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2020 FEB 14 P 1:44

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p>IRRC Number: 3206</p>
<p>(1) Agency: Department of Environmental Protection</p>		
<p>(2) Agency Number: 7</p> <p>Identification Number: 542</p>		
<p>(3) PA Code Cite: 25 Pa. Code Chapter 78a</p>		
<p>(4) Short Title: Unconventional Well Permit Application Fees</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Laura Edinger, 717.783.8727, ledinger@pa.gov</p> <p>Secondary Contact: Jessica Shirley, 717.783.8727, jessshirley@pa.gov</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation</p> <p><input checked="" type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation;</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The purpose of the final-form rulemaking is to increase the unconventional well permit application fees. This fee increase is necessary to address the current disparity between the income generated by the current well permit application fees and the cost of administering 58 Pa.C.S. Chapter 32 (relating to development) (2012 Oil and Gas Act) by the Department of Environmental Protection's (Department) Office of Oil and Gas Management (collectively, the Oil and Gas Program or Program). This final-form rulemaking increases the well permit application fees from \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells to \$12,500 for all unconventional well permit applications to sustain the Program at current staff levels and operating costs. This final-form rulemaking does not amend the current fees for conventional well permit applications. This final-form rulemaking also removes definitions for "nonvertical unconventional well" and "vertical unconventional well" related to well permit applications as well permit application fees will now be the same for all unconventional well permit applications.</p>		
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>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."</p>		

58 Pa.C.S. § 3274. This section directs the Environmental Quality Board to adopt regulations necessary to implement the 2012 Oil and Gas Act.

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

(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.

The purpose of this final-form rulemaking is to increase unconventional well permit application fees to sustain the Program at current staff levels and operating costs. This final-form rulemaking is needed because the current revenue generated by the well permit application fees is not adequate to cover the cost of the Program's efforts to administer the 2012 Oil and Gas Act despite recent staff reductions and the implementation of several cost-saving measures.

Given the fee increase in this final-form rulemaking is intended to cover the costs to sustain the existing Program, the other sources of revenue currently available to the Program, including conventional well permit application fees and the \$6 million distributed to the Department from the Impact Fee established by 58 Pa.C.S. Chapter 23 (relating to Unconventional Gas Well Fee) currently allocated to the Program, are needed to provide a funding buffer in the event that the actual permit applications the Department receives in the years following this final-form rulemaking do not meet the permit application projections that form the basis of this final-form rulemaking, as well as restore the Program to a full staff complement of 226 people, hire necessary additional staff and fund program enhancements.

The Department is tasked with implementing the 2012 Oil and Gas Act. Section 3211(d) of the 2012 Oil and Gas Act provides: "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 [the 2012 Oil and Gas Act]." 58 Pa.C.S. § 3211(d).

As prescribed by Section 3211(d) of the 2012 Oil and Gas Act, a well permit application fee is a one-time payment submitted with each well permit application that is deposited into the Well Plugging Fund as a dedicated revenue source for the Program. This fee is set by the Board in regulation and must be reasonably related to the cost of the Program to administer the 2012 Oil and Gas Act. The fees do not provide ongoing revenue to the Program. For that reason, the fees received in a given year must fund all of the Program's functions beyond permitting.

Based on this funding mechanism, the Board has established reasonable fees to fund Program costs. Prior fee increases have established a fee structure based on several factors, including annual well permit applications projections, the different types of wells, total well bore length, the costs to develop the different well types and ability to pay.

In accordance with 25 Pa. Code §§ 78.19(e) and 78a.19(b), the Department evaluates these fees and recommends regulatory amendments to the Board every three years 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 the Program is self-sustaining.

The Oil and Gas Act, originally enacted in 1984, established a \$100 well permit application fee. See 58 P.S. §§ 691.201(d), repealed by the act of February 14, 2012, P.L. 87, No. 13, § 3(2). This fee remained in place for 25 years. In 2009 and 2014, the Board increased well permit application fees to fund the Program's increasing expenses and to establish a fee structure that sets different amounts for the different types of wells, including unconventional, conventional and home use wells. As stated above, the Board has established reasonable fees to fund Program costs for these different types of wells based on several factors, including annual well permit application projections, total well bore length, the costs to develop the different well types and ability to pay.

