

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

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(1) Agency

Department of Environmental Protection

(2) Agency Number:

Identification Number: #7-483

IRRC Number: 3022

(3) Pa. Code Cite: 25 Pa.Code § 78.1, *et seq.*

(4) Short Title:

Chapter 78 Oil and Gas Wells

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

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(6) 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

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

The purpose of the final-form regulation is to change the unconventional natural gas well permit fee structure from a sliding fee schedule based on well bore length to a fixed fee of \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells. As a result of this change in structure, the permit fee for an average unconventional well will increase by approximately \$1,800 per well for nonvertical unconventional wells and by \$1,300 per well for vertical unconventional wells. This fee increase is necessary to support current Oil and Gas Program activities and to fund additional positions where needed.

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

58 Pa. C.S. § 3211(d). This section provides that "each application for a well permit shall be accompanied by a permit fee, established by the Environmental Quality Board, which bears a reasonable relationship to the cost of administering this chapter."

58 Pa. C.S. § 3274. This section directs the Environmental Quality Board to adopt regulations necessary to implement 58 Pa. C.S., Chapter 32.

71 P.S. § 510-20 (Administrative Code § 1920-A). This section authorizes the Environmental Quality Board to promulgate regulations of the Department.

(9) 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.

This regulation is not mandated by federal law, federal or state court order, or federal regulation.

However, 25 Pa. Code § 78.19(f) requires the Department to evaluate the well permit fee every three years and recommend any changes to the fee necessary “to address any disparity between 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.” The oil and gas well permit fee was last modified in October 2009. Therefore, conducting such an evaluation and recommending as needed changes to the fee to the Environmental Quality Board is mandated at this time by Chapter 78.

(10) 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.

This regulation is needed because the revenue generated by the well permit fee is not sufficient to cover current Oil and Gas Program expenses. The regulation is also needed to support the additional staff necessary to continue administration of the additional responsibilities required of the program by Acts 9 and 13 of 2012 as well as to improve program consistency and permitting efficiency.

The Department’s Oil and Gas Program is funded primarily through the oil and gas well permit fee. In addition, the Oil and Gas Program receives financial support out of the erosion and sediment control permit fee and the \$6 million Act 13 Impact Fee allocation to the Department. Fines and penalties collected for violations of Act 13 are also deposited into the Well Plugging Fund and used to support the Oil and Gas Program activities. The program does not receive any revenue from the General Fund.

As noted above in response to question (9), conducting an evaluation of the well permit fee and recommending changes to the fee to the Environmental Quality Board is mandated at this time by Chapter 78. Since fall of 2011, the Department has been monitoring the declining Well Plugging Fund balance and evaluating the need for additional staff and revenue by means of a regulatory fee package.

With FY 11-12 revenues totaling \$13.5M and expenditures exceeding \$16.6M, the Oil and Gas program is projected to have increasing expenditures with declining revenues in future fiscal years, which will continue to deplete the existing fund reserves. At the current rate of revenues and expenditures, the balance of the fund will be insufficient to cover program expenses in FY15-16.

The utilization of Act 13 Impact Fee revenue to stabilize the Well Plugging Fund is not a sustainable

approach. At current permit fee levels, an annual transfer of \$6M in Impact Fee revenue to the Well Plugging Fund would not sustain the program through the three-year period contemplated by 25 Pa.Code § 78.19(f).

All the citizens of the Commonwealth will benefit through the environmental protection provided by the continued administration and enforcement of the 2012 Oil and Gas Act. Maintaining the Oil and Gas Program allows for statewide oil and gas conservation and environmental programs to facilitate the safe exploration, development, and recovery of Pennsylvania's oil and gas reservoirs in a manner that will protect the Commonwealth's natural resources, the environment, and public health, safety and welfare.

The oil and gas industry will also benefit through improved program consistency and permitting efficiency.

(11) 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.

N/A. Outside of Underground Injection Control permitting, which is handled in Pennsylvania by EPA Region III, there are no federal permitting or fee standards applicable to wells regulated by this rulemaking.

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

The well permit fees charged by neighboring states are: New York - \$290 base fee plus \$190 for every 500 feet in well bore length (\$5,230 for a typical Marcellus well in Pennsylvania). Ohio - \$500 to \$1,250 depending on rural or urban locations. West Virginia - \$10,150 for the first horizontal well and \$5,150 for subsequent wells on the same pad.

The cost to drill a typical unconventional well is approximately \$6 million. The current average unconventional well permit fee is \$3,200. An increase of \$1,800 to a flat fee of \$5,000 for a nonvertical unconventional well represents .0003% of the overall cost to drill a well and will have no impact on Pennsylvania's competitiveness with other states.

(13) 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 or agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department staff presented this proposed revision to the Oil and Gas Technical Advisory Board at the Board’s April 23, 2013 meeting. The Department staff also met with the Associated Petroleum Industries of Pennsylvania, the Pennsylvania Independent Oil and Gas Association and the Marcellus Shale Coalition. None of these organizations, whose members likely include “small businesses,” oppose the regulation.

The proposed rulemaking was published in the *Pennsylvania Bulletin* on September 15, 2013 (43 Pa.B. 5457), with a 30-day public comment period. The EQB received comments from six commentators and the Independent Regulatory Review Commission (IRRC) during the public comment period. Four commentators, including the Pennsylvania Independent Oil and Gas Association and IRRC, suggested adding more detail to the proposed definition of “conventional well.” This suggestion was accepted and the final-form rulemaking contains the additional detail in section 78.1.

Two commentators explicitly supported the concept of fee increases, with one requesting that the fee be doubled above what was proposed. One commentator was opposed to fee increases to support staffing increases until such time as the Department’s electronic permitting initiative is in place and the efficiencies gained from that development can be assessed. This comment fails to acknowledge the additional responsibilities placed on the Department by Acts 9 and 13 of 2012 as well as the expanding universe of regulated oil and gas wells (more wells are permitted and drilled each year than are plugged so the regulated universe continues to expand), as well as the infrastructure development oversight carried out by the Office of Oil and Gas Management. As noted above, the Department has conducted a thorough analysis of the program’s current resources and expenditures, and believes that the fee and staff increases are adequate given the program’s needs.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

This regulation affects companies that operate natural gas wells in unconventional formations, such as the Marcellus Shale. According to the U.S. Small Business Administration, for NAICS codes 211111 (Crude Petroleum and Natural Gas Extraction) and 213111 (Drilling Oil and Gas Wells), businesses with less than 500 employees are considered by the U.S. Small Business Administration to be small businesses. According to the Department’s permitting records, there are currently 73 operators of unconventional well sites in Pennsylvania, and that number is not expected to change significantly in the near term.

The Marcellus Shale Coalition, an industry association that represents the majority of exploration, production, midstream, and supply chain partners of unconventional natural gas drilling in Pennsylvania, has estimated that less than half of the operators affected may be classified as a small business. The final-form rulemaking requires payment of an increased fee to the Department for a permit to drill and operate an unconventional well. As noted above in response to questions (7) and (12), this increased

permit fee represents a small portion of the total cost to develop an unconventional well.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

This regulation affects companies that operate natural gas wells in unconventional formations, such as the Marcellus Shale. According to the U.S. Small Business Administration, for NAICS codes 211111 (Crude Petroleum and Natural Gas Extraction) and 213111 (Drilling Oil and Gas Wells), businesses with less than 500 employees are considered by the U.S. Small Business Administration to be small businesses. According to the Department's permitting records, there are currently 73 operators of unconventional well sites in Pennsylvania, and that number is not expected to change significantly in the near term.

The Marcellus Shale Coalition, an industry association that represents the majority of exploration, production, midstream, and supply chain partners of unconventional natural gas drilling in Pennsylvania, has estimated that less than half of the operators affected may be classified as a small business.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

Increasing the well permit fee by approximately \$1,800 for a nonvertical unconventional gas well that costs approximately \$6 million to drill should have no impact on well drilling activity in Pennsylvania. Failure to increase the well permit fee, however, will have a substantial negative impact to the unconventional shale gas industry and potentially to the public as the Department would be forced to reducing its permitting and inspection staff unless other funding sources are used, such as the General Fund. This could result in increased permitting timeframes and associated slowdown of economic activity. Fewer inspectors would erode public confidence in the Department and could result in more well sites going uninspected each year.

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

The revenues generated from the fee increase will enable the Department to continue funding of the direct and indirect costs of administering Pennsylvania's Oil and Gas Program. Direct and indirect costs include personnel costs for carrying out program activities including processing of permits and conducting site inspections, operating expenses and the purchase of fixed assets such as sampling supplies, monitoring equipment and vehicles.

The benefits of the regulation include the ability of the Department to provide timely permit reviews and perform robust inspections at an increasing number of well sites in Pennsylvania to help prevent environmental harms to the Commonwealth's lands, waterways and air resources as well as minimize impacts to human health, safety and welfare.

(19) 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 rulemaking adjusts the fee structure from a sliding scale fee to a fixed fee amount for vertical and nonvertical unconventional wells.

Currently, section 78.19 includes a prescribed fee schedule that applies to vertical wells, nonvertical wells, and Marcellus Shale wells. The current fee structure includes a variable fee cost depending on the total length of the well that is drilled.

The proposed fee structure would utilize a flat fee for vertical unconventional wells and nonvertical unconventional wells; however the current sliding scale fee for vertical (conventional) wells will continue to apply to all conventional wells.

An applicant for a vertical well with a well bore length of 1,500 feet or less for home use will continue to pay \$200. This permit fee remains unchanged from the current fee for such wells.

Nonvertical Unconventional Wells:

The average permit fee paid for a nonvertical unconventional well or Marcellus Shale well during 2012 was approximately \$3,200 per well. The final-form rulemaking establishes a fixed \$5,000 fee for each nonvertical unconventional well which is an increase of \$1,800 per well. The Department projects that approximately 2,600 well permit applications will be received annually following this adoption of these amendments. This would result in an additional annual incremental permit cost of \$4,680,000 to the regulated community.

Vertical Unconventional Wells:

The final-form rulemaking regulation establishes a fixed \$4,200 fee for each vertical unconventional well. The Department projects that approximately 80 well permit applications for vertical unconventional wells will be received annually following this adoption of these amendments. This would result in an additional annual incremental permit cost of \$104,000 to the regulated community.

Conventional Vertical and Nonvertical Wells:

Permit applicants for conventional wells will see no impact from the final-form rulemaking because the rulemaking retains the current “vertical well” fee structure as the new “conventional well” fee structure. Typically, “conventional wells” as defined in the final-form rulemaking would currently pay the “vertical well” fee.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no anticipated additional costs or savings for local governments to comply with these proposed

regulations.

(21) Provide a specific estimate of the costs and/or savings to the **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 fees that are collected by the Department are utilized solely to offset the direct and indirect costs of administering Pennsylvania's Oil and Gas Program. The fees collected will enable the Department to continue operating an effective Oil and Gas Program while enabling additional positions that will assist the Department in administering newly enacted statutory requirements.

(22) For each of the groups and entities identified in items (19)-(21) above, 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.

The final-form rulemaking does not add to or change the existing reporting, recordkeeping or other paperwork requirements for the regulated community, local governments, or state government. If anything, the final-form rulemaking reduces the burden on the regulated community and the Department because it replaces the sliding scale permit fees, requiring proper calculation and review, with flat fees that are easy to understand and implement.

