# Regulatory Analysis Form

(Completed by Promulgating Agency)

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

***INDEPENDENT REGULATORY REVIEW COMMISSION***



(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:

Oil and Gas Well Fee Amendments

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

Primary Contact:
Michele Tate, Regulatory Coordinator, Phone No. 717-783-8727
The Policy Office, PO Box 2063, Harrisburg, PA 17105-2063
Email: mtate@pa.gov

Secondary Contact:
Hayley Book, Director, Phone No. 717-783-8727
The Policy Office, PO Box 2063, Harrisburg, PA 17105-2063
Email: hbook@pa.gov

(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 proposed 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 wells and by $2,000 per well for vertical 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, all reserves will be exhausted and the fund will incur a deficit before the end of 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 only sustain the program through the current fiscal year.

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.

(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.

(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 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 proposed 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 proposed 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 vertical 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 proposed regulation 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 proposed 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 $176,000 to the regulated community.

*Conventional Vertical and Nonvertical Wells:*

Permit applicants for conventional wells will see no impact from this proposed 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 proposed 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 proposed amendments do 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 proposed regulation 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** | **FY +1** | **FY +2** | **FY +3** | **FY +4** | **FY +5** |
|---|---|---|---|---|---|---|

| | Year 12/13 | Year 13/14 | Year 14/15 | Year 15/16 | Year 16/17 | 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** | $4,856,000 | $4,856,000 | $4,856,000 | $4,856,000 | $4,856,000 | $4,856,000 |
| **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** | $4,856,000 | $4,856,000 | $4,856,000 | $4,856,000 | $4,856,000 | $4,856,000 |
| **REVENUE LOSSES:** | **$** | **$** | **$** | **$** | **$** | **$** |
| **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 -09/10 | FY -10/11 | FY -11/12 | Current FY (through 12/31/12) |
|---|---|---|---|---|
| Well Plugging Restricted Revenue Account (Fund 001- SAP Fund 60083) (*) | $8,530,000 | $16,222,000 | $16,332,000 | $18,309,000 |

(*) – 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 proposed 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. 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 negative 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 positive 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: 30 days after publication

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

(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).

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Copy below is hereby approved as to form and legality.
Attorney General

By: Amy M. Elliott
(Deputy Attorney General)

AUG 30 2013

DATE OF APPROVAL

☐ Check if applicable
Copy not approved. Objections attached.

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

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-483

DATE OF ADOPTION JULY 16, 2013

BY E. Christopher Abruzzo

TITLE E. CHRISTOPHER ABRUZZO
ACTING CHAIRMAN

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

By: Shawn E. Smith

JUL 31 2013
DATE OF APPROVAL

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

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

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

Oil and Gas Well Fee Amendments

25 *Pa. Code,* Chapter 78

**PROPOSED RULEMAKING**
**ENVIRONMENTAL QUALITY BOARD**
**[25 PA CODE CH. 78]**

The Environmental Quality Board (Board) proposes to amend §§ 78.1 and 78.19 (relating to definitions; and permit application fee schedule) to read as set forth in Annex A. This proposal satisfies the obligation of the Department of Environmental Protection (Department), as specified at 25 Pa. Code § 78.19(f), to provide the Board with an evaluation of the Chapter 78 fees and recommend regulatory changes to address any disparity between the program income generated by the fees and the Department's cost of administering the program. The proposal includes several changes to the structure of oil and gas well permit fees, including establishing increased flat fees for unconventional well permits.

This proposed rulemaking was adopted by the Board at its meeting of July 16, 2013.

A. *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin.*

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. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed 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*

This proposed rulemaking is authorized under 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 and Purpose*

Applicants for permits to drill oil and gas wells in this Commonwealth must 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 the

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" as part of this proposed rulemaking. A copy of that Report is available from the persons listed in Section B, above. The conclusions of that Report are outlined in this section of the Preamble.

The Well Plugging Fund balance is declining as the Department's expenses to operate the Oil and Gas 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 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 current permit fee and expenditure levels, with projected permitting levels the Department expects a $1.8 million deficit of the Well Plugging Fund by the end of FY 2015-16.