When the Board last amended the unconventional well permit fees in 2014, it eliminated a sliding scale and established a flat fee of \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells. The Board projected that those increased fees would be adequate to support the Program with a full complement of 226 staff provided the Program receives 2,600 unconventional well permits annually.

However, while that projection was accurate during the pendency of that rulemaking, the number of unconventional well permit applications received since that time has been lower than anticipated. In Fiscal Year 2014-2015, the Program received 2,533 unconventional well permit applications. In Fiscal Year (FY) 2015-2016, the Program received 1,646 unconventional well permit applications. And in, FY 2016-2017, the Program received 1,993 unconventional well permit applications. As a result, the well permit application fees have not generated the revenue needed to fund Program costs.

Even as the Program has reduced costs by reducing staff, pursuing efficiency measures like using tablet computers to conduct inspections, and reducing operating costs, the Program's workload has continued to increase. Each year more wells are drilled than plugged resulting in a growing inventory of wells to be inspected to ensure compliance with the 2012 Oil and Gas Act and its implementing regulations. There is also a growing number of support facilities, including gathering pipelines, well development impoundments, water withdrawals and other support facilities, with separate authorizations and inspection obligations. As the result of a continually advancing oil and gas industry, the Program has increasing responsibilities to develop guidance, update forms, provide training, improve data management and to study and evaluate new and evolving issues all to ensure that the Program operates effectively and efficiently while providing clarity to the regulated community. Equally important are the Program's responsibilities related to gas storage as well as orphaned and abandoned wells. Finally, the Program must ensure that it responds to complaints, emergencies and requests for public records related to the implementation of the 2012 Oil and Gas Act. All of these activities are essential program functions beyond well permit application reviews that are necessary to administer the 2012 Oil and Gas Act and are paid for by the one-time well permit application fees.

As a result, the Program now struggles to meet its gas storage field inspection goals, consistently achieve appropriate permit review time frames, adequately fund training opportunities for staff and provide training for the industry. Important Program development initiatives, such as policies, best practices and technical guidance documents, have been put on hold indefinitely due to the lack of sufficient staff to develop and update these important pieces of the Program necessary to administer the 2012 Oil and Gas Act. In short, the Program is challenged to provide an adequate level of high-quality service to the public and to the industry.

To thoroughly address prior inaccurate well permit application projections and to comply with 25 Pa. Code §§ 78.19(e) and 78a.19(b) requiring the Department to provide an evaluation of well permit applications fees and recommend regulatory changes every three years, the Department prepared and presented to the Board a *3-Year Regulatory Fee and Program Cost Analysis Report* (Fee Report) at the Board's April 17, 2018, meeting.

The Fee Report provided that the Program's projected budget to sustain the Program with 190 staff and operating costs in FY 2018-2019 would be approximately \$25 million. Given this projected budget and the current well permit application fees, the Program would need to receive 5,000 nonvertical unconventional well permit applications per year to sustain the Program. However, based on the average of annual well permit applications the Department received in FY 2015-2016, 2016-2017 and 2017-2018 discussed above, the Department anticipated receiving 2,000 unconventional well permit applications per year. For that reason, the Department recommended that the Board revise the unconventional well permit application fee to \$12,500. This analysis provided the basis for the proposed rulemaking.

Based on the Fee Report's analysis of unconventional well permit application trends for FYs 2014-2015, 2015-2016, and 2016-2017, the Program continues to anticipate that it will receive approximately 2,000 unconventional well permit applications per year. Additionally, the Program continues to project the costs to fund the Program at its reduced complement of 190 employees and operating costs at approximately \$25 million as explained in the table below. For this reason, as recommended in the Fee Report and in the proposed rulemaking, this final-form rulemaking establishes an increased unconventional well permit application fee of \$12,500.

Expense	Cost (in dollars)
Staff (190 positions at \$106,000 per staff person)	20,140,000
Operating Expenses (FY2018-19)	4,519,000
<b>TOTAL Cost</b>	<b>24,659,000</b>

The Department's well permit application projections are reasonable given the challenges in predicting the number of well permit applications. It is significant that in FY 2017-2018, the Department received 1,674 unconventional well permit applications. And in FY 2018-2019, the Department received 1,684 unconventional well permit applications. For the first half of Fiscal Year 2019-2020, the Department is on track to receive fewer than 1,600 unconventional well permit applications. The variability of unconventional well permit applications can be attributed to various market and industry changes. The price of natural gas has remained low, which industry analysts suggest is the result of supply-demand imbalances between the Appalachian region and the rest of the United States market. It might also be because the first few years of Marcellus Shale gas development constituted an initial boom and was not representative of drilling patterns in a more mature shale production market. Also, improvements in technology are allowing operators to extract more gas from each well, thus requiring fewer wells to satisfy the same demand. All of these trends are outside of the Program's control, may be subject to a vacillating commodity markets, and not readily predictable.