(23) 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 Year 12/13	FY +1 Year 13/14	FY +2 Year 14/15	FY +3 Year 15/16	FY +4 Year 16/17	FY +5 Year 17/18
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total Savings	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
COSTS:	\$	\$	\$	\$	\$	\$
Regulated Community	\$4,784,000	\$4,784,000	\$4,784,000	\$4,784,000	\$4,784,000	\$4,784,000
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
Total Costs	\$4,784,000	\$4,784,000	\$4,784,000	\$4,784,000	\$4,784,000	\$4,784,000
REVENUE LOSSES:	\$	\$	\$	\$	\$	\$
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00

Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
Total Revenue Losses	0.00	0.00	0.00	0.00	0.00	0.00

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -10/11	FY -11/12	FY -12/13	Current FY (through 11/30/13)
Well Plugging Restricted Revenue Account (Fund 001- SAP Fund 60083) (*)	\$16,220,000	\$16,634,000	\$16,371,000	\$8,116,000

(*) – Expenditures and commitments

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the regulation.

This regulation affects companies that operate natural gas wells in unconventional formations, such as the Marcellus Shale. According to the U.S. Small Business Administration, for NAICS codes 211111 (Crude Petroleum and Natural Gas Extraction) and 213111 (Drilling Oil and Gas Wells), businesses with less than 500 employees are considered by the U.S. Small Business Administration to be small businesses. According to the Department's permitting records, there are currently 73 operators of unconventional well sites in Pennsylvania, and that number is not expected to change significantly in the near term.

The Marcellus Shale Coalition, an industry association that represents the majority of exploration, production, midstream, and supply chain partners of unconventional natural gas drilling in Pennsylvania, has estimated that less than half of the operators affected may be classified as a small business.

(b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

This rulemaking will not impose a reporting or recordkeeping requirement.

(c) A statement of probable effect on impacted small businesses.

It is not anticipated that this rulemaking will adversely impact small businesses. The universe of oil and gas operators that are small businesses tend to be restricted to the drilling of conventional oil and gas wells. The final-form rulemaking does not alter the current fee structure for conventional oil and gas well permits.

- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

There is no less intrusive alternative to this regulation.

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

This rulemaking does not affect groups or persons including minorities, the elderly, small businesses or farmers; therefore, this rulemaking does not include special provisions that address such needs.

(26) 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.

The Department considered various regulatory options to amend the existing permit fee structure for unconventional gas well permits. The options included assessing increased permit fees, annual gas well registration fees, and transfer fees. It was determined that the most viable option would be to replace the current sliding scale permit fee for unconventional vertical and nonvertical wells with a flat fee per well with no additional fees assessed. This approach is the most viable as it does not significantly change how or when the fees are currently collected; only the amount collected is changed. Also, the increase is minimal (.0003%) compared to the overall cost to drill an unconventional well and will have no impact on Pennsylvania's competitiveness with other states (see response to question (12)). The existing sliding scale fee for conventional wells will not be adjusted so will remain unchanged. This approach results in the least burdensome alternative to the regulated community while providing sufficient funds to enable to Department to continue to operate an effective oil and gas regulatory program.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;

While some oil and gas operators may be considered a small business as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, no changes to reporting, recordkeeping, or other administrative procedures are proposed as part of this rulemaking. The oil and gas operators are familiar with the existing requirements for reporting and recordkeeping for their entity and have the professional and technical skills needed for continued compliance with these requirements.

- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

While some oil and gas operators may be considered a small business as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, no changes to reporting, recordkeeping, or other administrative procedures are included as part of this rulemaking.

- c) The consolidation or simplification of compliance or reporting requirements for small businesses;

While some oil and gas operators may be considered a small business as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, no changes to reporting, recordkeeping, or other administrative procedures are included as part of this rulemaking.

- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and

The final-form rulemaking does not include design or operational standards.

- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

While certain oil and gas operators may meet the definition of small business under the Regulatory Review Act, Act 76 of 2012, those operators are already subject to the permit fee imposed by § 78.19.

Further, the Department considered the universe of small businesses that might be affected by this rulemaking and developed the final-form rulemaking to provide flexibility for small businesses.

The universe of oil and gas operators that are small businesses tend to be restricted to the drilling of conventional oil and gas wells. The final-form rulemaking does not alter the current fee structure for conventional oil and gas well permits.

The Marcellus Shale Coalition estimated that less than half of the operators affected may be classified as a small business. For those unconventional operators the proposed fee increase is minimal (.0003%) compared to the overall cost to drill an unconventional well (see response to question (12)).

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Declining revenue from the collection of oil and gas well permit fees from FY 2010-11 levels is the basis for revising the current fee structure that has been in place since October 2009. Pursuant to section 78.19 (f), "At least every 3 years, the Department will provide the EQB with an evaluation of the fees in this chapter and recommend regulatory changes to the EQB 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." 25 Pa. Code § 78.19(f).

This final-form rulemaking, along with the 3-Year Report, is intended to meet this regulatory requirement and includes a recommendation to increase the current fee structure to ensure all program costs are met and such that the Oil and Gas Program is sustained until the next 3-year fee review.

The Department relied on standard comparative financial statements to assist in determining the solvency and of the Well Plugging Restricted Revenue Account and to conduct an analysis of the future viability of the account balance based on anticipated revenue and expenditures. The comparative financial statement at Attachment 1 (see the 3-Year Report) identifies the insufficient account balance that would be expected given the current revenue collections and expenditures. The comparative financial statement at Attachment 2 (see the 3-Year Report) estimates the sufficient account balance that would be anticipated based on the adjusted fee structure as a result of the passage and implementation of this rulemaking.

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

- | | |
|---|----------------------------------|
| A. The date by which the agency must receive public comments: | <u>30 days after publication</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>1Q 2014</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon publication</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>Upon publication</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

Section 78.19(f) requires the Department to evaluate the well permit fee every three years and recommend any changes to the fee necessary to address any disparity between 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.

The Department intends to continue to monitor fee revenue collections and program expenditures and will conduct a re-evaluation of the fee structure within three years of the effective date of this final rulemaking as required by section 78.19(f).

3-YEAR REGULATORY FEE AND PROGRAM COST ANALYSIS REPORT TO THE ENVIRONMENTAL QUALITY BOARD

BACKGROUND:

The Department of Environmental Protection's (Department) Office of Oil and Gas Management is responsible for statewide oil and gas conservation and environmental programs to facilitate the safe exploration, development, and recovery of Pennsylvania's oil and gas reservoirs in a manner that will protect the Commonwealth's natural resources and the environment. The office develops policy and programs for the regulation of oil and gas development and production pursuant to the 2012 Oil and Gas Act (Act); oversees the oil and gas permitting and inspection programs; develops statewide regulation and standards; conducts training programs for industry; and works with the Interstate Oil & Gas Compact Commission and the Technical Advisory Board. The entire oil and gas program is funded by well permit fees, fines and civil penalties through the Well Plugging Fund, which was established by the Act.

The Act, which was passed in Pennsylvania on December 19, 1984, and recently amended in 2012 by Act 13, initially established a \$100 fee for oil and gas well permits. Section 3211 (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. For nearly 25 years, permit fee levels were stagnant and remained at \$100, despite escalating program expenses. In April 2009, in response to the dramatic increase in program resources needed to regulate the Marcellus Shale Well gas industry in Pennsylvania, the Department increased permit fees for Marcellus Shale wells through a final-omitted rulemaking. The fee structure implemented at 25 Pa. Code § 78.19 increased fees from \$100 to a sliding scale based on the length of the well bore drilled.

At the same time the final-omitted rulemaking was initiated, another rulemaking was developed by the Department that included permit fee increases for conventional or vertical wells based on the length of the well bore drilled and permit fee increases for nonvertical and Marcellus Shale wells, which were identical to the fee structure included in the Marcellus Shale Wells fee final-omitted rulemaking. The latter fees were included in the rulemaking in order to allow for public comment and review which was omitted during the final-omitted rulemaking process. In October 2009, the rulemaking was finalized and established fee levels as provided in **Table 1** below. The rulemaking also established a fee of \$200 for a permit for a vertical well with a well bore length of 1,500 feet or less for home use. Based upon historical Department data from 2009 to the present, the average permit fee for a Marcellus Shale well in Pennsylvania is currently \$3,200.

TABLE 1

<i>Vertical Wells</i>		<i>Nonvertical Wells</i>		<i>Marcellus Shale Wells</i>	
Total Well Bore Length in Feet	Total Fee	Total Well Bore Length in Feet	Total Fee	Total Well Bore Length in Feet	Total Fee
0 to 2,000	\$250	0 to 1,500	\$900	0 to 1,500	\$900
2,001 to 2,500	\$300	1,501 to 2,000	\$1,000	1,501 to 2,000	\$1,000
2,501 to 3,000	\$350	2,001 to 2,500	\$1,100	2,001 to 2,500	\$1,100
3,001 to 3,500	\$400	2,501 to 3,000	\$1,200	2,501 to 3,000	\$1,200
3,501 to 4,000	\$450	3,001 to 3,500	\$1,300	3,001 to 3,500	\$1,300
4,001 to 4,500	\$500	3,501 to 4,000	\$1,400	3,501 to 4,000	\$1,400

4,501 to 5,000	\$550	4,001 to 4,500	\$1,500	4,001 to 4,500	\$1,500
5,001 to 5,500	\$650	4,501 to 5,000	\$1,600	4,501 to 5,000	\$1,600
5,501 to 6,000	\$750	5,001 to 5,500	\$1,700	5,001 to 5,500	\$1,700
6,001 to 6,500	\$850	5,501 to 6,000	\$1,800	5,501 to 6,000	\$1,800
6,501 to 7,000	\$950	6,001 to 6,500	\$1,900	6,001 to 6,500	\$1,900
7,001 to 7,500	\$1,050	6,501 to 7,000	\$2,000	6,501 to 7,000	\$2,000
7,501 to 8,000	\$1,150	7,001 to 7,500	\$2,100	7,001 to 7,500	\$2,100
8,001 to 8,500	\$1,250	7,501 to 8,000	\$2,200	7,501 to 8,000	\$2,200
8,501 to 9,000	\$1,350	8,001 to 8,500	\$2,300	8,001 to 8,500	\$2,300
9,001 to 9,500	\$1,450	8,501 to 9,000	\$2,400	8,501 to 9,000	\$2,400
9,501 to 10,000	\$1,550	9,001 to 9,500	\$2,500	9,001 to 9,500	\$2,500
10,001 to 10,500	\$1,650	9,501 to 10,000	\$2,600	9,501 to 10,000	\$2,600
10,501 to 11,000	\$1,750	10,001 to 10,500	\$2,700	10,001 to 10,500	\$2,700
11,001 to 11,500	\$1,850	10,501 to 11,000	\$2,800	10,501 to 11,000	\$2,800
11,501 to 12,000	\$1,950	11,001 to 11,500	\$2,900	11,001 to 11,500	\$2,900
		11,501 to 12,000	\$3,000	11,501 to 12,000	\$3,000

PURPOSE:

The 2009 regulatory amendments include a provision at 25 Pa. Code § 78.19 (f) that requires the Department to provide the Environmental Quality Board (EQB) with an evaluation of the adequacy of the fees and a recommendation regarding regulatory changes necessary to address any disparity between program costs and income received. The purpose of the following evaluation is to fulfill the requirements of 25 Pa. Code § 78.19 (f) and to ensure that well permit fees are sufficient to meet the current and projected costs of implementing and administering the Commonwealth's Oil and Gas Program.

ANALYSIS:

The Oil and Gas Program has invested additional resources to enhance program operations in response to demands associated with the Marcellus Shale Gas industry. **Table 2** below identifies the number of unconventional well permit applications received by the Department since 2008 and is illustrative of the increased workload by the Department as oil and gas permitting activities have increased nearly six-fold since 2008. In 2004, the program employed 64 employees. With the permit fee increases promulgated in 2009, the Department received revenue to expand staffing in the program to the current complement of 202 employees, or over three-times the complement in 2004. Approximately 80% of the staff is assigned to engineering, scientific or permit/inspection-related work, as Oil and Gas Inspectors or Oil and Gas Inspector Supervisors, and the remaining 20% are assigned to clerical, administrative, or legal work to support the Oil and Gas Program.