In addition to declining Well Plugging Fund balances, the Oil and Gas 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 the Commonwealth. These expenditures are only expected to increase as exploration of other unconventional formations and infrastructure development expands.

The proposed rulemaking increases 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 22% 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 Acts 9 and 13 of 2012, the overall responsibility of the Oil and Gas Program has increased. It is imperative that the Department have 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 Pennsylvania, 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 the proposed 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 Oil and Gas 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 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 will provide for permit review transparency as an applicant will be able to closely follow their 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 such requests, much of which is attributed to the Oil and Gas 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 one 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 on-site, eliminate the need to return to the office for data entry, and will 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's) assigned to the Office of Oil and Gas Management. The program has grown considerably; in 2004 the program had 64 FTE's. 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 Oil and Gas Program.

The Department is proposing that additional positions are needed within the Office of Oil and Gas Management to implement the additional responsibilities required by 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.

58 Pa.C.S. Chapter 32 comprehensively amended the 1984 Oil and Gas Act and established a number of new responsibilities on the oil and gas industry as well as the Department. Pursuant

to 58 Pa.C.S. Chapter 32, 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 have stretched thin the current staff and therefore necessitate additional inspectors to fulfill the increased inspection requirements and expectations of the law. Absent additional inspection staff, well sites will not be inspected at the frequency envisioned by the law.

In addition to responding to new legislative requirements, additional staff is needed to timely review the increase in permits received by the Department due to substantial natural gas infrastructure development throughout the 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 are necessary to support the Office's Bureau of Oil and Gas Planning and Program Management. These additional staff will enable the Office 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 the law. Additional staff will better serve the public as well as the industry by making more transparent how DEP interprets and implements the law.

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, assure 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 this proposed 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 proposed rule.

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 $2,000.

*Proposed Fee Structure*

The proposed rulemaking amends § 78.19 to create two classes of wells for permit fee purposes. These classes are "conventional wells" and "unconventional wells." This part of the proposal follows 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 proposed 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), proposed changes to § 78.1 would define those terms with reference to section 3203's definitions 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 such wells, this proposed rulemaking will have no impact.

Permit applicants for conventional wells will see no impact from this proposed 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 proposed rulemaking would currently pay the "vertical well" fee.

For "unconventional nonvertical wells" and "unconventional vertical wells, the proposed rulemaking establishes flat permit fees of $5,000 and $4,200, respectively, regardless of the total well bore length of the well. The Department has determined that this increase will enable the Department to operate the Oil and Gas Program in the manner contemplated by the current rules and regulations, as well as undertake the initiatives described above.

F. *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 the 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, the proposed regulation reduces the burden on the regulated community and the Department because it replaces the sliding scale permit fees, which require proper calculation and review, 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 proposed regulation 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 proposed 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 $176,000 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 the newly revised requirements 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 would be amended to reflect the new permit fee structure.

*Paperwork Requirements*

There are no additional paperwork requirements associated with this proposed rulemaking with which the industry would need to comply.

G. *Pollution Prevention*

The Federal 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.

H. *Sunset Review*

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended. 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 three years after the promulgation of the final-form rulemaking.

I. *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 this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), the Commission may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

J. *Public Comments*

*Written comments.* Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by October 15, 2013. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by October 15, 2013. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

*Electronic comments.* Comments may be submitted electronically to the Board at RegComments@pa.gov and must also be received by the Board by October 15, 2013. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission. If the sender does not receive an acknowledgement of electronic comments within two working days, the comments should be retransmitted to ensure receipt.

E. CHRISTOPHER ABRUZZO
Acting 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:

*****

***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.**

*****

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

*****

*Nonvertical* ***unconventional*** *well—*

(i) A**n unconventional** well drilled intentionally to deviate from a vertical axis.

(ii) The term includes wells drilled diagonally and wells that have horizontal bore holes.

*****

*Vertical* ***unconventional*** *well*—A**n unconventional** well with a single vertical well bore.

