Department estimates the increase in fees will cost the regulated community \$7,484,575 in the 2009/2010 fiscal year in comparison to \$1,209,350, which is collected now under the current \$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. Explain

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how the dollar estimates were derived.

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. Explain how the dollar estimates were derived.

The proposed fees will help cover the cost the Commonwealth incurs permitting and inspecting oil and gas wells, including costs associated with the addition of 37 staff positions in FY 2009 to support program operations.

(20) In the table below, provide an estimate of the fiscal savings and costs 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	7,484,575	10,083,075	14,367,350	17,688,800	18,032,500
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
Total Costs	935,100	7,484,575	10,083,075	14,367,350	17,688,800	18,032,500
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

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(20a) 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) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The increase in fee will be a benefit to the Commonwealth by providing the Department the necessary funds to review and processes oil and gas permit applications. The proposed regulation will allow the Department 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.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The final form 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.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

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 regulations.

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

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Please reference the fee comparison attachment.

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

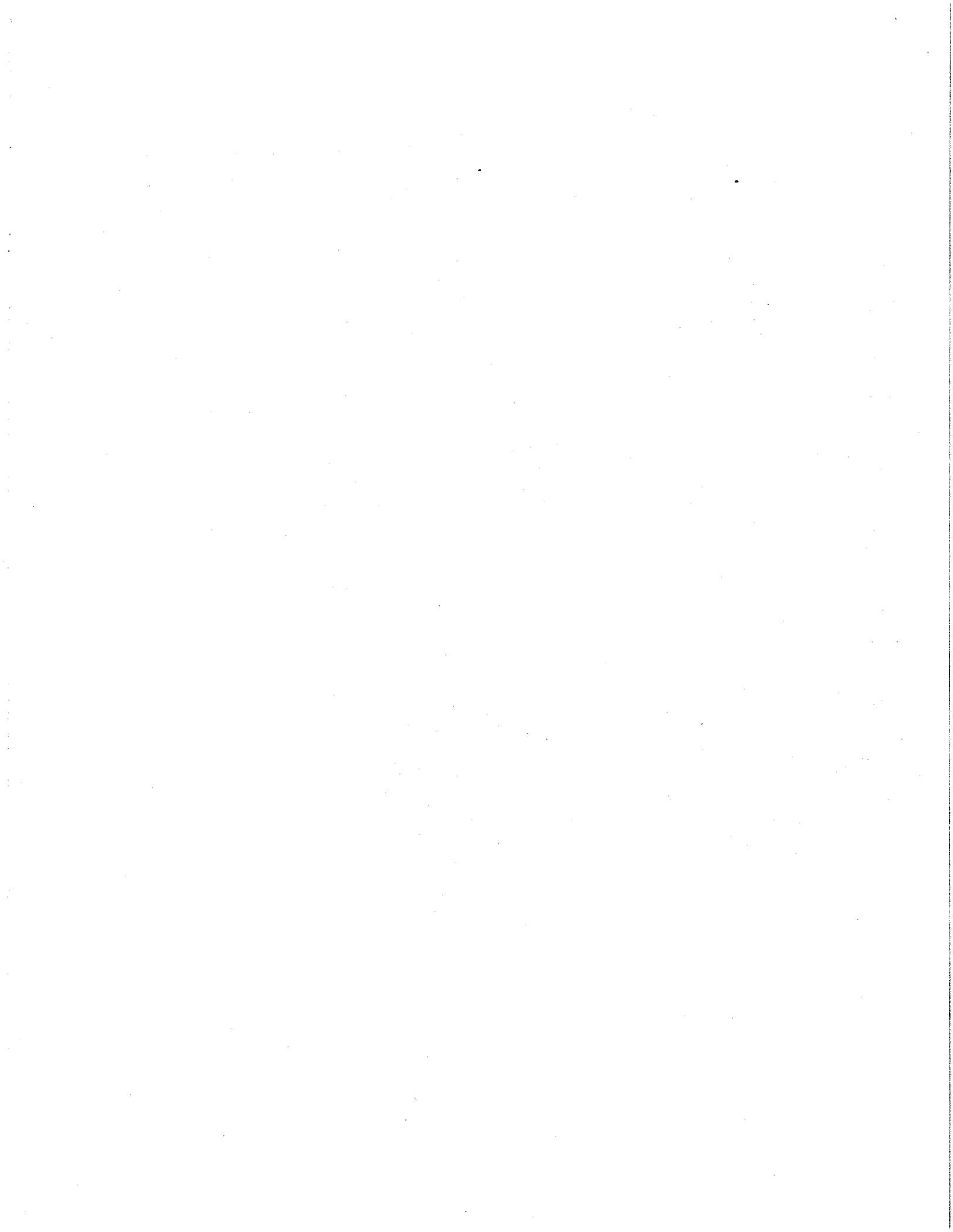
This regulation will not affect any other regulations promulgated by this agency or any other state agency.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

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

(28) 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.

The Commonwealth has a long history of oil and gas activity and many shallow sources are still being recovered by small operators. To minimize the impact of the proposed permit fee increase on operators who typically drill vertical wells, the Department set a base fee of \$250 down to a depth of 2,000 ft. The \$250 fee is the estimated cost the Department incurs to perform a review of the simplest (or minimal) vertical well application. The complexity of an oil or gas well application increases with the depth and length of the well bore in addition to the amount of water used in the fracing of the well. This is the reason for the increase in permit fees based of the length of the well bore. The fees for a non-vertical and Marcellus Shale gas well is based on the well bore length and the review of the water use addendum. An applicant for a vertical well with a well bore length of 1,500 feet or less for home use shall pay a permit application fee of \$200.00.



