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From: Steve Rhoads [srhoads@pogam.org]
Sent: Monday, March 16, 2009 2:32 PM
To: EP, RegComments
Cc: Gilius, Ronald; Sexton, Barbara (DEP); Roberts, Jay Scott
Subject: Comments on Proposed Chapter 78 Revisions

INDEPENDENT REGULATORY
REVIEW COMMISSION

Attached are the comments of the Pennsylvania Oil & Gas Association and the Independent Oil & Gas Association of PA on the proposed regulations amending Chapter 78 to increase well permit fees.

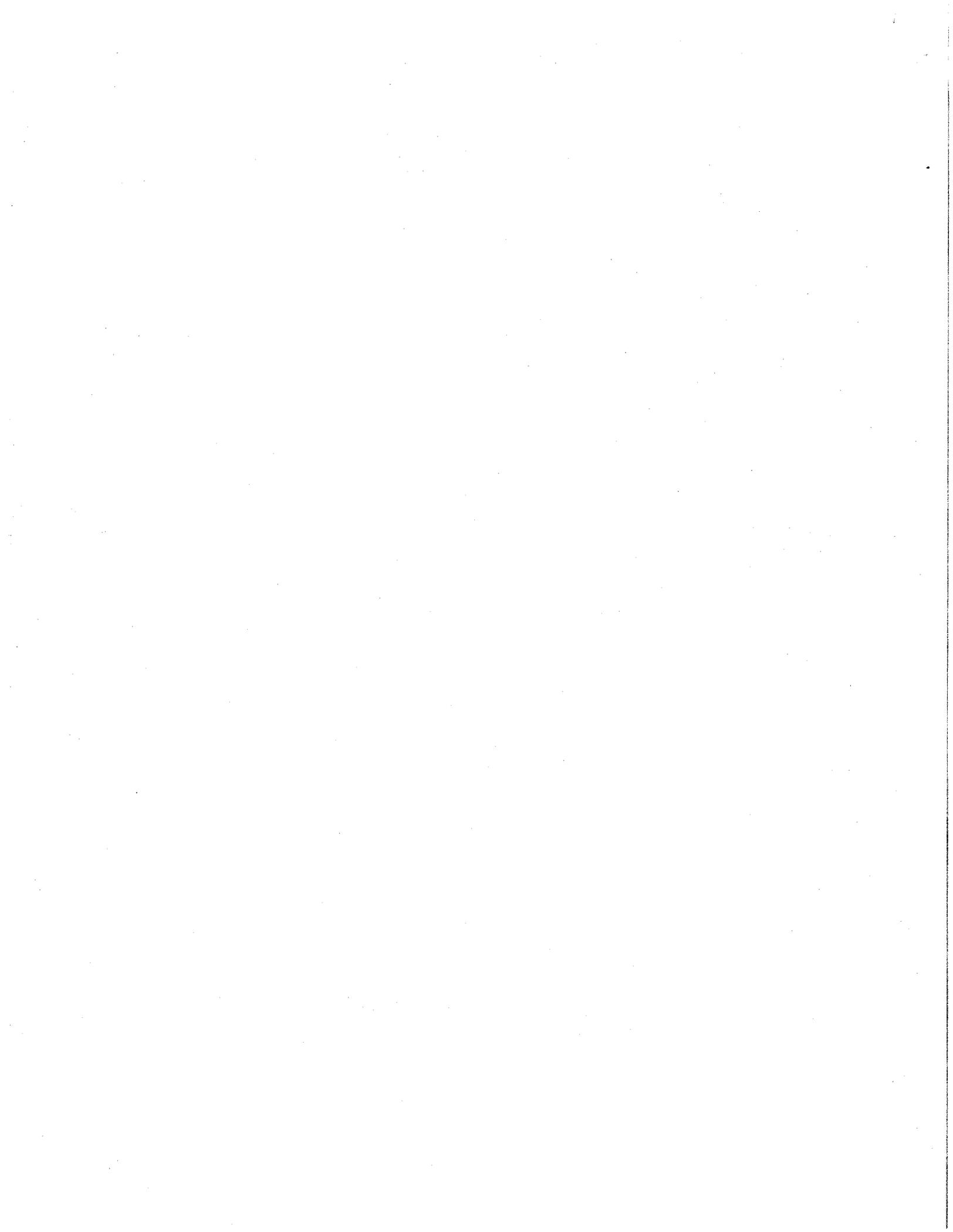
Please respond to this email and let me know that you received these comments by the submission deadline.