Because of this reasonable uncertainty, it is critical that the other sources of revenue currently available to the Program, including conventional well permit application fees and the \$6 million distributed to the Department from the Impact Fee established by 58 Pa.C.S. Chapter 23 (relating to Unconventional Gas Well Fee) currently allocated to the Program, provide a funding buffer in the event that the actual permit applications the Department receives in the years following this final-form rulemaking do not meet the permit application

projections. If that happens, the Program will need these other revenue sources to sustain the Program. If not, these funds will be allocated for the additional Program needs including restoring the Program to a full staff complement of 226 people, hire necessary additional staff and fund program enhancements.

By increasing the unconventional well permit application fee in order to provide the revenue needed to sustain the Program at existing staff levels and operating costs while creating a funding buffer dedicating other revenue sources for increasing staff and program enhancement, 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 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. There are no federal permitting or fee standards applicable to unconventional 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?

Below is an outline of the fee structure for other unconventional oil and natural gas producing states, including New York, Maryland, West Virginia, Ohio, Arkansas, Colorado, New Mexico, Texas and Oklahoma.

### ***Marcellus and Utica Shale States***

#### **West Virginia**

West Virginia charges \$10,150 for the first horizontal well on a well site and \$5,150 for subsequent wells on the same pad. West Virginia also charges fees for a variety of other activities. These fees are as follows:

\$650 for deep well and coalbed methane well permits

\$400 for shallow well permits

\$100 for a permit to dispose of well work fluids

\$550 to convert an existing shallow well to an injection well

\$800 to convert an existing deep well to an injection well

#### **Ohio**

Ohio charges a variety of fees as well. Its fee schedule is as follows:

Permit to drill, reopen, convert or plug-back:

\$250 to expedite review

\$500 for fees for drill, reopen, convert or plug-back

**Urban Fees:**

\$500 to develop in an area with a population under 10,000

\$750 to develop in an area with a population under 15,000

\$1,000 to develop in an area with a population over 15,000 or incorporated municipal area

\$5,000 for a mandatory pooling application fee

\$250 for a revision or reissuance of a permit to drill, reopen, convert or plug-back

**Temporary Inactive Status:**

\$100 for first year, \$250 for second year, \$500 for third year and beyond.

**Permit to Plug and Abandon a Well:**

\$250 for an Application Fee

\$500 to expedite review

**Disposal of Brine:**

\$1,000 for a permit fee

\$0.05/bbl for an in-state disposal fee

\$0.20 for an out-of-state disposal fee

**Registration Certificate and Identification for Brine Haulers:**

\$50 for an application fee

**Surface Application of Brine by Local Governments:**

\$50 for a plan fee for application of brine

**Unitization:**

\$10,000 for an application filing fee

**Notice of Assignment or Transfer of Interest in Lease:**

\$100 for a well transfer fee

\$50 for a revised unit fee

\$250 for a revised location fee

\$50 for a post drilling map fee

Unconventional well drilling has been banned in **New York** and **Maryland**.

***Other Oil & Gas Producing States***

In comments submitted during the public comment period on the proposed rulemaking, several commenters requested that the fees charged by Arkansas, Colorado, New Mexico, Texas and Oklahoma be included in the Department's analysis. The Department has considered the following:

**Arkansas**

\$500 hearing application fees plus \$2.00 for each person named in the application.

**Administrative Issuance of Default Integration Order for Certain Unleased Mineral Interests:**

If the applicant specifies which Model Form Operating Agreement approved by the Commission it seeks to use, i) Not to exceed more than \$7,500.00 for a drilling well rate and \$750 dollars for a producing well when

the proposed well is a dry natural gas well; or ii) Not to exceed more than \$4,500 for a drilling well rate and \$450 dollars for a producing well when the proposed well is a liquid hydrocarbon well.

The application to appeal a Director's decision shall be accompanied by a \$250 filing fee.