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

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

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT AGENCY
LEGISLATIVE REFERENCE BUREAU

DO NOT WRITE IN THIS SPACE

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. 7-431

DATE OF ADOPTION July 21, 2009

BY John Hanger

TITLE JOHN HANGER
CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY Andrew C. Clark

Andrew C. Clark

DATE OF APPROVAL AUG 12 2009

(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

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD**

Oil and Gas Well Permit Fees

25 Pa. Code, Chapter 78

**NOTICE OF FINAL RULEMAKING
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD**

[25 Pa. Code Ch. 78]

Oil and Gas Wells

Order

The Environmental Quality Board (Board) by this order amends 25 Pa. Code Chapter 78 (relating to Oil and Gas Wells) by adding new definitions and amending section 78.19 relating to permit fees as set forth in Annex A. The Board has the authority to establish fees by regulation under Section 201 of the Oil and Gas Act, 58 P.S. § 601.201. Under this provision, the Board has the authority to set fees at an amount that bears a reasonable relationship to the cost of administering the Act.

This order was adopted by the Board at its meeting of July 21, 2009.

A. Effective Date

These 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

The final-form rulemaking is adopted 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 performance of the work of the Department.

D. Background and Purpose

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. Fees for traditional oil and gas wells have never been increased. However, fees for Marcellus Shale wells were recently increased on April 18, 2009.

At the same meeting that the Board approved the proposed rulemaking that is made final by this order, the Board also approved a final-omit rulemaking that increased permit fees for wells that produce natural gas from the Marcellus Shale formation. The proposed rulemaking also included the new Marcellus Shale permit application fees that were included in the final-omitted rulemaking to allow interested persons to comments on the new Marcellus Shale permit application fees as part of the proposed rulemaking. The Board committed to making appropriate changes to the Marcellus Shale permit application fees as part of the proposed rulemaking in response to public comments. On April 18, 2009 the final-omitted regulations increasing permit fees for Marcellus Shale wells were published in the Pennsylvania Bulletin and became final.

There are three considerations that support a regulation that increases the permit application fees authorized by the Oil and Gas Act. First, the costs of administering the Act have increased significantly since 1984 when the General Assembly establish the \$100 fee that the Department currently charges. This \$100 per permit application fee does not currently bear a reasonable relationship to the cost of administering the Oil and Gas Act. Indeed, in 2008 permit fees only provided 15% of the revenue needed by the Department to administer the Act. The remaining 85% was provided through the General Fund.

Second, the number of permit applications that the Department reviews annually has grown dramatically over the past several years. In 2000, 1,354 wells were drilled in Pennsylvania. In 2008 the Department issued 7,927 well permits, of which 7,451 were for traditional oil and gas wells. The Department's current staffing levels for the Oil and Gas program were established at a time when the Department reviewed considerably fewer permit applications than it reviews today. To properly review the number of applications that the Department currently receives and to inspect the operations at sites that currently possess a permit, the Department needs additional staff that the current \$100 fee cannot support.

Finally, there continues to be significant interest in the development and recovery of natural gas resources from the Marcellus Shale formation that underlies much of Pennsylvania. Despite the recent economic downturn and the decline of natural gas prices, Marcellus Shale well permitting and drilling is increasing. In 2008, the Department permitted 476 Marcellus Shale wells. In the first 5 months of 2009, the Department permitted 569 Marcellus Shale wells.

The drilling and completion techniques that allow recovery of natural gas from the Marcellus Shale present new and expanded environmental considerations that the Department must evaluate to ensure the gas is recovered in an environmentally protective manner. Many of the environmental considerations are directly related to the use of water to recover natural gas from the Marcellus Shale formation. Extracting natural gas from the Marcellus Shale requires a

process known as “hydraulic fracturing”. 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 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 disposal of the wastewater.

The Department expends considerable staff resources to review the additional information associated with a Marcellus Shale well permit. The fees provided by the final-omitted regulation provide the revenue needed to recover the Department’s costs to properly evaluate a Marcellus Shale well permit application and to inspect the activities associated with Marcellus Shale well drilling. Therefore, the fees provided by the final-omitted regulation will remain unchanged.

E. Summary of Changes Made in the Final-form Rulemaking

§ 78.1 (definitions)

In response to comments by the Independent Regulatory Review Commission, the Department added definitions for Marcellus Shale well, Non-vertical well and Vertical well.

§ 78.19 (d) (underpayment of fee)

In response to several comments, the Department removed the 10% penalty for wells that are drilled longer than the length applied for. As amended, applicants only need to submit difference between the correct fee and the previously submitted fee.

§ 78.19 (e) (money-back guarantee)

This subsection stated that fees were non-refundable. It was not the Department’s intention to withhold fee refunds where the Department fails to take action on well permits within the time period required by the Department’s money-back guarantee policy. This subsection has been deleted.

F. Summary of Comments and Responses on the Proposed Rulemaking

Fees for traditional wells

Several commentators questioned the size of the fee increase for non-Marcellus Shale wells. They contend that for conventional shallow oil and gas well permitting, either no fee increase is needed or at most, a fee increase that tracks inflation since 1983 would be more appropriate. Using the Consumer Price Index published by the US Department of Labor's Bureau of Labor Statistics, the fee for such wells would increase from the current \$100 as enacted in the Oil and Gas Act to \$216.

The initial \$100 permit fee did not cover the program costs in 1984. Program staff and most equipment have primarily been funded by the General Fund. Very few positions, equipment, or emergency well plugging has been funded by permit fees. Indeed, revenue provided by permit fees only covered 15% of the Department's administrative costs in 2008 with the remaining 85% funded through the General Fund. Also, permitting has increased by 398% in just the last ten years with only recent increases in permitting staff and minimal increases in inspection staff. It is also important to note that the well permit fee is not an annual fee. Therefore, the entire program must be funded through new well permits. In order to provide the funding needed to employ sufficient staff and provide equipment necessary to carry out the Department's statutory duties through the well permit application fee, as envisioned by section 201(d) of the Oil and Gas Act, the permit fees must be increased in the amounts provided in the regulation to "bear a reasonable relationship to the cost of administering this act."

Fees based on well bore length

Several commentators questioned the relationship between well bore length and the administrative costs incurred by the Department in reviewing and processing the application.