TABLE 2

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF OIL AND GAS MANAGEMENT
ANNUAL UNCONVENTIONAL PERMIT APPLICATIONS RECEIVED**

2008	2009	2010	2011	2012
589	2050	3,418	3,672	2,678

Despite the increase in complement since 2009, the Oil and Gas Program has been faced with additional responsibilities associated with the support of the Oil and Gas industry in Pennsylvania. These additional responsibilities coupled with regulatory oversight obligations to existing and future operations are increasing operational expenditures of the Oil and Gas Well Plugging Fund. For example, Act 13 of 2012 comprehensively amended the 1984 Oil and Gas Act and imposed a number of new responsibilities on the oil and gas industry as well as the Department. Pursuant to Act 13, the Department must inspect well sites before drilling can commence and well drillers must now notify the Department prior to cementing all strings of casing and before hydraulic fracturing operations commence. These new requirements add to the responsibilities of the Oil and Gas Program furthering the need for additional inspectors to fulfill the increased inspection requirements of the law.

In addition to Act 13, the Department is also responsible for implementing Chapters 102 and 105 regulated activities. Chapter 105 relates to stream and wetland encroachments and Chapter 102 addresses earth moving activities including erosion and sediment control and post construction storm water management. It is the Department's responsibility to have a water quality specialist inspect these sites which may include well pads, gas gathering lines, access roadways, equipment storage areas, staging areas, compressor stations and pipelines. The water quality specialist is also responsible to respond to citizen complaints related to these activities as well as to do routine compliance inspections, including newly mandated inspections per Act 13 of 2012 Section 3258(a.1), which requires a site inspection prior to commencement of drilling activities. The installation of gathering lines and pipelines alone have dramatically increased the Department's workload, as they are long linear projects that can occupy miles within one permit application and are very time consuming in terms of permit and compliance inspections.

In addition to responding to new legislative requirements, the demand for Department resources is expanding due to the substantial natural gas infrastructure being developed throughout the Commonwealth, which requires staff resources to review the necessary Clean Streams Law and Dam Safety and Encroachments Act permits for these projects on a timely basis. Failure to review permit applications within a reasonable time period can result in substantial cost increases for these projects and ultimately prevents natural gas from reaching consumers, thus increasing commodity costs.

Finally, as a result of the Department's recent reorganization, the Office of Oil and Gas Management was created to unify the planning and program management staff with the permitting, inspection and enforcement staff under a common deputate. As a result of this reorganization and the growing demands of the overall program, additional resources are needed to support the Office's new Bureau of Planning and Program Management. Resources are needed to enable the office to develop new regulations, policies and technical guidance documents pertaining to well construction and surface activities on a timely basis. Failure to address the needs provided by the new office may lead to uncertainty and inconsistent application of legal requirements. Additional bureau staff will better

serve the public as well as the industry by making more transparent how the Department interprets and implements the law.

CONCLUSION:

The Department has conducted a thorough analysis of the program's current resources and expenditures and those resources needed in the future to address the expanding responsibilities and workload of the Oil and Gas Program. The Department has concluded that anticipated revenue to support the program based upon current permit fees is not adequate to meet future program operations, including permitting, inspection, enforcement and information technology needs. (**Please see Attachment 1**). Since 2010, the Department has experienced a 22% year-over-year decrease in the number of unconventional well permit applications received. Since that time, however, the cumulative universe of Marcellus Shale wells drilled and overseen by the Oil and Gas Program has increased by 23.5%. This increase in workload coupled with declining permit revenues creates a situation where the incoming permit revenue is insufficient to cover the current operational costs of the program, not allowing any room for flexibility in terms of future staff and resource needs. Without additional revenue to cover future program expenses, including additional staff and technology, the Department's ability to provide high quality compliance assistance, ensure timely permitting, provide adequate inspection and enforcement operations, and leverage existing technology to streamline inspection and permitting activities will be compromised.

RECOMMENDATION:

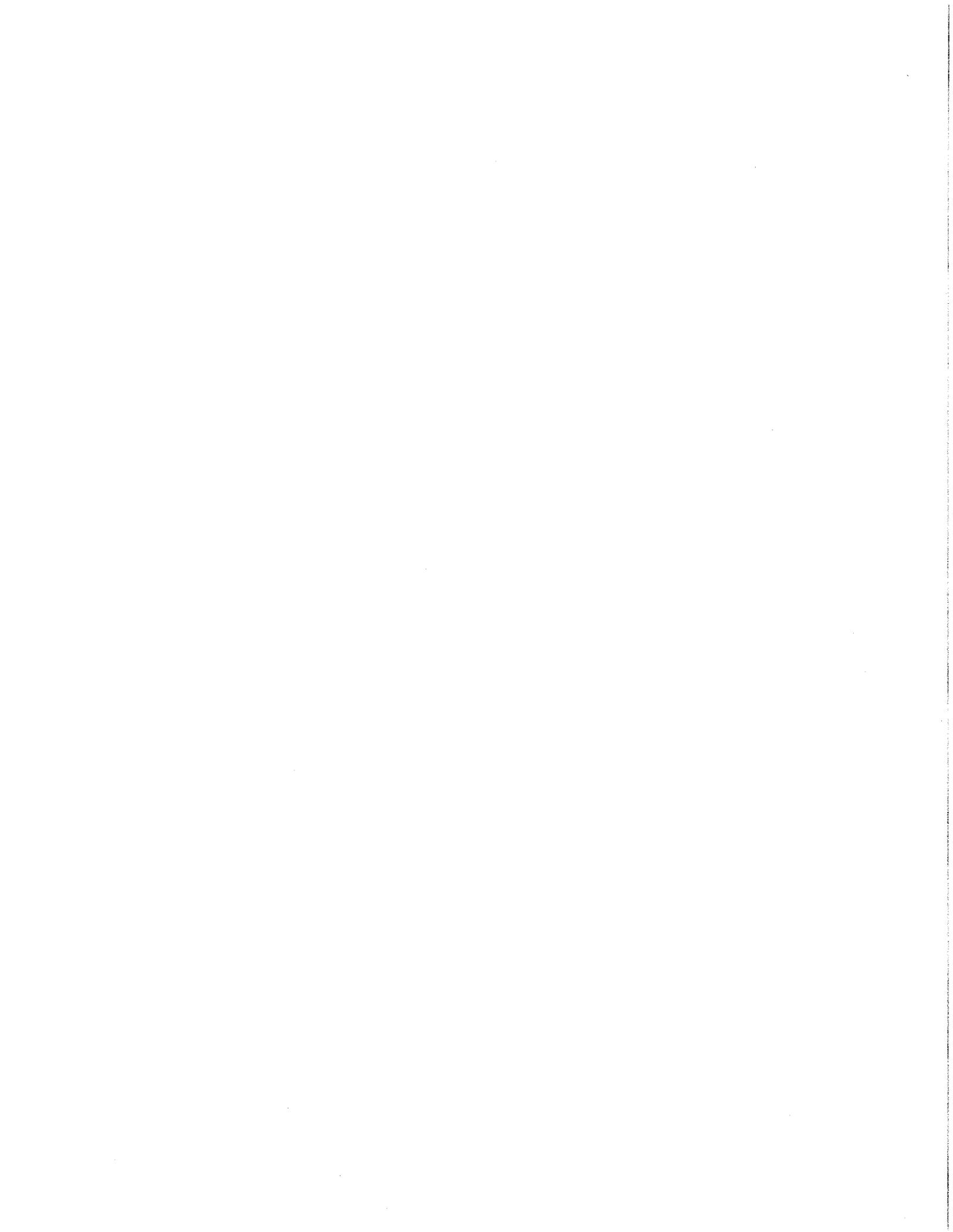
To ensure the solvency of the Oil and Gas Well Plugging Account and the resources necessary for the continued proper management of the Department's Oil and Gas Program, the Department recommends that the EQB revise the permit fees for all unconventional wells and charge a flat fee of \$5,000 for nonvertical unconventional wells and \$4,200 vertical unconventional wells. The Department also recommends that the fees for conventional wells, which are typically vertical wells, remain unchanged. If these recommendations are accepted, assuming an annual average permitting workload of 2,600 unconventional permit applications per year, **Attachment 2** shows that the Oil and Gas Well Plugging Account will remain solvent for at least three years, when the next regulatory review is required by 25 Pa. Code § 78.19 (f).

ATTACHMENT 1 - COMPARATIVE FINANCIAL STATEMENT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
WELL PLUGGING FUND
 (in thousands)
BASED ON SPEND PLAN
Current well permit fee structure

Updated thru December 31, 2013 Revenue and Expenditures

FUND: 001 Restricted: 60083	TWO YEAR	TWO YEAR	ONE YEAR	ONE YEAR	AVAILABLE	BUDGET	PLAN YR.1	PLAN YR.2	PLAN YR.3	PLAN YR.4
	PRIOR	PRIOR	PRIOR	PRIOR						
	BUDGETED	ACTUAL	BUDGETED	ACTUAL						
	FY 2011-12	FY 2011-12	FY 2012-13	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Beginning Balance	\$2,979	\$5,836	\$2,276	\$2,975	\$11,093	\$8,422	\$4,664	\$512	(\$4,042)	(\$9,006)
Revenue:										
Fines and Penalties	\$900	\$2,287	\$1,900	\$2,347	\$1,586	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
Registration Fees	0	0	0	0	0	0	0	0	0	0
Permit Fees	15,370	11,317	12,500	9,465	10,033	9,000	9,000	9,000	9,000	9,000
Trf to Environmental Ed Fund	(45)	(189)	(95)	(114)	(117)	(50)	(50)	(50)	(50)	(50)
Bond Forfeiture	0	50	0	0	0	0	0	0	0	0
Automobile/Vehicle Sale	0	6	0	8	15	0	0	0	0	0
Miscellaneous Revenue	0	0	0	157	0	0	0	0	0	0
Impact Fees	0	0	0	12,000	6,000	6,000	6,000	6,000	6,000	6,000
Total Receipts	\$16,225	\$13,471	\$14,305	\$23,863	\$17,517	\$15,950	\$15,950	\$15,950	\$15,950	\$15,950
Funds Available	\$19,204	\$19,307	\$16,581	\$26,838	\$28,610	\$24,372	\$20,614	\$16,462	\$11,908	\$6,944
Expenditures:										
Well Plugging	\$18,058	\$16,634	\$16,917	\$16,371	\$20,188	\$19,708	\$20,102	\$20,504	\$20,914	\$21,333
Uncommitted Ending Balance	1,146	2,673	(336)	10,467	8,422	4,664	512	(4,042)	(9,006)	(14,389)
Plus: Commitments Carried Forward	Not Est.	302	Not Est.	626	Not Est.	Not Est.	Not Est.	Not Est.	Not Est.	Not Est.
Ending Balance	\$1,146	\$2,975	(\$336)	\$11,093	\$8,422	\$4,664	\$512	(\$4,042)	(\$9,006)	(\$14,389)

This is an accrual basis financial statement and does not tie to the Statement of Cash Receipts and Disbursements.