Thanks.

Steve Rhoads



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INDEPENDENT REGULATORY
COMMISSION

March 15, 2009
Environmental Quality Board
P. O. Box 8477
Harrisburg, PA 17105-8477

Re: Proposed Amendments to 25 Pennsylvania Code Chapter 78 (oil and gas wells)

We write on behalf of the of hundreds of large and small businesses involved in natural gas and crude oil exploration and production in the Commonwealth to offer our observations and recommendations on Environmental Quality Board's proposed rulemaking to amend Chapter 78, Subchapter B (permits, transfers and objections) by adding a new permit fee schedule for oil and gas wells in §78.19. Notice of the proposal was published in the *Pennsylvania Bulletin* on February 14, 2009.

SUMMARY OF THE RULEMAKING PROPOSAL

The department proposes an increase in its well permit fees because the current base fee, which was created by statute in 1984 is no longer sufficient to cover expenses. The department also anticipates substantial new workload in response to high gas prices and the new natural gas opportunities presented by the Marcellus shale formation.

The proposed rulemaking adds a new permit fee structure in §78.19. The fee structure includes:

- 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; and
- a horizontal well 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 would pay a permit application fee of \$200.

In the preamble to the proposed rule, the department justifies a fee structure based on the length of the well bore because the complexity of an oil or gas well application allegedly increases with the depth and length of the well bore in addition to the amount of water used in the hydrofracturing of the well. The department also states that the new fee structure is designed to minimize the impact of the fee increase on operators who typically drill vertical wells while also reflecting the costs borne by the department in processing more complex permit applications for deviated and Marcellus Shale gas wells. The latter permit applications include departmental review and evaluation of the water management plan components of the new Marcellus Shale well permit addendum.

PERMIT FEE INCREASE

While we appreciate the complexity of the well permit application created by the addition of the new Marcellus Shale well permit addendum, we note that the regulatory difficulties associated with Marcellus Shale well drilling does not relate in any way to conventional shallow vertical wells. In fact, we submit that the department's experience over the last 24 years in permitting conventional shallow oil and gas wells has made the permitting process more routine and less complicated. The routine nature of conventional well permitting 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. While there have been calls for permit fee modifications in recent years, it appears that department permitting staff only started feeling workload pressures with the development and implementation of the regulatory changes associated with Marcellus Shale wells.

We concur with the department's general assertion that a permit fee increase is overdue and justified. We believe, however, that given the routine and relatively simple procedures associated conventional shallow oil and gas well permitting, a fee increase that tracks inflation since 1983 would be more appropriate than the novel fee structure for vertical wells proposed by the department in this rulemaking.

We propose that the department should amend the final rule to adopt a new permit fee for conventional, non-deviated vertical oil and gas wells that reflects inflation over the 24 years between 1983 and 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.

Alternatively, if the department wishes to adopt a tiered approach to permitting vertical wells for the purpose of raising funds to underwrite program costs, we would suggest a two-tiered flat fee structure for vertical wells that is tied to the depth of the well bore, 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.

Regardless of the approach ultimately chosen by the department in its final rule, we do 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.

PENALTY FOR DRILLING DEEPER

We also suggest the deletion from the final rulemaking of the provisions in proposed §78(d) that penalize 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 basic permit fee associated with the longer well bore plus a 10% penalty bonus to the department for the entire length of the well bore.

The penalty provision is little more than a fundraising gimmick that could be easily 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.

PERMIT FEE INCREASES

We also question 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.

*Respectfully submitted on behalf of
the Commonwealth’s independent oil and gas industry by*

Stephen W. Rhoads, President
Pennsylvania Oil & Gas Association

Louis D’Amico, Executive Director
Oil & Gas Association of Pennsylvania