Section 201(d) of the Oil and Gas Act states that well permit fees must "bear a reasonable relationship to the cost of administering this act." The Department believes the fee structure satisfies this requirement. While there is not a direct relationship between well bore length and review time, deeper wells do tend to have a greater potential for environmental impacts and this in turn requires greater Department evaluation of the potential impacts. Any set permit fee will necessarily require one group of well drillers to pay more than others if the Department's total costs to administer the program are to be covered by the permit fee as envisioned by the law. The Department believes the ability to bear the cost of increased fees is better able to be borne by operators drilling deeper wells and to do otherwise would place an undue burden on smaller operators.

Penalty for underpayment of fee

Commentators requested deletion of the provision in § 78.19(d) that penalize the operator if the drilled well bore length exceeds the length specified in the permit application.

This provision has been removed.

Fee refund

Commentators questioned whether the Department would continue to refund permit fees according to its money-back guarantee policy in light of § 78 (e) which states that fees are non-

refundable.

This subsection has been deleted. It was not the Department's intention to withhold fee refunds where the Department fails to take action on well permits within the time period required by the Department's money-back guarantee policy. However, the Department will not refund permit fees for wells that are permitted but not drilled or for wells that are drilled that have a shorter well bore length than the length permitted.

G. Benefits, Costs and Compliance

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. First, 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 because the Department will be able to hire additional staff to properly inspect new and existing traditional wells and to properly review Marcellus Shale well 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 well 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 base fee for vertical wells \$250 with an additional \$50 per 500 feet of well bore drilled from 2,000 feet to 5,000 feet and an additional \$100 per 500 feet for the well bore drilled past 5,001 feet. Non-vertical wells and Marcellus Shale wells have a base fee of \$900 with an additional \$100 per 500 feet of well bore drilled past 1,500 feet. An applicant for a vertical well with a well bore length of 1,500 feet or less for home use shall pay a permit application fee of \$200.

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 are not complete. 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 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(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 4, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 *Pa.B.* 838 to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Department has considered all comments from IRRC, the Committees, and the public.

Under section 5.1(j.2) of the Regulatory Review Act, on (blank), these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on (blank) and approved the final-form regulations.

J. Findings of the Board

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated there under at *1 Pennsylvania Code* §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposal published at 39 *Pa.B.* 838 on February 14, 2009.
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

K. Order of the Board

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

- (a) The regulations of the Department of Environmental Protection, *25 Pennsylvania Code*, Chapter 78, are amended to read as set forth in Annex A.
- (b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.
- (c) The Chairperson of the Board 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
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 A. GENERAL PROVISIONS

§ 78.1 Definitions.

(a) The words and terms defined in section 103 of the act (58 P. S. § 601.103), section 2 of the Coal and Gas Resource Coordination Act (58 P. S. § 502), section 2 of the Oil and Gas Conservation Law (58 P. S. § 402), section 103 of the Solid Waste Management Act (35 P. S. § 6018.103) and section 1 of The Clean Stream Law (35 P. S. § 691.1), have the meanings set forth in those statutes when the terms are used in this chapter.

(b) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

MARCELLUS SHALE WELL – A WELL THAT WHEN DRILLED OR ALTERED PRODUCES GAS OR IS ANTICIPATED TO PRODUCE GAS FROM THE MARCELLUS SHALE GEOLOGIC FORMATION.

NON-VERTICAL WELL – A WELL DRILLED INTENTIONALLY TO DEVIATE FROM A VERTICAL AXIS. THE TERM INCLUDES WELLS DRILLED DIAGONALLY AND WELLS THAT HAVE HORIZONTAL BORE HOLES.

VERTICAL WELL – A WELL WITH A SINGLE VERTICAL WELL BORE.

SUBCHAPTER B. PERMITS, TRANSFERS, AND OBJECTIONS

§ 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)](a) 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>Vertical Wells</u>	
<u>Total Well Bore Length in Feet</u>	<u>Total fee</u>
<u>0 to 2,000</u>	<u>\$250</u>
<u>2,001 to 2,500</u>	<u>\$300</u>
<u>2,501 to 3,000</u>	<u>\$350</u>
<u>3,001 to 3,500</u>	<u>\$400</u>
<u>3,501 to 4,000</u>	<u>\$450</u>
<u>4,001 to 4,500</u>	<u>\$500</u>
<u>4,501 to 5,000</u>	<u>\$550</u>
<u>5,001 to 5,500</u>	<u>\$650</u>
<u>5,501 to 6,000</u>	<u>\$750</u>
<u>6,001 to 6,500</u>	<u>\$850</u>
<u>6,501 to 7,000</u>	<u>\$950</u>
<u>7,001 to 7,500</u>	<u>\$1,050</u>
<u>7,501 to 8,000</u>	<u>\$1,150</u>
<u>8,001 to 8,500</u>	<u>\$1,250</u>
<u>8,501 to 9,000</u>	<u>\$1,350</u>
<u>9,001 to 9,500</u>	<u>\$1,450</u>
<u>9,501 to 10,000</u>	<u>\$1,550</u>
<u>10,001 to 10,500</u>	<u>\$1,650</u>
<u>10,501 to 11,000</u>	<u>\$1,750</u>
<u>11,001 to 11,500</u>	<u>\$1,850</u>
<u>11,501 to 12,000</u>	<u>\$1,950</u>

<u>Non-Vertical Wells</u>	
<u>Total Well Bore Length in Feet</u>	<u>Total fee</u>
<u>0 to 1,500</u>	<u>\$900</u>
<u>1,501 to 2,000</u>	<u>\$1,000</u>
<u>2,001 to 2,500</u>	<u>\$1,100</u>
<u>2,501 to 3,000</u>	<u>\$1,200</u>
<u>3,001 to 3,500</u>	<u>\$1,300</u>
<u>3,501 to 4,000</u>	<u>\$1,400</u>
<u>4,001 to 4,500</u>	<u>\$1,500</u>
<u>4,501 to 5,000</u>	<u>\$1,600</u>
<u>5,001 to 5,500</u>	<u>\$1,700</u>
<u>5,501 to 6,000</u>	<u>\$1,800</u>
<u>6,001 to 6,500</u>	<u>\$1,900</u>
<u>6,501 to 7,000</u>	<u>\$2,000</u>
<u>7,001 to 7,500</u>	<u>\$2,100</u>
<u>7,501 to 8,000</u>	<u>\$2,200</u>
<u>8,001 to 8,500</u>	<u>\$2,300</u>
<u>8,501 to 9,000</u>	<u>\$2,400</u>
<u>9,001 to 9,500</u>	<u>\$2,500</u>
<u>9,501 to 10,000</u>	<u>\$2,600</u>
<u>10,001 to 10,500</u>	<u>\$2,700</u>
<u>10,501 to 11,000</u>	<u>\$2,800</u>
<u>11,001 to 11,500</u>	<u>\$2,900</u>
<u>11,501 to 12,000</u>	<u>\$3,000</u>