**ATTACHMENT 2 - COMPARATIVE FINANCIAL STATEMENT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OIL AND GAS WELL PLUGGING ACCOUNT
(Fund 001 - SAP Fund 00083)**

Assumption 2,600 unconventional permits @ \$5,000 flat permit fee in FY 2014-2015

FUND: 001 Restricted: 60083	TWO YEAR		ONE YEAR		AVAILABLE	BUDGET	PLAN YR.1	PLAN YR.2	PLAN YR.3	PLAN YR.4
	PRIOR	PRIOR								
	ACTUAL	ACTUAL	FY 2013-14	FY 2014-15						
	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19		
Beginning Balance	\$5,836	\$2,975	\$11,093	\$7,122	\$7,431	\$6,131	\$4,668	\$3,040		
Revenue:										
Fines and Penalties	\$2,287	\$2,347	\$1,586	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	
Registration Fees	0	0	0	0	0	0	0	0	0	
Permit Fees										
Unconventional	10,362	8,881	9,384	-	-	-	-	-	-	
Conventional	955	584	649	-	-	-	-	-	-	
Total Permit Fees:	11,317	9,465	10,033	-	-	-	-	-	-	
Unconventional Permit Fee (Horizontal)	-	-	-	13,260	13,525	13,796	14,072	14,348		
Unconventional Permit Fee (Vertical)	-	-	-	750	750	750	750	750		
Conventional Sliding Permit Fee (Vertical)	-	-	-	692	678	664	651	638		
Trf to Environmental Ed Fund	(189)	(114)	(117)	(50)	(50)	(50)	(50)	(50)		
Bond Forfeiture	50	0	0	0	0	0	0	0		
Automobile/Vehicle Sale	6	8	15	0	0	0	0	0		
Miscellaneous Revenue	0	157	0	0	0	0	0	0		
Impact Fees (Act 13)	0	12,000	6,000	6,000	6,000	6,000	6,000	6,000		
Total Receipts	\$13,471	\$23,863	\$17,517	\$21,652	\$21,903	\$22,160	\$22,423	\$22,686		
Funds Available	\$19,307	\$26,838	\$28,610	\$28,774	\$29,334	\$28,291	\$27,091	\$25,726		
Expenditures:										
Well Plugging										
Personnel:	\$14,190	\$13,049	\$16,219	\$16,543	\$16,874	\$17,211	\$17,555	\$17,906		
Other Operating:	\$2,444	\$3,322	\$3,969	\$3,000	\$4,129	\$4,212	\$4,296	\$4,382		
Total Expenditures - Well Plugging:	\$16,634	\$16,371	\$20,188	\$19,543	\$21,003	\$21,423	\$21,851	\$22,288		
Additional Staff (22):	\$0	\$0	\$300	\$1,800	\$2,200	\$2,200	\$2,200	\$2,200		
BIT O & G Support:	\$0	\$0	\$1,000	\$0	\$0	\$0	\$0	\$0		
Plus: Commitments Carried Forward	302	626	Not Est.							
	\$16,332	\$15,745	\$21,488	\$21,343	\$23,203	\$23,623	\$24,051	\$24,488		
Ending Balance	\$2,975	\$11,093	\$7,122	\$7,431	\$6,131	\$4,668	\$3,040	\$1,238		

Note: Figures in millions

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By:
(Deputy Attorney General)

DEPARTMENT OF ENVIRONMENTAL
PROTECTION
ENVIRONMENTAL QUALITY BOARD

BY 
MAR 14 2014
DATE OF APPROVAL

(AGENCY)

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

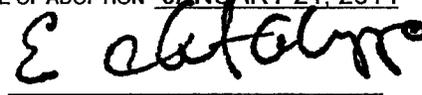
DATE OF APPROVAL

DOCUMENT/FISCAL NOTE NO. 7-483

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

DATE OF ADOPTION JANUARY 21, 2014

Check if applicable
Copy not approved. Objections attached.

BY 

TITLE E. CHRISTOPHER ABRUZZO
CHAIRMAN

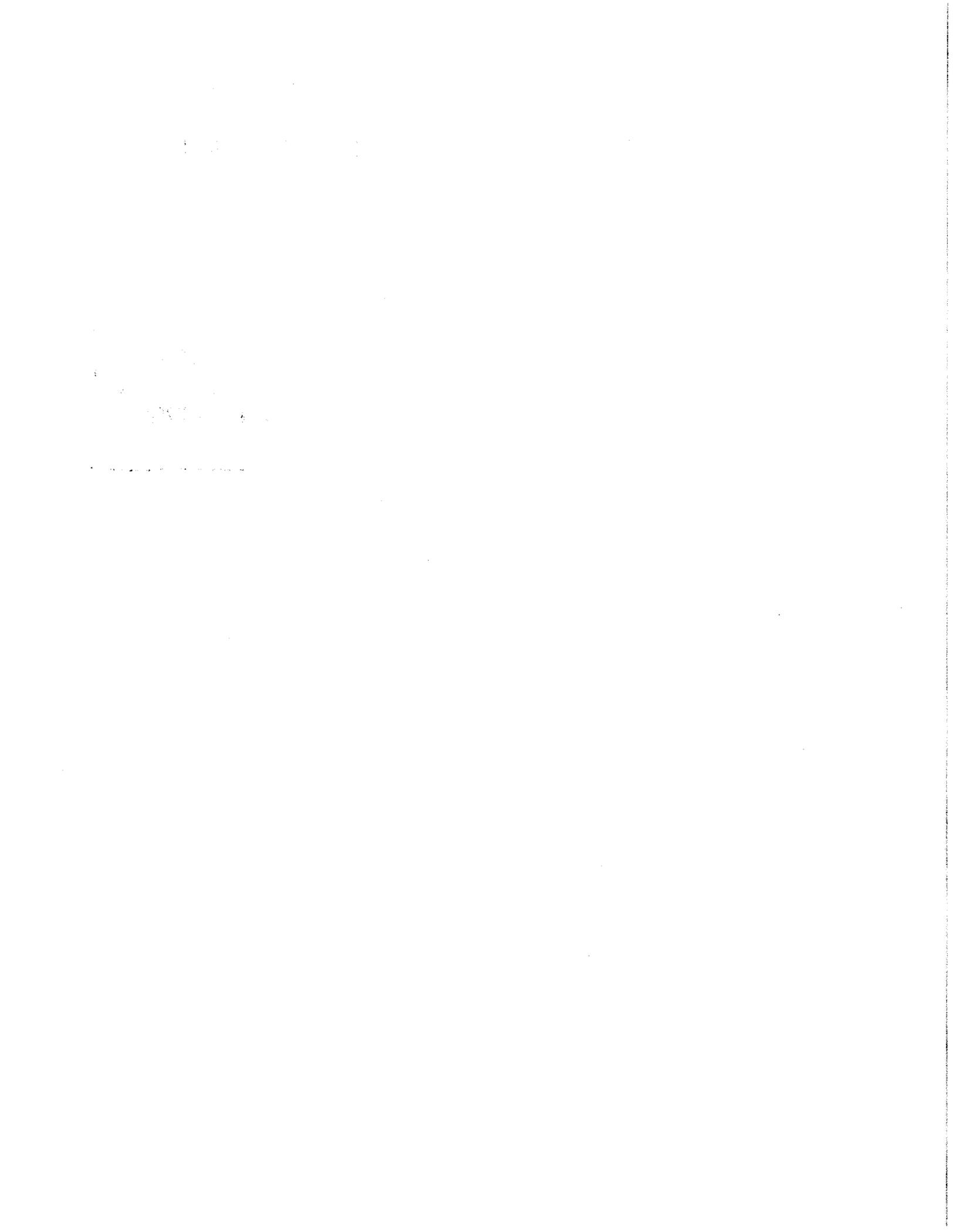
EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

NOTICE OF FINAL RULEMAKING

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD**

Oil and Gas Well Fee Amendments

25 Pa. Code, Chapters 78



**NOTICE OF FINAL RULEMAKING
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD
[25 PA CODE CH. 78]
OIL AND GAS WELL FEE AMENDMENTS**

The Environmental Quality Board (Board) by this order amends §§ 78.1 and 78.19 (relating to definitions; and permit application fee schedule) to read as set forth in Annex A. These amendments satisfy the obligation of the Department of Environmental Protection (Department), as specified in § 78.19(f), to provide the Board with an evaluation of the Chapter 78 fees and recommend regulatory changes to address any disparity between Oil and Gas Program (Program) income generated by the fees and the Department's cost of administering the Program. These amendments include several changes to the structure of oil and gas well permit fees, including establishing increased flat fees for unconventional well permits.

This final-form rulemaking was adopted by the Board at its meeting of January 21, 2014.

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 Kurt Klapkowski, Director, Bureau of Oil and Gas Planning and Program Management, Rachel Carson State Office Building, 15th Floor, 400 Market Street, P. O. Box 8765, Harrisburg, PA 17105-8765, (717) 772-2199; or Trisha Salvia, 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, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available electronically on the Department of Environmental Protection's (Department) web site at www.dep.state.pa.us (DEP Search/Keyword: Public Participation).

C. Statutory Authority

The final-form rulemaking is being made under the authority of 58 Pa.C.S. § 3274 (relating to regulations) which directs the Board to adopt regulations necessary to implement 58 Pa.C.S. Chapter 32 (relating to development), 58 Pa.C.S. § 3211(d) (relating to well permits), which authorizes the Board to establish permit fees that bear a reasonable relationship to the cost of administering 58 Pa.C.S. Chapter 32, and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which authorizes the Board to promulgate regulations of the Department.

D. Background of the Amendments.

Applicants for permits to drill oil and gas wells in this Commonwealth shall pay the permit fee established by the Board. These permits fees fund the entire operation of the Department's Office of Oil and Gas Management (Oil and Gas Program), which is responsible for Statewide oil and gas conservation and environmental programs to facilitate the safe exploration, development and

recovery of Pennsylvania's oil and gas reservoirs in a manner that will protect this Commonwealth's natural resources, the environment and public health, safety and welfare. The permit fees are placed in the Well Plugging Fund.

The Department prepared and presented to the Board a 3-Year Regulatory Fee and Program Cost Analysis Report (Report) as part of this rulemaking. A copy of the Report is available from the persons listed in Section B. The conclusions of the Report are outlined below.

The Well Plugging Fund balance is declining as the Department's expenses to operate the Program have exceeded permit fee revenues for the past several fiscal years. Fiscal Year (FY) 2011-12 revenues totaled \$13.5 million and expenditures exceeded \$16.6 million. The Program is projected to have increasing expenditures with declining revenues in future fiscal years, which will continue to deplete the existing fund reserves. At current permit fee and expenditure levels, with projected permitting levels, the Well Plugging Fund will be insufficient to maintain the operations of the program through FY 2015-16.

In addition to declining Well Plugging Fund balances, the Program is facing increasing operational expenditures due to increased activity in the area of oil and gas exploration associated with previously unexplored unconventional gas formations, as well as the development of natural gas infrastructure throughout this Commonwealth. These expenditures are only expected to increase as exploration of other unconventional formations and infrastructure development expands.

These amendments increase the well permit fee to provide adequate revenue to support the ongoing operations of the Program as well as to meet future Program needs, including permitting, inspection, enforcement and information technology needs. Compounding the problem of declining funds due to increasing expenditures is the decrease of well permit applications. Since 2010, the Department has experienced a year-over-year decrease in the number of unconventional well permit applications received. The decline in permit applications is met with declining revenues but with the passage of the act of February 2, 2012 (P. L. 67, No. 9) and the act of February 14, 2012 (P. L. 87, No. 13), the overall responsibility of the Program has increased. It is imperative that the Department has the resources and technology necessary to ensure industry compliance and environmental protection as Office of Oil and Gas Management responsibilities in this area continue to expand.

This increase in workload coupled with declining permit revenues creates a situation where the incoming permit revenue is insufficient to cover the current operational costs of the Program, not allowing any room for flexibility in terms of future staff and resource needs. As the oil and gas industry continues to expand in this Commonwealth, additional Department staff and technology will be critical to ensure the Department's proper oversight of the industry.

Two areas where this increased workload and expenditures make this permit fee increase critical are streamlined electronic review and staffing.

Streamlined Electronic Review

The Department will allocate a substantial portion of the increased fee revenue to Information Technology projects for the Program, such as electronic permitting, mobile digital inspections, upgrades to existing reporting systems and modernization of forms and databases. This investment in technology will yield efficiencies for both the Department and the regulated community in terms of more predictable and timely permit issuance, more effective site inspections, increased availability of staff for compliance assistance, and more streamlined reporting to and communication with the Department. It will also make the Department's work more transparent to the public as electronic documents can be easily made available on the Internet. The two key initiatives on the forefront of information technology priorities for the Department are the ePermitting initiative and enabling staff with devices and the capability to conduct mobile digital inspections.