## SUBCHAPTER B. PERMITS, TRANSFERS, AND OBJECTIONS

### § 78.19. Permit application fee schedule.

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

| *[Vertical] Conventional Wells* | | *[Nonvertical Wells]* | | *[Marcellus Shale Wells]* | |
|---|---|---|---|---|---|
| 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**n** **[nonvertical well or Marcellus Shale]** **unconventional** well **[exceeding 12,000 feet in total well bore length]** shall pay a permit application fee **according to the following:** **[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.]**

**(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]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.

(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.

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

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## 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**

| *Vertical Wells* | | *Nonvertical Wells* | | *Marcellus Shale Wells* | |
|---|---|---|---|---|---|
| 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 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 |
|---|---|---|---|---|
| 775 | 1,992 | 3,759 | 3,597 | 2,596 |

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% decrease in the number of unconventional well permit applications received; however, the total number of Marcellus Shale wells drilled since 2010 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).

pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION
POLICY OFFICE

September 4, 2013

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

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

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, please find enclosed a copy of a proposed regulation for review and comment by the Independent Regulatory Review Commission (Commission). This proposal is scheduled for publication as a proposed rulemaking in the *Pennsylvania Bulletin* on September 14, 2013, with a 30-day public comment period. The Environmental Quality Board (Board) adopted this proposal on July 16, 2013.

In conformance with 25 *Pa Code* Section 78.19(f), DEP has completed a 3-Year Report of the adequacy of the fees assessed in Chapter 78. Through that analysis, DEP 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. Since 2010, the Department has experienced a 22% decrease in the number of unconventional well permit applications received; however, the number of Marcellus Shale wells drilled since 2010 has increased by 23.5%. This increase in workload coupled with declining permit revenues is creating 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. For example, at current permit fee and expenditure levels, and with projected permitting levels, DEP expects a $1.8 million deficit of the Well Plugging Fund by the end of FY 2013.

The proposed rulemaking increases the well permit fee to provide adequate revenue to support the ongoing operations of the Commonwealth's Oil and Gas Program as well as to meet future program needs, including permitting, inspection, enforcement and information technology needs. The rulemaking revises the current sliding scale permit fee structure by establishing a flat fee of $5,000 for nonvertical unconventional wells and $4,200 for vertical unconventional wells. Conventional well operators are not affected by the proposal and will continue to pay the current vertical well fee as provided in Chapter 78. The current average unconventional nonvertical well permit fee is $3,200 and the current average vertical unconventional well permit fee is $2,000. As a result of the change in fee structure included in this proposed rulemaking, the permit fee for an average unconventional well will increase by approximately $1,800 per well for nonvertical wells and by $2,200 per well for vertical wells.

DEP consulted with the Oil and Gas Technical Advisory Board (TAB) in the development of the proposed rulemaking. DEP 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 on the proposed 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 the Commission with the assistance required to facilitate a thorough review of the enclosed proposal. Section 5(g) of the Regulatory Review Act provides that the Commission may, within 30 days of the close of the comment period, convey to the agency its comments, recommendations and objections to the proposed regulation. The Department will consider any comments, recommendation or suggestions submitted by the Commission, as well as the Committees and public commentators, prior to final adoption of the enclosed regulation.

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

Sincerely,

Michele L. Tate

Michele L. Tate
Regulatory Coordinator

Enclosures

0120-FM-PY0011 8/2006

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF POLICY

# 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

## TYPE OF REGULATION

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

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## FILING OF REGULATION

| DATE | SIGNATURE | DESIGNATION |
|---|---|---|
| 9-4-13 | | Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Rep. Ron Miller |
| 9-4-13 | | Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Rep. Greg Vitali |
| 9-4-13 | | Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Senator Gene Yaw |
| 9-4-13 | | Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Senator John Yudichak |
| 9/4/13 | K Cooper | INDEPENDENT REGULATORY REVIEW COMMISSION |
| | | ATTORNEY GENERAL (for Final Omitted only) |
| 9-4-13 | | LEGISLATIVE REFERENCE BUREAU (for Proposed only) |