<u>Marcellus Shale Wells</u>	
<u>Total Well Bore Length in Feet</u>	<u>Total fee</u>
<u>0 to 1,500</u>	<u>\$900</u>
<u>1,501 to 2,000</u>	<u>\$1,000</u>
<u>2,001 to 2,500</u>	<u>\$1,100</u>
<u>2,501 to 3,000</u>	<u>\$1,200</u>
<u>3,001 to 3,500</u>	<u>\$1,300</u>
<u>3,501 to 4,000</u>	<u>\$1,400</u>
<u>4,001 to 4,500</u>	<u>\$1,500</u>
<u>4,501 to 5,000</u>	<u>\$1,600</u>
<u>5,001 to 5,500</u>	<u>\$1,700</u>
<u>5,501 to 6,000</u>	<u>\$1,800</u>
<u>6,001 to 6,500</u>	<u>\$1,900</u>
<u>6,501 to 7,000</u>	<u>\$2,000</u>
<u>7,001 to 7,500</u>	<u>\$2,100</u>
<u>7,501 to 8,000</u>	<u>\$2,200</u>
<u>8,001 to 8,500</u>	<u>\$2,300</u>
<u>8,501 to 9,000</u>	<u>\$2,400</u>
<u>9,001 to 9,500</u>	<u>\$2,500</u>
<u>9,501 to 10,000</u>	<u>\$2,600</u>
<u>10,001 to 10,500</u>	<u>\$2,700</u>
<u>10,501 to 11,000</u>	<u>\$2,800</u>
<u>11,001 to 11,500</u>	<u>\$2,900</u>
<u>11,501 to 12,000</u>	<u>\$3,000</u>

(b) An applicant for a vertical well exceeding 12,000 feet in total well bore length shall pay a permit application fee of \$1,950 + \$100 for every 500 feet the well bore extends over 12,000 feet. Fees shall be rounded to the nearest 500 foot interval.

(c) An applicant for a **non-vertical well or** 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 **nearest 500** foot interval.

(d) If, when drilled, the total well bore length of [**a Marcellus shale**] **the** 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] subsections a through c. [plus 10% of the total amount required by subsection b]

[(e) fees are non-refundable.]

[(f)](e) An applicant for a vertical well with a well bore length of 1,500 feet or less for home use shall pay a permit application fee of \$200.00.

(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.

OIL AND GAS WELLS FEES

[25 Pa. Code Chapter 78, Subchapter A]

Comment and Response Document

Proposed Rulemaking #7-431: Oil and Gas Well Fees

ID	Name/Address
1.	Gregory W. Stephenson Vice-President Stephenson Group Natural Gas Company Smicksburg, PA 16256
2.	Lisa Graves-Marcucci Jefferson Hills, PA 15025
3.	Pennsylvania Oil & Gas Association (Stephen W. Rhoads, President) and Independent Oil & Gas Association of Pennsylvania (Louis D'Amico, Executive Director) Harrisburg, PA 17108
4.	Senator Mary Jo White Chairman, Senate Environmental Resources and Energy Committee Senate Box 203021 Room 168, Stae Capitol Building Harrisburg, PA 17120-3021
5.	Representative Tim Solobay PA House of Representatives - Oil and Gas Caucus G-14 Irvis Office Building P.O. Box 202048 Harrisburg, PA 17120-2048
6.	Representative Brian Ellis PA House of Representatives - Oil and Gas Caucus 145 B East Wing P.O. Box 202011 Harrisburg, PA 17120-2011
7.	Independent Regulatory Review Commission 333 Market Street, 14th Floor Harrisburg, PA 17101

Comment and Response (#) Commentator Number

1 Comment: The commentator agrees that a permit fee increase is overdue and justified. However, they contend that for conventional shallow oil and gas well permitting, a fee increase that tracks inflation since 1983 would be more appropriate. They propose that the Department amend the final rule to adopt a new permit fee for conventional, non-deviated vertical oil and gas wells that reflect inflation from 1983 through 2008 as calculated in the Consumer Price Index published by the US Department of Labor's Bureau of Labor Statistics. Using the CPI, the proposed fee for such wells would increase from the current \$100 as enacted in the Oil and Gas Act to \$216. The commentator does not believe that it is appropriate for any fee structure for conventional vertical oil and gas wells to deviate far from the inflation-adjusted permit fee rate of \$216 per well permit. (3)(5)(6)

Response: The Department agrees in part that the well permit fee needs to be increased but by substantially more than the rate of inflation. The initial \$100 permit fee did not cover the program costs in 1984. Program staff and most equipment have primarily been funded through the General Fund. Very few positions, equipment, or emergency well plugging has been funded by permit fees. Indeed, revenue provided by permit fees only covered 15% of the Department's administrative costs in 2008 with the remaining 85% funded through the General Fund.

It is also important to note that the well permit fee is not an annual fee. Therefore, the entire program must be funded through new well permits. In order to provide the funding needed to employ sufficient staff and provide equipment necessary to carry out the Department's statutory duties through the well permit application fee, as envisioned by section 201(d) of the Oil and Gas Act, the permit fees must be increased in the amounts provided in the regulation to "bear a reasonable relationship to the cost of administering this act."