The ePermitting system will provide the ability to process applications for oil and gas permits online. The new system will replace the manual process that requires applicants to complete paper forms and deliver multiple copies of documentation to a Department district office. This change should reduce data transcription errors from entering data on paper forms into the Department's databases. The new ePermitting system is designed to increase review efficiency through electronic workflow and to significantly decrease the time from initial application submission to permit issuance. It will enable applicants to submit online payment and provide for permit review transparency as an applicant will be able to closely follow a permit through the approval process and receive automatic notifications as it completes the outlined benchmarks. Upon approval, the system will deliver the permit electronically to the applicant, thereby eliminating the lag time from permit issuance to receipt by the applicant.

Electronic receipt and storage of the permitting documents will also result in significant savings in terms of storage and of staff time and costs associated with related Right-to-Know requests. The Department is second in the Commonwealth in terms of Right-to-Know requests, much of which is attributed to the Program. The public will enjoy greater access to timely data as the Department receives it.

Creation and deployment of a mobile digital inspection platform and mobile devices will create marked improvement and efficiencies in terms of how the organization conducts site inspections. Current paper based inspection forms necessitate staff spending at least 1 day a week in the office to manually enter data from paper inspection reports and mail the resulting inspection report and findings to operators. Mobile digital inspections will allow entry of data into the system while onsite, eliminate the need to return to the office for data entry and enable employees to spend their time where they are needed, on location for inspections and compliance assistance.

Staffing Needs

Currently, there are 202 full time equivalents (FTE) assigned to the Office of Oil and Gas Management. The Program has grown considerably; in 2004 the Program had 64 FTEs. Approximately 80% of the current staff is assigned to engineering, scientific or

permit/inspection-related work, as oil and gas inspectors or oil and gas inspector supervisors. Another 20% are assigned to clerical, administrative or legal work to support the Program.

The Department is proposing that additional positions are needed within the Office of Oil and Gas Management to implement the additional responsibilities required under 58 Pa.C.S. Chapter 32 to review well pad and pipeline development permit applications in an efficient and timely manner and to support the Bureau of Oil and Gas Planning and Program Management.

Chapter 32 of 58 Pa.C.S. comprehensively amended the Oil and Gas Act of 1984 and established a number of new responsibilities on the oil and gas industry as well as the Department. Under 58 Pa.C.S. Chapter 32, the Department must inspect well sites before drilling can begin and well drillers must now notify the Department prior to cementing all strings of casing and before hydraulic fracturing operations begin. These new requirements have stretched thin the current staff and therefore necessitate additional inspectors to fulfill the increased inspection requirements and expectations of 58 Pa.C.S. Chapter 32. Absent additional inspection staff, well sites will not be inspected at the frequency envisioned by 58 Pa.C.S. Chapter 32.

In addition to responding to new requirements, additional staff is needed to timely review the increase in permits received by the Department due to substantial natural gas infrastructure development throughout this Commonwealth. Failure to review permit applications within a reasonable time period can result in substantial cost increases for these projects and ultimately prevents natural gas from reaching consumers, thus increasing commodity costs.

Finally, as a result of the Department's 2011 reorganization, the Office of Oil and Gas Management was created to unify the planning and program management staff with the permitting, inspection and enforcement staff under a common Deputate. As a result of this reorganization, additional staff is necessary to support the Office of Oil and Gas Management's Bureau of Oil and Gas Planning and Program Management. These additional staff will enable the Office of Oil and Gas Management to better develop new regulations, policies and technical guidance documents pertaining to well construction and surface activities on a timely basis. Failure to promptly develop these rules and policies can lead to uncertainty and inconsistent application of 58 Pa.C.S. Chapter 32. Additional staff will better serve the public as well as the industry by making more transparent how the Department interprets and implements 58 Pa.C.S. Chapter 32.

Without additional revenue provided by a regulatory fee package, additional staff complement will not be possible, which will jeopardize the Department's ability to provide high quality compliance assistance, ensure timely permitting, ensure adequate inspection and enforcement operations, and leverage existing technology to streamline inspection and permitting activities.

The Department consulted with the Oil and Gas Technical Advisory Board (TAB) in the development of the proposed rulemaking. The Department presented the draft proposed rulemaking to TAB at its April 23, 2013, meeting. Because the proposed rulemaking did not address technical issues relating to oil and gas, TAB did not take a formal action relative to the proposed rulemaking.

E. *Summary of Regulatory Requirements*

Current Fee Structure

The current permit fee structure is outlined in § 78.19 and establishes three classes of wells. Two are based on the type of wellbore that will be used to produce oil or natural gas—vertical or nonvertical (deviated or horizontal) and the third is based on the Marcellus Shale being the target formation. Permit fees for an individual well are determined by use of a sliding scale based on the total well bore length in feet. The sliding scales for the nonvertical and Marcellus wells are identical and are roughly two to three times the fee paid for a vertical well of the same total well bore length. As an example, an applicant requesting a permit for a 5,000-foot vertical well pays a fee of \$550, while an applicant for a nonvertical or Marcellus Shale well of the same well bore length would pay \$1,600. The current average nonvertical unconventional well permit fee is approximately \$3,200 and the current average vertical unconventional well permit fee is \$2,900.

Amended Fee Structure

The final-form rulemaking amends § 78.19 to create two classes of wells for permit fee purposes. These classes are “conventional wells” and “unconventional wells.” These amendments follow the general structure of 58 Pa.C.S. Chapter 32, which established the “conventional vs. unconventional well” distinction in a number of different areas. For example, 58 Pa.C.S. § 3215 (relating to well location restrictions) establishes differing setback requirements for the two classes of wells and 58 Pa.C.S. § 3218 (relating to protection of water supplies) establishes differing presumptions of liability for the two classes of wells.

It is important to be clear that the final-form rulemaking does not include any changes to the current permit fee structure for applicants for permits to drill “conventional” oil and gas wells. Although “conventional” wells and formations are not defined in 58 Pa.C.S. § 3203 (relating to definitions), the amendments to § 78.1 define those terms with reference to definitions in 58 Pa.C.S. § 3203 of “unconventional well” and “unconventional formation.”

By reviewing the “unconventional” definitions, “conventional wells” include: (1) any wells drilled to produce oil; (2) wells drilled to produce natural gas from formations other than shale formations; (3) wells drilled to produce natural gas from shale formations located above the base of the Elk Group or its stratigraphic equivalent; and (4) wells drilled to produce natural gas from shale formations located below the base of the Elk Group where natural gas can be produced at economic flow rates or in economic volumes without the use of vertical or nonvertical well bores stimulated by hydraulic fracture treatments or by using multilateral well bores or other techniques to expose more of the formation to the well bore. For permit applicants to drill these wells, these amendments do not have any impact.

Permit applicants for conventional wells will not see an impact from these amendments because the rulemaking retains the current “vertical well” fee structure as the new “conventional well” fee structure. Typically, “conventional wells,” as defined in this final-form rulemaking, would pay the “vertical well” fee if permitted prior to these amendments taking effect.

For “unconventional nonvertical wells” and “unconventional vertical wells,” these amendments establish flat permit fees of \$5,000 and \$4,200, respectively, regardless of the total well bore

length of the well. The Department determined that this increase will enable the Department to operate the Program in the manner contemplated by the current rules and regulations, as well as undertake the initiatives previously described.

F. Summary of Comments and Responses on the Proposed Rulemaking and Changes to the Proposed Rulemaking

The Board received comments from six commentators and the Independent Regulatory Review Commission (IRRC) during the 30-day public comment period. Four commentators, including the Pennsylvania Independent Oil and Gas Association and IRRC, suggested adding more detail to the proposed definition of “conventional well.” This suggestion was accepted and this final-form rulemaking contains the additional detail in section 78.1.

Two commentators explicitly supported the concept of fee increases, with one requesting that the fee be doubled above what was proposed. One commentator was opposed to fee increases to support staffing increases until such time as the Department’s electronic permitting initiative is in place and the efficiencies gained from that development can be assessed. This comment fails to acknowledge the additional responsibilities placed on the Department by Acts 9 and 13 of 2012 as well as the expanding universe of regulated oil and gas wells (more wells are permitted and drilled each year than are plugged so the regulated universe continues to expand), as well as the infrastructure development oversight carried out by the Office of Oil and Gas Management. As noted above, the Department has conducted a thorough analysis of the program’s current resources and expenditures, as well as future requirements necessary to carry out the Program’s responsibilities under the statutes of the Commonwealth and believes that the fee and staff increases are adequate given the program’s needs.

G. Benefits, Costs and Compliance

Benefits

The increased oil and gas permit fee revenue would be used to adequately fund the Department's Office of Oil and Gas Management. Revenue to the Department from the fee increase would be used solely to operate the regulatory program overseeing the responsible development of this Commonwealth's oil and natural gas resources. In addition, the Department will be able to pursue streamlined electronic review initiatives and increase the Office of Oil and Gas Management staffing levels to meet the challenges of increased responsibilities and timely oversight, responsiveness and transparency. Finally, these amendments reduce the burden on the regulated community and the Department because the sliding scale permit fees, which require proper calculation and review, are replaced with flat fees that are easy to understand and implement.

Compliance Costs

Nonvertical Unconventional Wells:

The average permit fee paid for a nonvertical unconventional well or Marcellus Shale well during 2012 was approximately \$3,200 per well. The amendments establish a fixed \$5,000 fee for each nonvertical unconventional well which is an increase of \$1,800 per well. The

Department projects that approximately 2,600 well permit applications will be received annually following the effective date of this rulemaking. This would result in an additional annual incremental permit cost of \$4.68 million to the regulated community.

Vertical Unconventional Wells:

The amendments establish a fixed \$4,200 fee for each vertical unconventional well. The Department projects that approximately 80 well permit applications for vertical unconventional wells will be received annually following the effective date of this rulemaking. This would result in an additional annual incremental permit cost of \$104,000 to the regulated community.

No new legal, accounting or consulting procedures would be required.

Compliance Assistance Plan

The Department plans to educate and assist the public and regulated community in understanding these amendments and how to comply with them. This outreach initiative will be accomplished through the Department's ongoing compliance assistance program. Permit application forms and instructions have been amended to reflect the new permit fee structure.

Paperwork Requirements

There are no additional paperwork requirements associated with these amendments with which the industry would need to comply.

H. Pollution Prevention

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. The anticipated increased revenues would allow the Department to continue providing adequate oversight of the oil and gas industry in this Commonwealth, ensuring continued protection of the environment and the public health and welfare of the citizens of this Commonwealth.

I. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended. In addition, in accordance with § 78.19(f), the Department will evaluate these fees and recommend regulatory changes to the 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. This

report and any proposed regulatory changes will be presented to the Board no later than 3 years after the effective date of this final-form rulemaking.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 4, 2013, the Department submitted a copy of the notice of proposed rulemaking, published at 43 Pa.B. 5457, 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 _____, 2014, 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 _____, 2014, and approved the final-form regulations.