\$500 application for a drilling permit for a well proposed to be drilled, is being drilled, or has been drilled, but prior to commencement of production, at a location within an established drilling unit, which fails to conform to the drilling unit setback distance requirements as measured from the approximate center of the wellbore to unit boundary lines under applicable field rules or Commission general rules:

\$500 application fee for a permit to perform field seismic operations.

\$500 for certain unitization requests.

\$100 per Transportation Tank for an Exploration and Production Fluid Transportation System

Application to drill, deepen, re-enter, recomplate or operate a Class II Disposal or Class II Commercial Disposal Well:

Permit fee in the amount of \$300 if the Class II Disposal or Class II Commercial Disposal Well is drilled, deepened, or re-entered;

Non-refundable fee of \$100.00 for a Class II Disposal Well or \$500 for a Class II Commercial Disposal Well to recomplate or operate the Class II Disposal or Class II Commercial Disposal Well

Transfer of ownership fees:

\$500 per well for wells less than 3000 feet in depth; and

\$1000 per well for wells equal to or greater than 3000 feet in depth; and pay a salvage value for the tanks, pumping units, and other related equipment, as determined by submission of 2 independent salvage value estimates from commercial salvage oil and gas production equipment dealers and approved by the Director or his or her designee and;

Pay the fair market value per barrel, to be determined at the time of the transfer approval, for all oil fluids (hydrocarbons) stored on the lease or unit.

Arkansas also charges an annual fee to all permit holders of liquid hydrocarbon and associated Class II wells as follows:

1-5 Permits or Wells \$100/Well

6-15 Permits or Wells \$750/Operator

16-50 Permits or Wells \$1,250/Operator

51-150 Permits or Wells \$2,000/Operator

151-300 Permits or Wells \$3,000/Operator

301 or more Permits or Wells \$4,000/Operator

### **Colorado**

Colorado does not charge fees for permits or authorizations. Instead, the Colorado Oil and Gas Conservation Commission is funded by "levy revenue", fines, an annual allocation from the Severance Tax Operational Fund, and a small federal grant. Levy revenue is determined by: Volume of oil and gas production; Oil and gas commodity prices; and Levy rate. The Colorado Oil and Gas Act allows the levy to be set as high as 1.7 mills.

**New Mexico**

\$500 application for a non-federal and non-Native American permit to drill, deepen, plug back or reenter a well.

\$150 for administrative approval of a non-standard location, downhole commingle, surface commingle, off-lease measurement, release notification and corrective action, change of operator, application for modification to surface waste management facility, request for the creation of a new pool, proposed alternative method permit or closure plan application or authorization to move produced water.

\$500 for a fluid injection well permit application.

\$10,000 application for a permit for a commercial surface waste management facility, landfill or landfarm.

\$500 application for an administrative hearing, re-hearing or de novo hearing before the division or commission.

\$150 application for a continuance of an administrative hearing, re-hearing or de novo hearing before the division or commission.

**Texas**

Texas charges fees for 30 different actions by the Railroad Commission. These fees range from in price \$125 - \$2,500 and can be viewed at the following link:

<https://www.rrc.state.tx.us/oil-gas/applications-and-permits/fees-surcharges/>

**Oklahoma**

Oklahoma charges fees for 40 different actions by the Corporation Commission. These fees ranging in price from \$50 - \$2,500 and can be viewed at the following link:

[https://www.occeweb.com/og/ogfield\\_files/OIL%20AND%20GAS%20Form%20Fees%202010-1-2018.pdf](https://www.occeweb.com/og/ogfield_files/OIL%20AND%20GAS%20Form%20Fees%202010-1-2018.pdf)

These fees are proposed to be increased.

***Comparison of Pennsylvania to Other States***

This final-form rulemaking seeks to increase only the fees for unconventional well permit applications. This fee is one part of the Program's fee structure which is based solely on well permit applications fees. Currently, in accordance with 25 Pa. Code § 78a.19(a), well permit applicants for vertical unconventional wells pay \$4,200 and well permit applicants for nonvertical unconventional wells pay \$5,000. This final-form rulemaking increases this fee to a flat fee of \$12,500 for an unconventional well permit application.

In comparing the fee increase in this final-form rulemaking with similar fees in other states, it is significant to note that there are major differences between the shale gas plays in the northeast, the shale gas plays in the southwest, and shale oil plays in the south or northwest.