2 Comment: It is my understanding that under this rule, an average Marcellus Shale permit fee will increase from \$100 to approximately \$2,600. The actual cost of each permit will, in large part, be tied to the total wellbore length of the well. In summary, the farther or deeper a well is drilled, the higher the permit fee will be – increasing about \$100 per 500 feet drilled. I question what the relationship is between the length of a proposed well and the administrative costs incurred by DEP in reviewing and processing the application. (4)(5)(6)

Response: Section 201(d) of the Oil and Gas Act states that well permit fees must "bear a reasonable relationship to the cost of administering this act." The Department believes the fee structure satisfies this requirement. While there is not a direct relationship between well bore length and review time, deeper wells do tend to have a greater potential for environmental impacts and this in turn requires greater Department evaluation of the potential impacts. The Department also believes the ability to bear the cost of increased fees is better able to be borne by operators drilling deeper wells because these operations are more costly and have the potential to produce more gas than shallower wells. To do otherwise would place an undue burden on smaller operators.

3 Comment: Alternatively, the commentator suggests a possible two-tiered flat fee structure for vertical wells, with one fee for shallow vertical wells drilled no deeper than 2,500 feet and another fee for such wells drilled deeper than 2,500 feet. (3)

Response: The Department disagrees with a two tier flat fee structure. However, it should be noted that the proposed regulation does include a tiered structure. There is one fee for any well 0 to 2,000 feet for a vertical well and 0 to 1,500 feet for a non-vertical or Marcellus Shale well. Any well proposed to be drilled beyond those depths would be assessed the fee associated with the well bore length.

Any set permit fee will necessarily require one group of well drillers to pay more than others if the Department's total costs to administer the program are to be covered by the permit fee as envisioned by the law. The Department believes the ability to bear the cost of increased fees is better able to be borne by operators drilling deeper wells because these operations are more costly and have the potential to produce more gas than shallower wells. To do otherwise would place an undue burden on smaller operators. The fee for wells with a well bore length of 2,500 feet is \$300. This is \$84 more than the inflation adjusted fee advocated by the commentators.

4 Comment: The commentator appreciates the complexity of the well permitting and completion practices of the new Marcellus Shale wells. The commentator suggests that the Marcellus Shale well drilling does not relate to conventional shallow vertical wells. The commentator suggests that the Department's experience over the last 24 years in permitting conventional shallow oil and gas wells has made the permitting process less complicated and that has allowed the Department to conduct business with little change in its regional staff complement over the last two decades in spite of the recent upsurge in well permit applications. The commentator suggests that Department permitting staff only started feeling workload pressures with the development and implementation of the regulatory changes associated with Marcellus Shale wells. (3)

Response: The Department agrees that we have made progress in our attempts to streamline the permitting process. However, permitting has increased by 398% in just the last ten years with only recent increases in permitting staff and minimal increases in inspection staff. Indeed The permitting increase results in not just additional workload for permit staff, but the resultant increases in drilling also requires more inspection and compliance staff. For these reasons, the Department believes the fee increases are warranted to ensure the industry is not unduly delayed by the permit application process and that the environmental resources and citizens of the Commonwealth are protected.

5 Comment: The Department should explain this disparity between the fee increase proposed by Governor Rendell as part of his 2007-2008 FY budget (\$1,475) and the Department's proposed fee schedule. (4)

Response: The fee increase proposed by Governor Rendell was based on static staffing levels and well drilling activity in 2006. Since that time well drilling has increased, wells are being drilled in new parts of the Commonwealth, and the Department is expending more staff time to

respond to those activities – including inspections, complaint response and environmental reviews. This requires additional staff and equipment not contemplated in 2006.

6 Comment: The commentator suggests deletion of §78(d) that penalizes the operator if the drilled well bore length exceeds the length specified in the permit application. The proposed penalty amounts to the value of the difference in the permit fee applied for to the longer well bore plus a 10% penalty bonus to the Department. The penalty provision is little more than a fundraising gimmick that could be abused by the discretion granted to the Department in interpreting its application. A deviation of one or two vertical feet could allow the Department to charge the operator with a violation of the subsection. Proposed §78.19(d) is unnecessary and punitive, and it should be deleted from the rulemaking (3)(4)(5)(6)

Response: The Department has deleted this provision from section §78.19(d). An applicant will still be responsible for any increase in permit fee that would result from drilling past the proposed well bore length.

7 Comment: Commenter noted that the final-omitted regulation states “Fees are non-refundable” (§78.19(e)). I do not know if that was the intent of DEP, but believe this provision should be clarified in the final rulemaking. (4)(5)(6)

Response: This subsection has been deleted. The Department did not intend to withhold permit fee refunds where the Department failed to comply with its money-back guarantee policy. However, the Department will not refund permit fees for wells that are permitted but not drilled or for wells that are drilled that have a shorter well bore length than the length permitted.

8 Comment: The commentator questions the scope of § 78.19(g), which provides for possible well permit fee increases every three years based on the objective of ensuring that well permit fees meet all program costs to ensure that the program is self-sustaining. We do not believe that the underlying statutory authority granted by the Oil and Gas Act to the Department to increase well permit fees was intended to create an opportunity for the Department to adjust well permit fees to a level sufficient to generate revenues that would cover the full cost of operating the oil and gas regulatory program. The act merely states that the well permit fees must bear “a reasonable relationship to the cost of administering [the] act.” If the General Assembly intended that the permit fees be adjusted by the Department to cover all program costs, it would not have created a \$50 permit fee surcharge and a Well Plugging Restricted Revenue Account in the original act to underwrite the plugging of abandoned wells. Similarly, the legislature would not have subsequently amended the act in 1992 to create additional surcharges to underwrite the Department’s costs for plugging orphan wells. Such surcharges would be unnecessary. We suggest that §78.19(g) be modified in the final rule either by eliminating the provisions or by amending it to reflect the statutory direction given to the Department to adjust well permit fees so that they have a “reasonable relationship” to the Department’s administrative costs, not to its full program costs. (3)

Response: The Department respectively disagrees with the commentator. Section §78.19(g) requires the Department to evaluate the fee structure to ensure that the well permit application fees bears a responsible relationship to the cost of administering the Oil and Gas Act. The

Proposed Rulemaking #7-431: Oil and Gas Well Fees

Orphan Well Plugging Account and the Abandoned Well Plugging Account are used for only those activities associated with plugging orphaned or abandoned wells. Neither account is used to cover the cost of permitting or inspection activities. Also, the fee increases every three years are not automatic. The rule requires the Department to provide the Environmental Quality Board with an evaluation of the fees and how they relate to the Department's cost of administering the program with the objective of ensuring fees meet all program costs and programs are self-sustaining.