K. 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 thereunder 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 43 *Pennsylvania Bulletin* 5457 (Saturday, September 14, 2013).
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

L. Order of the Board

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

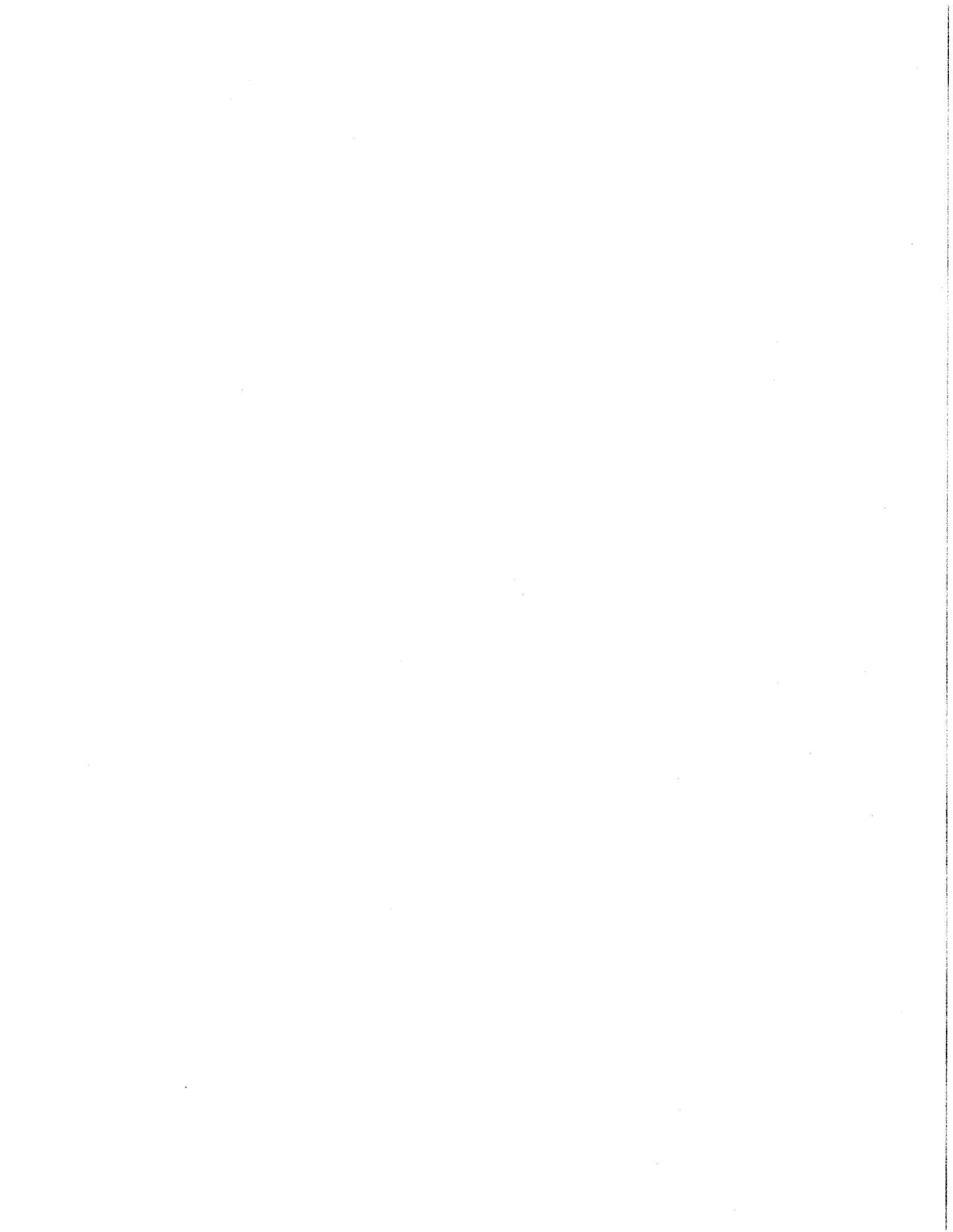
- (a) The regulations of the Department of Environmental Protection, 25 Pennsylvania Code, Chapter 78, are amended to read as set forth in Annex A.
- (b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and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

E. CHRISTOPHER ABRUZZO
Chairman
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)](a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise, or as otherwise provided in this chapter:

* * * * *

Conductor pipe—A short string of large-diameter casing used to stabilize the top of the wellbore in shallow unconsolidated formations.

Conventional formation—A formation that is not an unconventional formation.

Conventional well—A bore hole drilled or being drilled for the purpose of or to be used for ~~[the production of oil or gas from a conventional formation]~~ **CONSTRUCTION OF A WELL REGULATED BY 58 PA.C.S. §§ 3201 – 3274 THAT IS NOT AN UNCONVENTIONAL WELL, IRRESPECTIVE OF TECHNOLOGY OR DESIGN. THE TERM INCLUDES BUT IS NOT LIMITED TO:**

(I) WELLS DRILLED TO PRODUCE OIL.

(II) WELLS DRILLED TO PRODUCE NATURAL GAS FROM FORMATIONS OTHER THAN SHALE FORMATIONS.

(III) WELLS DRILLED TO PRODUCE NATURAL GAS FROM SHALE FORMATIONS LOCATED ABOVE THE BASE OF THE ELK GROUP OR ITS STRATIGRAPHIC EQUIVALENT.

(IV) WELLS DRILLED TO PRODUCE NATURAL GAS FROM SHALE FORMATIONS LOCATED BELOW THE BASE OF THE ELK GROUP WHERE NATURAL GAS CAN BE PRODUCED AT ECONOMIC FLOW RATES OR IN ECONOMIC VOLUMES WITHOUT THE USE OF VERTICAL OR NONVERTICAL WELL BORES STIMULATED BY HYDRAULIC FRACTURE TREATMENTS OR MULTILATERAL WELL BORES OR OTHER TECHNIQUES TO EXPOSE MORE OF THE FORMATION TO THE WELL BORE.

(V) IRRESPECTIVE OF FORMATION, WELLS DRILLED FOR COLLATERAL PURPOSES, SUCH AS MONITORING, GEOLOGIC LOGGING, SECONDARY AND TERTIARY RECOVERY OR DISPOSAL INJECTION.

Deepest fresh groundwater—The deepest fresh groundwater bearing formation penetrated by the wellbore as determined from drillers logs from the well or from other wells in the area surrounding the well or from historical records of the normal surface casing seat depths in the area surrounding the well, whichever is deeper.

* * * * *

L.E.L.—Lower explosive limit.

[*Marcellus Shale well*—A well that when drilled or altered produces gas or is anticipated to produce gas from the Marcellus Shale geologic formation.]

Noncementing material—A mixture of very fine to coarse grained nonbonding materials, including unwashed crushed rock, drill cuttings, earthen mud or other equivalent material approved by the Department.

* * * * *

Nonvertical unconventional well—

- (i) [A] **An unconventional** well drilled intentionally to deviate from a vertical axis.
- (ii) The term includes wells drilled diagonally and wells that have [horizontal] **horizontal** bore holes.

* * * * *

Vertical unconventional well—[A] An unconventional well with a single vertical well bore.

* * * * *

Subchapter B. PERMITS, TRANSFERS AND OBJECTIONS

PERMITS AND TRANSFERS

§ 78.19. Permit application fee schedule.

(a) An applicant for a conventional well shall pay a permit application fee according to the following schedule:

<i>[Vertical] Conventional Wells</i>		<i>[Nonvertical Wells]</i>		<i>[Marcellus Shale Wells]</i>	
Total Well Bore Length in Feet	Total Fee	[Total Well Bore Length in Feet	Total Fee]	[Total Well Bore Length in Feet	Total Fee]
0 to 2,000	\$250	[0 to 1,500	\$900]	[0 to 1,500	\$900]
2,001 to 2,500	\$300	[1,501 to 2,000	\$1,000]	[1,501 to 2,000	\$1,000]
2,501 to 3,000	\$350	[2,001 to 2,500	\$1,100]	[2,001 to 2,500	\$1,100]
3,001 to 3,500	\$400	[2,501 to 3,000	\$1,200]	[2,501 to 3,000	\$1,200]
3,501 to 4,000	\$450	[3,001 to 3,500	\$1,300]	[3,001 to 3,500	\$1,300]
4,001 to 4,500	\$500	[3,501 to 4,000	\$1,400]	[3,501 to 4,000	\$1,400]
4,501 to 5,000	\$550	[4,001 to 4,500	\$1,500]	[4,001 to 4,500	\$1,500]
5,001 to 5,500	\$650	[4,501 to 5,000	\$1,600]	[4,501 to 5,000	\$1,600]
5,501 to 6,000	\$750	[5,001 to 5,500	\$1,700]	[5,001 to 5,500	\$1,700]
6,001 to 6,500	\$850	[5,501 to 6,000	\$1,800]	[5,501 to 6,000	\$1,800]
6,501 to 7,000	\$950	[6,001 to 6,500	\$1,900]	[6,001 to 6,500	\$1,900]
7,001 to 7,500	\$1,050	[6,501 to 7,000	\$2,000]	[6,501 to 7,000	\$2,000]
7,501 to 8,000	\$1,150	[7,001 to 7,500	\$2,100]	[7,001 to 7,500	\$2,100]
8,001 to 8,500	\$1,250	[7,501 to 8,000	\$2,200]	[7,501 to 8,000	\$2,200]
8,501 to 9,000	\$1,350	[8,001 to 8,500	\$2,300]	[8,001 to 8,500	\$2,300]
9,001 to 9,500	\$1,450	[8,501 to 9,000	\$2,400]	[8,501 to 9,000	\$2,400]
9,501 to 10,000	\$1,550	[9,001 to 9,500	\$2,500]	[9,001 to 9,500	\$2,500]
10,001 to 10,500	\$1,650	[9,501 to 10,000	\$2,600]	[9,501 to 10,000	\$2,600]
10,501 to 11,000	\$1,750	[10,001 to 10,500	\$2,700]	[10,001 to 10,500	\$2,700]
11,001 to 11,500	\$1,850	[10,501 to 11,000	\$2,800]	[10,501 to 11,000	\$2,800]
11,501 to 12,000	\$1,950	[11,001 to 11,500	\$2,900]	[11,001 to 11,500	\$2,900]

[11,501 to 12,000 \$3,000] [11,501 to 12,000 \$3,000]

(b) An applicant for a **[vertical] conventional** 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 **under this subsection.**

(c) An applicant for **[a nonvertical well or Marcellus Shale well exceeding 12,000 feet in total well bore length] an unconventional well** 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.] according to the following:**

(1) \$4,200 for a vertical unconventional well.

(2) \$5,000 for a nonvertical unconventional well.

(d) If, when drilled, the total well bore length of the **conventional** well exceeds the length specified in the permit application **due to target formation being deeper than anticipated at the time of application submittal,** the operator shall pay the difference between the amount paid as part of the permit application and the amount required by subsections **[(a)—(c)] (a) and (b).**

(e) An applicant for a **[vertical] conventional** well with a well bore length of 1,500 feet or less for home use shall pay a permit application fee of \$200.

* * * * *



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Oil and Gas Well Permit Fee
25 Pa. Code Chapter 78

Environmental Quality Board Regulation #7-483
Independent Regulatory Review Commission #3022

Comment and Response Document

**Bureau of Oil and Gas Planning and
Program Management**

INTRODUCTION

In assembling this document, the Environmental Quality Board (“Board”) has addressed all pertinent and relevant comments associated with this package. For the purposes of this document, comments of similar subject material have been grouped together and responded to accordingly. During the public comment period, the Board received 16 comments from seven individuals, organizations and the Independent Regulatory Review Commission. The following table lists these individuals and organizations. The Commentator ID number is found in parenthesis following the comments in the comment/response document.