Further, it is significant that these other states have very different fee structures and assess fees for a variety of different actions, not just permit applications. These other states also have a variety of other funding mechanisms not available in Pennsylvania, such as severance taxes. In developing this final-form rulemaking, the Department considered charging fees for other approval requests submitted to the Program. However, the Department determined that each of these submissions were as unpredictable as well permit applications and thus would create even more uncertainty in program funding.

In comparing Pennsylvania to other northwest shale plays -- the Marcellus and Utica shale plays in New York, Ohio, West Virginia and Maryland -- it is important to note that both New York and Maryland have elected to ban the activity and both West Virginia and Ohio significantly trail Pennsylvania in activity. For example, in 2018, DEP issued 1,868 unconventional well drilling permits while West Virginia issued 433 such permits and Ohio issued 258 permits. Overall, 3,866 unconventional wells have been drilled in West Virginia, 3,717 unconventional wells have been drilled in Ohio and 12,232 unconventional wells have been drilled (and remain active) in Pennsylvania. In addition, each year total gas production in Pennsylvania has grown with over 6 trillion cubic feet produced in 2018.

The Department acknowledges that the well permit application fee in this final-form rulemaking is higher than in other states, but this fee is reasonable and appropriate compared to other states because of Pennsylvania's limited fee structure and other funding mechanisms. Further, this fee increase will not negatively impact Pennsylvania's competitiveness as discussed below.

### ***Pennsylvania's Competitiveness***

As noted above, it is significant to note that there are major differences between the shale gas plays in the northeast, the shale gas plays in the southwest, and shale oil plays in the south or northwest. Market prices for natural gas vary regionally due to supply, demand and infrastructure. Oil and natural gas prices have decoupled, therefore, operators will continue to drill wells where gas prices are high or where they can recover a high volume of production. The Marcellus and Utica Shales are the premier shale plays in the United States with Pennsylvania being the premier state in which to drill these wells.

The cost of drill an unconventional well is approximately \$ 8 million dollars. This increased fee accounts for .16% of the cost to drill an unconventional well. Due to the relatively small percentage that the well permit application fee will cost unconventional operators in the scheme of developing a well and the fee structure that Pennsylvania has compared to other states, the new unconventional well permit application fee will not negatively impact Pennsylvania's ability to be competitive with other gas producing 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 consulted with the Oil and Gas Technical Advisory Board (TAB) in the development of the proposed rulemaking. The Department presented its *Three-Year Fee Report* and discussed its proposal to raise the unconventional well permit application fee to \$12,500 at TAB's February 14, 2018, meeting. The Department also included the proposed unconventional well permit application fee increase as an agenda item during several Oil and Gas Industry Quarterly Meetings. Attendees included representatives from all the major trade groups in the unconventional industry. Program managers have also given advance notice of this fee increase through informal discussions with the regulated community and received feedback and suggestions for alternatives that were considered by Program staff. The plan to introduce this fee increase was also announced in a press conference by Governor Wolf and Secretary McDonnell on January 26, 2018.

The proposed rulemaking was adopted by the Board at its meeting on May 16, 2018, and published in the *Pennsylvania Bulletin* on July 14, 2018, with a 30-day comment period (48 Pa.B. 4100). No public hearings were held. The public comment period closed on August 13, 2018.

The Department received 51 comments from 14 commenters. One commenter was neutral on the rulemaking. Three commenters offered comments in support of the rulemaking, while nine commenters opposed the rulemaking. The Independent Regulatory Review Commission (IRRC) also submitted comments on September 12, 2018.

The Department discussed the final rulemaking at the TAB meeting on September 19, 2019.

(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 final-form rulemaking affects companies that seek to drill and operate natural gas wells in unconventional formations, such as the Marcellus Shale.

According to the U.S. Small Business Administration, businesses with less than 1,250 employees are considered to be small businesses for North American Industry Classification System (NAICS) Codes 211120 (Crude Petroleum Extraction) and 211130 (Natural Gas Extraction). Based on these NAICS codes, an industry association that represents the majority of exploration, production, midstream and supply chain partners of unconventional natural gas drilling in Pennsylvania asserts that the majority of companies engaged in unconventional natural gas extraction are small businesses. As such, the Department assumes that the 80 operators of unconventional well sites in Pennsylvania that are currently documented in according to the Department's permitting records qualify as small businesses and will be impacted by this rulemaking.