9 Comment: The commentator objects to the proposed rulemaking and the Board should reject the same until more stakeholders are consulted and more intensive consideration is given to general and specific variables not adequately addressed in the current form of the regulations. It is the opinion of this commentator that the current proposed fee schedule is arbitrary, capricious and unreasonable given the current national economic posture and the sharp downturn in the oil and gas industry activity at the time of this writing. These regulations only serve as an impediment to the development of the oil and natural gas resources of Pennsylvania and are in sharp contrast to the national consensus of the need to develop more domestic energy resources.

(1)

Response: The Department respectively disagrees with the commentator. The Department has considered comments through the rulemaking process and believes the fee increases are warranted to ensure the industry is not unduly delayed in the permit application process. In addition, the Department believes that sufficient resources are necessary to ensure that development of the Commonwealth's oil and gas resources does not come at the expense of the Commonwealth's equally important environmental resources. Finally, the Department believes that recovering the costs of administering the Act through the well permit fee is sound fiscal policy.

10 Comment: The commentator suggest any new permit fees based on well depth should instead be based on the Mean Sea Level (MSL) depth of the well. Otherwise operators drilling wells located on higher ground surface elevations will pay a higher fee than operators drilling adjacently on lower ground surface elevations with both operators targeting the same formation(s) occupying the same vertical Mean Sea Level interval. In essence the operator drilling on the hill pays a higher bill for no logical reason. This disparity could be eliminated. The same is true for operators targeting the same geologic formation which occurs at widely varying depths across the Commonwealth. In this sense a depth charge is patently unfair. **(1)**

Response: The Department believes the fee structure is reasonably related to the cost of administering the act. While there is not a direct relationship between well bore length and review time, deeper wells do tend to have a greater potential for environmental impacts and this in turn requires greater Department evaluation of the potential impacts. The Department also believes the ability to bear the cost of increased fees is better able to be borne by operators drilling deeper wells because these operations are more costly and have the potential to produce more gas than shallower wells. To do otherwise would place an undue burden on smaller operators.

11 Comment: The commentator believes the Department's statement that more staff time is necessary to review a permit application based on the depth of proposed wells which is erroneous. They believe the exact same forms, notices, well location plats (maps) and other forms required by the Department comprising an application for vertical non-Marcellus shale wells are exactly the same regardless of the proposed well depth. Additional staff time consumed would be a function of application volume as opposed to the depth of wells. During periods when the Department experiences increased volumes of applications the Department receives the additional fees satisfying needed funds for additional staff. If the fee increases are considered such increases should be dedicated solely for additional staff during substantial increased application activity with the additional staff being dismissed during downturns in permitting activity. Costly permanent staff would not be required during such downturns. This would satisfy the Department's contention that one of the benefits for the regulated community of the regulations would be timely review of applications. (1)

Response: The Department believes the fee structure is reasonably related to the cost of administering the act. While there is not a direct relationship between well bore length and review time, deeper wells do tend to have a greater potential for environmental impacts and this in turn requires greater Department evaluation of the potential impacts. The Department also believes the ability to bear the cost of increased fees is better able to be borne by operators drilling deeper wells because these operations are more costly and have the potential to produce more gas than shallower wells. To do otherwise would place an undue burden on smaller operators.

Additional permanent staff are needed to properly administer the Act. Permitting has increased by 398% in just the last ten years with only recent increases in permitting staff and minimal increases in inspection staff. In addition to the increase in applications, non-vertical and Marcellus shale wells require additional plotting of the top and bottom hole, review of deviated survey data, and filing and data entry than for non vertical wells. The permitting increase results in not just additional workload for permit staff, but also require more inspection and compliance staff as drilling activity increases in the field.

12 Comment: The commentator believes the Department's contention that the increased fees are necessary for compliance monitoring and inspection costs related to increased drilling activity is erroneous. Application fees currently collected are non-refundable. If a permit is denied or issued but well drilling is never undertaken pursuant to an issued permit there is little or no follow up required by the Department. These fees are a windfall for the Department. In fact, §78.903 to §78.906 is basically an exemption whereby the Department is not required to perform any inspections whatsoever except for certain conditions enumerated therein. The Department's inspections are solely discretionary and not mandated by statute or regulation. Lacking such mandates the Department lacks authority to request increased application fees for its inspection and compliance costs. The Department's inspection and compliance costs are not related at all to the type or depth of a well. The imposition of fees based on well depth or type for this purpose is unreasonable. During periods when the Department experiences increased drilling activity the Department has previously received additional fees satisfying funding for additional staff. If fee increases are considered such increases should be dedicated solely for temporary staff during substantial increased drilling activity with the additional staff being dismissed during

downturns in drilling activity. Costly permanent staff would not be necessary during such downturns. (1)

Response: The Department disagrees with the commentator. The Department is required to assess a fee that would reflect the cost to the Department to carry out the duties as outlined in the Oil and Gas Act. The fee has been developed in a manner that reflects the cost to run the program - which includes permitting wells that are not drilled. The Department also believes that inspection and compliance efforts are critical to protecting the environment and ensuring that the health and welfare of the citizens of the Commonwealth is protected. The Department is committed to diligent inspection of well drilling activity and will use the increased fees to uphold its statutory duties.