Table of Commentators

Commentator ID #	Name	Address	Requested Final Rule	Submitted One-Page Summary
1.	Douglas and Linda Hay	P.O. Box 481 Mill Rift, PA 19340		
2.	Emily E. Krafjack, President Connection for Oil, Gas & Environment in the Northern Tier, Inc. (C.O.G.E.N.T.).	1155 Nimble Hill Road Mehoopany, PA 18629		X
3.	Kevin J. Moody, Esq. Vice President Pennsylvania Independent Oil and Gas Association (PIOGA)	212 Locust Street Harrisburg, PA 17101-1510	X	
4.	Bryan J. McConnell, P.G.	141 Farm Street Fombell, PA 16123		
5.	Teresa Irvin McCurdy President and CEO TD Connections, Inc.	1646 Lowell Lane New Cumberland, PA 17070		
6.	Carrie Crumpton Manager - Regulatory Assistance CONSOL Energy, Inc.			
7.	David Sumner Executive Director Independent Regulatory Review Commission	333 Market Street 14 th Floor Harrisburg, PA 17101		

1) Comment: The increased permit cost should double again to provide for even more inspectors and higher standards. (1)

Response: The Board acknowledges the commentators' support for the concept of increasing well permit fees. As described in the Preamble and other supporting documents, the proposed increased well permit fees were designed to support the current operations of the Office of Oil and Gas Management, as well as allow for additional increased expenditures where necessary (primarily staffing increases and Information Technology project development). Increasing the well permit fees beyond the proposed levels is not necessary to keep the Office of Oil and Gas Management solvent and meet those additional needs. Further, at least every three years the Department is required to provide the Board with an evaluation of the permit fees established and recommend regulatory changes to the Board to address any disparity between 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. Therefore, the proposed well permit fee increases are retained in the final-form rulemaking.

2) Comment: We want to see an efficient, modernized, robust program with adequate staffing levels to ensure that the areas we love most and live within, are adequately protected for public health and safety, the environment and our communities at large. It is therefore the reason that we write to support the Department's Office of Oil and Gas Management proposed rulemaking to increase unconventional oil and gas permit fees. (2)

Response: The Board acknowledges the commentators' support for the proposal to increase well permit fees.

3) Comment: The Department's proposed rulemaking establishes flat permit fees of \$5,000 and \$4,200 regardless of the total length of the [unconventional] well. This is a good idea. It provides industry with the predictability and consistency they desire, the fee becomes a fixed cost. It also provides the Department with the ability to adequately forecast budgetary needs to meet program obligations. (2)

Response: The Board acknowledges the commentators' support for the specific proposed increase in well permit fees, as well as the concept of fixed flat unconventional well permit fees.

4) Comment: In many areas, the Department has lagged behind with utilization of electronic technology. The industry will certainly benefit with more electronic reporting options. The Department and the public will benefit as well. While the Department has made headway with the interactive reporting of spud wells, violations, production and other reports, there are still reports and information that are needed for transparency and easy access. Streamlining electronic review allows field staff to be more productive. Field staff will be in the field where we need and most want them to be. Making the permit applications available online, will solve yet another issue and reduce the need for the Department's clerical staff to spend so much time pulling files for file reviews. The more information available online, the more time the File Room Staff will have to do more clerical duties and less public interaction. (2)

Response: The Board acknowledges the commentators' support for Information Technology project development by the Department made possible by the proposed well permit fee increase.

5) Comment: This increase in fees will provide in the future for our field staff to be ready and following their daily eco-beat or when the situation requires, respond to an emergency event. (2)

Response: The Board acknowledges the commentators' support for increased field staff levels made possible by the proposed well permit fee increase.

6) Comment: Staffing needs in the Bureau of Oil & Gas Planning and Program Management must also be met. These are our regulators who take care to develop better regulations, policies and technical guidance documents pertaining to well construction and surface activities. (4, 6)

Response: The Board acknowledges the commentators' support for increased Central Office staff levels made possible by the proposed well permit fee increase.

7) Comment: The proposed rulemaking creates two classes of wells – “conventional wells” and “unconventional wells” – based upon the general structure of 58 Pa. C.S. Chapter 32 that establishes the “conventional vs. unconventional” well distinction for a number of other regulatory areas. The proposed rulemaking makes clear that no changes are proposed to the current permit fee structure for permit applications to drill “conventional” oil and gas wells. We agree with this approach and assert that it is both reasonable and appropriate, as the additional regulatory costs of the Department’s Oil and Gas Program are driven by unconventional well development and operations. (3, 4, 5)

Response: The Board acknowledges the commentators' support for maintaining conventional well permit fees at their current levels.

8) Comment: The proposed definitions of “conventional formation” and “conventional well” reflect that an oil or gas well is either a “conventional well” or an “unconventional well” under the 2012 Oil and Gas Act. Any well related to oil and natural gas development and operations that does not come within the terms of the “unconventional gas well” definition is a “conventional well.” We agree that this is the appropriate approach to defining the universe of oil and gas wells in Pennsylvania (3, 4, 5)

Response: The Board acknowledges the commentators' support for defining the universe of regulated wells in Pennsylvania as consisting of conventional wells and unconventional wells.

9) Comment: Providing examples of what constitutes a “conventional well” in the regulatory definition will provide more clarity, definiteness and guidance than the simple contrary definition in the proposed regulatory definition. This definition should be clear and

unambiguous. For that reason, we request that the proposed definition of “conventional well” in section 78.1 be retained, but modified to read as follows (additional text bolded and italicized):

*Conventional well—A bore hole drilled or being drilled for the purpose of or to be used for the production of oil or gas from a conventional formation. **Conventional wells are, irrespective of technology or design: (1) wells drilled to produce oil; (2) wells drilled to produce natural gas from formations other than shale formations; (3) wells drilled to produce natural gas from shale formations located above the base of the Elk Group or its stratigraphic equivalent; (4) wells drilled to produce natural gas from shale formations located below the base of the Elk Group where natural gas can be produced at economic flow rates or in economic volumes without the use of vertical or nonvertical well bores stimulated by hydraulic fracture treatments or multilateral well bores or other techniques to expose more of the formation to the well bore; and (5) irrespective of formation, wells drilled for collateral purposes, such as monitoring, geologic logging, secondary and tertiary recovery or disposal injection.***

(3, 4, 5, 7)

Response: The Board acknowledges the concerns raised by the commentators to adequately and precisely define the universe of wells regulated under 58 Pa.C.S. §§ 3201 – 3274 (2012 Oil and Gas Act). As the commentators point out, there are certain classes of wells regulated by the 2012 Oil and Gas Act that are not captured in the proposed definition of “conventional formation” and “conventional well.” For that reason, the Board has deleted the proposed definition of “conventional formation” and amended the proposed definition of “conventional well” to read as follows:

Conventional well – A bore hole drilled or being drilled for the purpose of or to be used for the production of oil or gas from a conventional formation **CONSTRUCTION OF A WELL REGULATED BY 58 PA.C.S. §§ 3201 – 3274 THAT IS NOT AN UNCONVENTIONAL WELL, IRRESPECTIVE OF TECHNOLOGY OR DESIGN. THE TERM INCLUDES BUT IS NOT LIMITED TO:**

(I) WELLS DRILLED TO PRODUCE OIL.

(II) WELLS DRILLED TO PRODUCE NATURAL GAS FROM FORMATIONS OTHER THAN SHALE FORMATIONS.

(III) WELLS DRILLED TO PRODUCE NATURAL GAS FROM SHALE FORMATIONS LOCATED ABOVE THE BASE OF THE ELK GROUP OR ITS STRATIGRAPHIC EQUIVALENT.

(IV) WELLS DRILLED TO PRODUCE NATURAL GAS FROM SHALE FORMATIONS LOCATED BELOW THE BASE OF THE ELK GROUP WHERE NATURAL GAS CAN BE PRODUCED AT ECONOMIC FLOW RATES OR IN ECONOMIC VOLUMES WITHOUT THE USE OF VERTICAL OR NONVERTICAL WELL BORES STIMULATED BY HYDRAULIC FRACTURE TREATMENTS OR MULTILATERAL WELL

BORES OR OTHER TECHNIQUES TO EXPOSE MORE OF THE FORMATION TO THE WELL BORE.

(V) IRRESPECTIVE OF FORMATION, WELLS DRILLED FOR COLLATERAL PURPOSES, SUCH AS MONITORING, GEOLOGIC LOGGING, SECONDARY AND TERTIARY RECOVERY OR DISPOSAL INJECTION.

This definition captures all regulated wells that are not “unconventional wells,” as that term is defined in the 2012 Oil and Gas Act.

10) Comment: Increasing costs and more stringent regulatory oversight is a contributing factor to the decrease in the number of unconventional well permit applications since 2010. The increasing costs associated with permit fees and complying with regulation will continue to force operators out of the Commonwealth and into surrounding states whose policies and permitting requirements are more favorable during weak economic conditions. We encourage the Department to adequately evaluate the economic burden on industry as Chapter 78 revisions are considered. (6)

Response: See Response to Comment 1, above. The Board believes that the supporting documents for the proposed rulemaking increasing well permit fees adequately justify the need for these additional permit fees in order to support the ongoing work of the Office of Oil and Gas Management. The work of the Office of Oil and Gas Management administering the 2012 Oil and Gas Act is almost exclusively funded by the well permit fees in Chapter 78. While acknowledging the additional burdens placed on the oil and gas industry by raising these fees, the Board believes that the proposed well permit fee increases are structured in such a way as to limit that increased burden to the minimum amount necessary for continued operations and improvements.

Further, the structure of the proposed well permit fee increases places that limited increased burden on the shoulders of unconventional well permit applicants. As unconventional wells represent that portion of the industry generating the additional administrative burdens on the Department, it is appropriate to have that portion of the industry pay the increased well permit fees.

It is also instructive to consider the well permit fees for similar wells in our neighboring states. The well permit fees charged by neighboring states are:

New York - \$290 base fee plus \$190 for every 500 feet in well bore length (\$5,230 for a typical Marcellus well in Pennsylvania).

Ohio - \$500 to \$1,250 depending on rural or urban locations.

West Virginia - \$10,150 for the first horizontal well and \$5,150 for subsequent wells on the same pad.

The proposed well permit fees are thus directly in line with those assessed by Pennsylvania's neighboring states.

Finally, the Board notes that the cost to drill a typical unconventional well is approximately \$6 million. The current average unconventional well permit fee is \$3,200. An increase of \$1,800 to a flat fee of \$5,000 for a nonvertical unconventional well represents .0003% of the overall cost to drill a well and therefore the Board believes that the proposed well permit fee increase will have no impact on Pennsylvania's competitiveness with other states. For these reasons, the proposed well permit fee increases are retained in the final-form rulemaking.

11) Comment: We are encouraged by the Information Technology project for the Oil and Gas program. However, until the full capital investment is realized and the efficiency of the Information Technology project is fully evaluated, there is no way to determine true staffing needs and this overestimate has been included in the assessment for increased permit fees. (6)

Response: The Board acknowledges that there will likely be administrative efficiencies realized through the implementation of several Information Technology projects. As described in the Responses to Comment 10, above and to Comment 12, below, the proposed well permit fee increases support the entire work of the Office of Oil and Gas Management, not simply the staff that reviews applications for permits to drill and operate wells. Most of the initial efficiency gains from these projects will be realized in that portion of the Office's workload, while the other needs still remain to be addressed. Finally, the increased efficiencies should allow the Office's permitting staff to review and process permits more quickly, which should result in compliance with the Department's Permit Decision Guarantee and decisions on permits more swiftly than the 2012 Oil and Gas Act's base 45-day permit decision deadline (58 Pa.C.S. § 3211(e)). Faster permit processing directly benefits the entities that will be required to pay the increased well permit fee. For these reasons, the proposed well permit fee increases are retained in the final-form rulemaking.

12) Comment: Based on the statement that there has been a 22% decrease in unconventional well permit applications since 2010, it is difficult to justify that "additional staff is needed to timely review the increase in permits received by the Department due to natural gas infrastructure development throughout this Commonwealth." (6)

Response: The commentator misapprehends the workload of the Office of Oil and Gas Management. As part of its responsibilities to administer the provisions of the 2012 Oil and Gas Act, the Office of Oil and Gas Management is also responsible for regulating activities implementing Chapter 102 and 105 regulated activities. Chapter 105 relates to stream and wetland encroachments and Chapter 102 addresses earth moving activities including erosion and sediment control and post construction storm water management. Under Section 3258(a.1) of the 2012 Oil and Gas Act (58 Pa.C.S. § 3258(a.1)), it is the Department's responsibility to have a water quality specialist inspect these sites which may include well pads, gas gathering lines, access roadways, equipment storage areas, staging areas, compressor stations and pipelines. The water quality specialist is also responsible to respond to citizen complaints related to these activities as well as to do routine compliance inspections, including these newly mandated

inspections. That section requires a well site inspection prior to commencement of drilling activities.

