

## Comments of the Independent Regulatory Review Commission



### Environmental Quality Board Regulation #7-483 (IRRC #3022)

#### Oil and Gas Well Fee Amendments

November 14, 2013

We submit for your consideration the following comments on the proposed rulemaking published in the September 14, 2013 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Environmental Quality Board (EQB) to respond to all comments received from us or any other source.

#### **1. Section 78.1. Definitions. – Clarity and lack of ambiguity; Need.**

##### *Conventional well*

EQB proposes to define *conventional well* as “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.” Commentators question whether secondary and tertiary recovery or disposal injection wells would be considered conventional wells under this definition. The commentators further state that both the regulated community, as well as regulators, would benefit from a more detailed definition of a conventional well. Specifically, commentators suggest using the description of a conventional well in Section E of the Preamble as the basis for a more detailed definition of conventional well in the regulation.

We ask EQB to consider the commentators’ suggestion or ensure that the definition of a conventional well in the final-form regulation is clear and lacks ambiguity for the regulated community.

##### *Subsection (a)*

EQB proposes to delete the current subsection (a) which states that certain words and terms used in the chapter are defined by other statutes. EQB did not address this deletion in the Preamble. We ask EQB to explain the need for removing this subsection in the final-form regulation.

**2. Section 78.19. Permit application fee schedule. – Economic or fiscal impacts; Reasonableness.**

The Department's Oil and Gas Program (Program) is funded primarily through the oil and gas well permit fee. The Department of Environmental Protection (Department) is required to evaluate the oil and gas 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." 25 Pa. Code § 78.19(f). However, the Oil and Gas Act (Act) requires the permit fee to bear a "reasonable relationship" to the cost of administering the Act. 58 P.S. § 601.201(d).

Based on the most recent evaluation, EQB proposes to change the current oil and gas well permit fee from a sliding fee schedule to a fixed fee for most wells. The change would result in a fixed \$5,000 fee for each nonvertical unconventional well (an increase of \$1,800 or 36 percent from the current average permit fee of \$3,200), and a fixed \$4,200 fee for each vertical unconventional well (an increase that is more than double the current average permit fee of \$2,000).

As noted above, permit fees must bear a "reasonable relationship" to the cost of the Program. In reviewing the Regulatory Analysis Form and Preamble, we do not see an explanation regarding how the proposed permit fees relate to the anticipated Program costs. Given that EQB proposes significant increases for unconventional well permits, we ask EQB to explain how it arrived at the anticipated Program costs to support the reasonableness of the increases. We will review EQB's response to these concerns as part of our consideration of the final-form regulation.