13 Comment: The only justification for any increased application fees may be found with respect to wells targeting the Marcellus shale (Note: Nomenclature with respect to a geologic occurrence can vary. Likewise this writer uses the term "Marcellus shale loosely.) This justification would be limited only to the additional staff time required with respect to the water withdrawals for the drilling and completion of wells targeting the Marcellus shale. It should be noted that the Department's obligation is limited in this matter as various river basin commissions are involved in this issue. The regulations make no allowance or explanation of whether these proposed fee increases will cover any costs these commissions may purport or assert a claim to. The permitting and subsequent inspection and compliance monitoring performed by the Department for Marcellus shale wells is little or no more than any other wells. (1)

Response: The Department respectively disagrees with the commentator. The initial \$100 permit fee did not cover the program costs in 1984. Program staff and most equipment have primarily been funded through the General Fund. Very few positions, equipment, or emergency well plugging has been funded by permit fees. Indeed, revenue provided by permit fees only covered 15% of the Department's administrative costs in 2008 with the remaining 85% funded through the General Fund.

It is also important to note that the well permit fee is not an annual fee. Therefore, the entire program must be funded through new well permits. In order to provide the funding needed to employ sufficient staff and provide equipment necessary to carry out the Department's statutory duties through the well permit application fee, as envisioned by section 201(d) of the Oil and Gas Act, the permit fees must be increased in the amounts provided in the regulation to "bear a reasonable relationship to the cost of administering this act."

14 Comment: The cost to the Department for processing well permit applications and the following inspection and compliance monitoring varies little based on the depth or type of well. Statutory and regulatory compliance by the permittee remains constant without regard for the type or depth of well with the Department not required to perform any specific duties incurring extra costs with respect to the type or depth of a well or whether a well is vertical or horizontal. The well operator is responsible for all costs for all types of wells, including all mapping, reporting data, environmental compliance and all other such costs with respect to all types of wells. The Department's contention that the regulations will not impose additional costs on the

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Department is erroneous as additional staff will certainly be required for calculating and verifying that the proper application fee has been paid and collected. The proposed fee schedule of the regulations is simply a de facto excise tax on oil and gas drilling in Pennsylvania. (1)

Response: The Department believes the proposed fee schedule “bear a reasonable relationship to the cost of administering this act. While there is not a direct relationship between well bore length and review time, deeper wells do tend to have a greater potential for environmental impacts and this in turn requires greater Department evaluation of the potential impacts. In addition, non-vertical and Marcellus shale wells require additional plotting of the top and bottom hole, review of deviated survey data, and filing and data entry than for non vertical wells. While this review will require additional staff time, verifying that the appropriate fee has been paid will not require additional staff.

15 Comment: Full disclosure to the public and local government officials of all fracking chemicals, lubricants, surfactants – including total amounts – used by each gas well drilling company, at each specific operation should be required. (2)

Response: The comment is outside the scope of this proposed regulation dealing with fees.

16 Comment: Full disclosure to the public and local government officials of the size of waste water pits, ponds – and a list of all fracking chemicals, lubricants, surfactants – including totals – that will be held on site, and for what length of time should be required. (2)

Response: The comment is outside the scope of this proposed regulation dealing with fees.

17 Comment: Full disclosure to the public and local government officials of which water sources will be used by the drilling company operations, at each specific site should be required. (2)

Response: The comment is outside the scope of this proposed regulation dealing with fees.

18 Comment: Full disclosure to the public and local government officials of where waste water will be taken – and written proof that it is an approved facility for handling, and treating drilling waste water should be required. (2)

Response: The comment is outside the scope of this proposed regulation dealing with fees.

19 Comment: The Department should require storm water management control plans and safeguards for all drilling sites, regardless of the acreage. Landowners and local governments should not be responsible for any problems that may arise as a result of well drilling and create storm water management problems. Storm water management and control should be the full responsibility of the drilling company. (2)

Response: The comment is outside the scope of this proposed regulation dealing with fees.

20 Comment: A mandatory 8-hour hold period for all cement casings to completely set before drilling operations begin and/or proceed. Require a PA DEP site inspection to ensure this holding period is fulfilled. (2)

Response: The comment is outside the scope of this proposed regulation dealing with fees.

21 Comment: Require increased air permitting requirements at all drilling sites – including emissions from drilling equipment, tanks, ponds and fracking chemicals. (2)

Response: The comment is outside the scope of this proposed regulation dealing with fees.

22 Comment: The bond associated with the well sites should be increased. (2)

Response: The comment is outside the scope of this proposed regulation dealing with fees.

24 Comment: Subsection (a) shows a fee schedule for three types of wells: "Vertical Wells," "Nonvertical Wells" and "Marcellus Shale Wells." The text of the proposed regulation does not specify what is a "Vertical Well," "Nonvertical Well" and "Marcellus Shale Well," or how to distinguish between them. Consequently, it is not clear how to apply the fee schedule to a well application. The regulation should define these terms. (7)

Response: The Department has added definitions for "Vertical Well," "Nonvertical Well" and "Marcellus Shale Well" to §78.1.

25 Comment: The fee schedules for "Nonvertical Wells" and "Marcellus Shale Wells" are identical in Subsections (a) and (c). Please explain the need for two identical fee schedules. (7)

Response: The Marcellus Shale well fee schedule applies only to wells that will extract gas or oil from the geological Marcellus formation. These wells can be vertical or nonvertical wells. The nonvertical well fee would apply to any oil or gas well that includes an intentional wellbore that deviates from a vertical shaft. An example is coal bed methane wells. The Department believes that the separate categories eliminate any confusion as to which fee should be paid. In addition, if the fees for Marcellus and non-vertical wells are adjusted at different levels in future rulemakings, the current structure would be easier to amend.

26 Comment: Nearest foot interval Subsections (b) and (c) state that for wells exceeding 12,000 feet, "fees shall be rounded to the foot interval." We suggest more specific language stating that fees shall be rounded to the "nearest 500 foot interval." (7)

Response: The Department agrees with the commenter and has amended the final rulemaking.

**FEE REPORT FORM
Oil and Gas Permit Application Fee**

Environmental Protection / Oil and Gas Management
Agency

October 23, 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				\$8,495,250	\$11,670,900	\$17,063,800	\$18,313,800

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

²This 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 (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.