Finally the “natural gas infrastructure development” cited in the Preamble focuses on ancillary development that often only occurs after wells are drilled. These include the installation of gathering lines and pipelines, which typically follow well drilling in time. Staff resources are required to review the necessary permits for these projects on a timely basis. Failure to review permit applications within a reasonable time period can result in substantial cost increases for these projects and ultimately prevents natural gas from reaching consumers, thus increasing commodity cost. Of course, permitting is only one part of the Department’s workload relating to these projects. Once the permit is issued and development commences the Office of Oil and Gas Management is responsible for inspecting those activities and responding to any incidents at these sites.

The fact that these projects trail well drilling temporally means that such work is actually increasing even with steady or declining well permit applications. These projects alone have dramatically increased the Department’s workload, as they are long linear projects that can occupy miles within one permit application and are very time consuming in terms of permit reviews and subsequent compliance inspections. For these reasons, the proposed well permit fee increases are retained in the final-form rulemaking.

13) Comment: The flat fee structure of \$5,000 and \$4,200 for “non-vertical unconventional wells” and “vertical unconventional wells,” respectively, is not justified by the benefit/cost analysis. This increase is based on staffing requirements that cannot be fully realized due to unknowns of Information Technology project efficiencies and permit activity assumptions. (6)

Response: See Responses to Comments 1, 7, 10, 11 and 12, above. For the reasons outlined in those Responses, the Board believes that the proposed well permit fee increases are justified and therefore are retained in the final-form rulemaking.

14) Comment: Language should be added to the regulation to clarify that in the event a permit modification is required the full permitting fee is not required again. (6)

Response: The 2012 Oil and Gas Act does not provide for permit modifications. Given the nature of setbacks and notices required by the 2012 Oil and Gas Act, modification of the drilling plan necessitates submission of a new well permit application, including a plat describing the vertical and horizontal location of the proposed well bore. Given the required review of the new information, it is appropriate for the Department to charge a new well permit application fee when the operator changes drilling plans after the initial permit application is approved. Therefore, the Board declines to adopt the commentator’s suggested regulatory change.

15) Comment: The Board is proposing to delete current section 78.1(a) from the regulation. Subsection (a) states that certain words and terms used in Chapter 78 are defined by other statutes. This deletion was not explained in the Preamble and the Board should explain the need for removing this subsection. (7)

Response: Deletion of Section 78.1(a) was purely an administrative amendment designed to clean up unnecessary cross-reference. Where a term or phrase is used in Chapter 78, the appropriate definition is either currently included in section 78.1, or will be proposed to be added as necessary as part of future rulemakings.

16) Comment: Permit fees must bear a “reasonable relationship” to the costs of administering the Oil and Gas Program. Given the significant increases proposed for unconventional well permit fees, the Board should explain how it arrived at the anticipated Program costs to support the reasonableness of the increases. (7)

Response: See Responses to Comments 1, 7, 10, 11 and 12, above. As outlined in the document titled *3-Year Regulatory Fee and Program Cost Analysis Report to the Environmental Quality Board (3-Year Report)* that accompanied the proposed rulemaking, the Department is faced with a greatly increased workload and permit fee revenues that have been declining since the time of the previous well permit fee increase (October 2009). As the Comparative Financial Statements attached to the 3-Year Report indicate, the Department is facing a situation where the costs being borne by the Office of Oil and Gas Management are increasing and will lead to a Fund balance that is insufficient to cover the costs of the Oil and Gas Management Program without responsible action on the part of the Board to adjust the well permit fee amounts. Further, these fees are directly related to the costs of administering the Oil and Gas Program as it is almost exclusively funded by the well permit fees in Chapter 78 and currently additional regulatory costs to the Oil and Gas Program are derived predominantly by the unconventional well development. For the reasons outlined in those Responses and the 3-Year Report, the Board believes that the proposed well permit fee increases are justified and therefore are retained in the final-form rulemaking.

March 21, 2014

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

Re: Final Rulemaking: Oil and Gas Well Fee Amendments (#7-483)

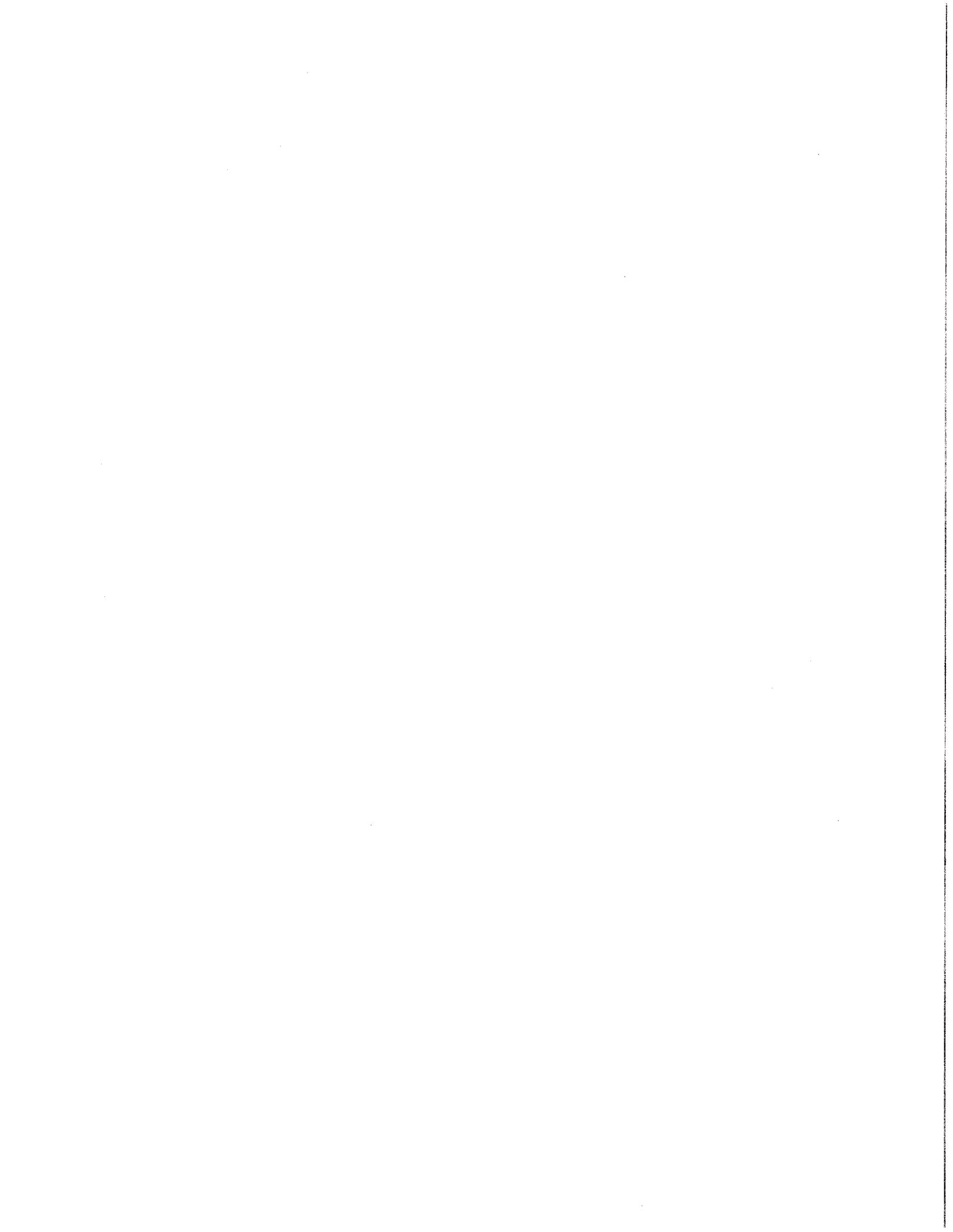
Dear Mr. Sumner:

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed the Oil and Gas Well Fee Amendments final rulemaking for review and comment by the Independent Regulatory Review Commission (IRRC). The Environmental Quality Board (EQB) adopted the final rulemaking at its January 21, 2014 meeting.

The enclosed final-form rulemaking includes amendments to 25 Pa. Code §§ 78.1 (definitions) and 78.19 (permit application fee schedule) in order to implement fees to support the Department of Environmental Protection's (Department) Oil and Gas Management Program. The purpose of these amendments is to change the unconventional natural gas well permit fee structure from a sliding fee schedule based on well bore length to a fixed fee of \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells. As a result of this change in structure, the permit fee for an average unconventional well will increase by approximately \$1,800 per well for nonvertical unconventional wells and by \$1,300 per well for vertical unconventional wells. Conventional well operators will continue to pay the current vertical well fee and will not be impacted by these amendments.

The Office of Oil and Gas Management is funded almost exclusively through well permit application fees assessed in 25 Pa Code Section 78.19(a). In conformance with 25 Pa Code Section 78.19(f), DEP completed a 3-Year Report of the adequacy of those fees. Through that analysis, DEP concluded that anticipated revenue to support the program based upon current permit fees is not adequate to meet future program operations, including permitting, inspection, enforcement and information technology needs. With the passage of Acts 9 and 13 of 2012, the overall responsibility of the Oil and Gas Program has increased. This increase in workload coupled with declining permit revenues has created a situation where the incoming permit revenue is insufficient to cover the current operational costs of the program. This trend is expected to continue as the Oil and Gas Program is projected to have increasing expenditures with declining revenues in future fiscal years.

The proposed rulemaking was adopted by the EQB on July 16, 2013, and was published in the *Pennsylvania Bulletin* for public comment on September 14, 2013, where notice of a 30-day



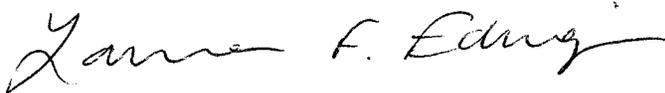
public comment period was advertised. The Board received comments from six commentators including; Connection for Oil, Gas, and Environment in the Northern Tier, Inc., Pennsylvania Independent Oil and Gas Association, TD Connections, Inc., CONSOL Energy, Inc., Douglas and Linda Hay, Bryan J. McConnell, and the Independent Regulatory Review Commission (IRRC) during the 30-day public comment period. All comments, responses, and changes that were incorporated into the final-form rulemaking are included in the Comment and Response Document that accompanies this final rulemaking.

The Department consulted with the Oil and Gas Technical Advisory Board (TAB) in the development of this rulemaking. The Department presented the draft proposed rulemaking to TAB at its April 23, 2013 meeting. Because the rulemaking does not address technical issues relating to oil and gas, TAB did not take a formal action relative to the rulemaking. DEP staff also discussed the draft proposed rulemaking with members of the Associated Petroleum Industries of Pennsylvania, the Pennsylvania Independent Oil and Gas Association and the Marcellus Shale Coalition.

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

Please contact me at 717.783.8727 or by e-mail at ledinger@pa.gov if you have any questions or need additional information.

Sincerely,



Laura Edinger
Regulatory Coordinator

Enclosures





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

I.D. NUMBER: 7-483
SUBJECT: Oil and Gas Well Fee Amendments
AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

2014 MAR 21 PM 2:21

RECEIVED
IRRC

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 Tolerated Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3-21-14		Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Rep. Ron Miller
3-21-14		Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Rep. Greg Vitale
3/21/14		Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Senator Cece Yaw
3/21/14		Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Senator John Yudichak
3/21/14		INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