Proposed The Department is proposing a permit fee increase for oil and gas wells. 25 PA Code § 78.19 would be added. 25 PA Code § 78.19 would include a vertical well base fee of \$250 with an additional \$50 per 500 feet of well bore drilled from 2,000 feet to 5,000 feet and an additional \$100 per 500 feet for the well bore drilled past 5,001 feet. Non-vertical wells, which are also called horizontal wells, would have a base fee of \$900 with an additional \$100 per 500 feet of well bore drilled past 1,500 feet. An applicant for a vertical well with a well bore length of 1,500 feet or less for home use shall pay a permit application fee of \$200. Well bore length is 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.

FEE OBJECTIVE: To establish a permit fee to that bear 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 oil and 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 reflect the cost of administering the program as required by the Act.

The Commonwealth has a long history of oil and gas activity and many shallow sources are still being recovered by small operators with limited resources. To minimize the impact on these operators which typically drill vertical wells, the Department set a base fee of \$250 for a well bore length of 0 to 2,000 feet. The \$250 fee is the estimated cost the Department incurs to perform a review of the simplest (or minimal) vertical well application. The complexity of an oil or gas well application increases with the depth and length of the well bore in 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. The fees for a non-vertical and Marcellus Shale gas well is based on the well bore length and the review of the water use addendum. An applicant for a vertical well with a well bore length of 2,000 feet or less for home use shall pay a permit application fee of \$200.00.

The fee increase is proportional to support staff increases which are necessary to manage increase workloads. The program has had extremely limited staffing increases since the program began in 1985. Recently the program has been inundated with a greatly increased workload in the traditional producing areas of the state because of the increase in oil and gas prices.

In 2004, 4,556 wells were permitted in Pennsylvania. In 2007, the Department issued 7,241 permits for new wells. In addition to this increased workload, there is new interest in the Marcellus Shale formation by large operators in traditional as well as areas of the state where oil and gas operations have not been conducted. This has led to a large amount of time in public outreach and educational efforts. In addition to increasing the number of traditional permit applications, high gas prices and advances in drilling technology have prompted the development of the Marcellus Shale formation. Developing the Marcellus Shale may result in greater areas of earth disturbance, more fresh water use, and the generation of more waste water than traditional oil and gas well development.

Based on a comprehensive workload analysis of the Oil and Gas Program, the Department is proposing an increase to allow for the cost recovery of the program activities. The Department's proposal is based on a base fee for wells completed vertically which are common and a higher base fee for non-vertical wells and Marcellus Shale wells which require additional review time for the application. A Marcellus well requires an addendum to be submitted along with the permit application. This requires additional staff time to evaluate as it includes water issues that are much larger than typical vertical wells. Horizontal wells also take additional space for their drilling pad location and additional time to drill which increases the programs inspection requirement. A vertical well of 4,000 ft would be drilled in a week whereas a horizontal well of 10,000 ft may take a month.

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	\$1,104,200	\$1,314,500	\$1,590,200	\$1,976,400
Proposed Fee	\$8,495,250	\$11,670,900	\$17,063,800	\$18,313,800

Amount				
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. The final form 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.



Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building

P.O. Box 2063

Harrisburg, PA 17105-2063

August 14, 2009

Policy Office

717-783-8727

Kim Kaufman, Executive Director
Independent Regulatory Review Commission
14th Floor
333 Market Street
Harrisburg, PA 17120

Re: Final-Form Rulemaking – Oil and Gas Well Permit Fees (#7-431)

Dear Mr. Kaufmann:

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed a copy 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 July 21, 2009, meeting.

This final rulemaking adds Section 78.19 in order to establish oil and gas well permit fees in amounts sufficient to cover the Department's costs in administering the Oil and Gas Well Program. On December 19, 1984, the PA General Assembly passed the Oil and Gas Act, which established a \$100 fee for all Oil and Gas well permits. Section 210(d) of the Act allows the Department to increase the fee by regulation, in order that it be set at a level that "bears a reasonable relationship to the cost of administering" the Act. Despite substantial growth in the industry as well as escalating program administration costs, the \$100 permit fee has not been increased in nearly 25 years. This has resulted in a majority of program costs being supported by General Fund revenues.

The final rulemaking establishes fees based upon the length and depth of the well bore drilled because the complexity of an oil and gas well permit application, including the review of such application, greatly increases as the length and depth of the well bore increases. The rulemaking includes a fee of \$250 for vertical wells, with an additional \$50 per 500 feet of well bore drilled from 2,000 feet to 5,000 feet and an additional \$100 per 500 feet for the well bore drilled past 5,001 feet. Fees for non-vertical wells and Marcellus Shale wells, which were initially established through a previous EQB final-omitted rulemaking, include a base fee of \$900 with an additional \$100 per 500 feet of well bore drilled past 1,500 feet. Permit fees for vertical wells with a well bore length of 1,500 feet or less for home use will pay a permit application fee of \$200.

The proposed rulemaking was published in the February 14, 2009, edition of the *Pa Bulletin*, which opened a 30-day public comment period. During the comment period, 7 commentators provided comments on the proposal, including Senator Mary Jo White, Representative Tim Solobay, Representative Brian Ellis and the Independent Regulatory Review Commission. As a result of comments received, the Department has modified the rulemaking by adding definitions; removing the 10% penalty provision for



wells that are drilled longer than the length applied for; and eliminating the provision that stated that fees were non-refundable. The Department presented the final rulemaking to the Oil and Gas Technical Advisory Board, which includes representatives from natural resources consulting firms, energy corporations and academia. The committee voiced no opposition to the final rulemaking.

The Department will provide assistance as necessary to facilitate the Commission's review of this final-form rulemaking under Section 5.1(e) of the Regulatory Review Act. Please contact me at the number above if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Michele L. Tate".

Michele L. Tate
Regulatory Coordinator

Enclosures





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

I.D. NUMBER: 7-431
SUBJECT: Oil and Gas 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
 JUN 14 PM 3:27
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 HARRISBURG, PA

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
8-14-09	<u>D. Newton</u>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8/14/09	<u>R. Borsari</u>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8/14/09	<u>B. Castelli</u>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8-14-09	<u>A. Rybarczyk</u>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8/14/09	<u>Kathy Cooper</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