As a result of this final-form rulemaking, companies that seek to obtain unconventional well permits in Pennsylvania will have to pay a fee of \$12,500 per unconventional well permit applications rather than the prior fee of \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells.

(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.

Companies that seek to drill and operate natural gas wells in unconventional formations, such as the Marcellus Shale, will be required to comply with this regulation. According to the Department's permitting records, there are currently 80 operators of unconventional well sites in Pennsylvania, and that number is not expected to change significantly in the near term.

(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.

As a result of this final-form rulemaking, companies that seek to obtain an unconventional well permit in Pennsylvania, most of which qualify as small businesses according to the U.S. Small Business Administration, will have to pay a fee of \$12,500 for all unconventional well permit applications rather than the prior fee of \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells.

The revenue generated from the increased unconventional well permit application fee will be used to sustain the Program at its current staff complement of 190 employees and at current operating costs. The other sources of revenue currently available to the Program, including conventional well permit application fees and the \$6 million distributed to the Department from the Impact Fee established by 58 Pa.C.S. Chapter 23 (relating to Unconventional Gas Well Fee) currently allocated to the Program, are needed to provide a funding buffer in the event that the actual permit applications the Department receives in the years following this final-form rulemaking do not meet the permit application projections that form the basis of this final-form rulemaking, as well as restore the Program to a full staff complement of 226 people, hire necessary additional staff and fund program enhancements.

As stated in the response to Question 10, by increasing the unconventional well permit application fee in order to provide the revenue needed for the Oil and Gas Program, 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.

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

Please see the response to Question 17 for more information on the benefits of this regulation.

In developing this regulation, the Department thoroughly considered the impacts of raising fees on companies engaged in unconventional natural gas extraction. This rulemaking increases the well permit application fee to \$12,500 for unconventional gas wells that cost approximately \$8 million to drill. This means that the average unconventional well permit will now account for .16% of the cost to drill an unconventional well rather than .001% of the cost to drill for which the prior unconventional well permit fee accounted. This new permit fee is more comparable to the current well permit application fee amount paid by the conventional gas industry, in which the average conventional well permit accounts for between .15% and .3% of the cost to drill a conventional well.

Furthermore, increasing the well permit application fee to \$12,500 for an unconventional gas well that costs approximately \$8 million to drill should have no impact on well drilling activity in Pennsylvania. Failure to increase the well permit application 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 further reduce its permitting and inspection staff. This would result in increased permitting timeframes and an associated slowdown of economic activity. Fewer inspectors would erode public confidence in the Department and would result in more well sites going uninspected each year. This could significantly harm the industry's social license to operate and result in several unintended consequences.

(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 increases the unconventional well permit application fee from \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells to \$12,500 for any

unconventional well permit application. This raises the cost for unconventional well permit applications by \$7,500 or \$8,300 per application.

Based on the analysis completed for the *3-Year Regulatory Fee and Program Cost Analysis Report to the Environmental Quality Board*, the Department projects that approximately 2,000 well permit applications will be received annually following the adoption of these amendments. Based on the existing \$5000 fee for nonvertical unconventional well permit applications, the fee increase in this final-form rulemaking will result in an additional annual incremental permit cost of \$15 million to the regulated community.

(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 final-form 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.

There are no anticipated additional costs or savings to state government associated with the implementation of the regulation, because the Department already collects an unconventional well permit application fee. The revenue from the increased unconventional well permit application fee will be utilized solely to offset the direct and indirect costs of administering the Oil and Gas Program.

(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 rulemaking does not add to or change the existing reporting, recordkeeping or other paperwork requirements for the regulated community, local governments, or state government.

(22a) Are forms required for implementation of the regulation?

Minor changes to the unconventional well permit application form, *Permit Application to Drill and Operate an Unconventional Well (Document #, 8000-PM-OOGM0001bU)*, will be necessary to implement this rulemaking.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

A draft version of the unconventional well permit application form, *Permit Application to Drill and Operate an Unconventional Well (Document #, 8000-PM-OOGM0001bU)* is attached.

(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	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Savings</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>COSTS:</b>						
Regulated Community	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Costs</b>	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000
<b>REVENUE LOSSES:</b>						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Revenue Losses</b>	\$0	\$0	\$0	\$0	\$0	\$0

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

Program	FY 2016/17	FY 2017/18	FY 2018/19	Current FY through 9/25/19
Well Plugging Restricted Revenue Account (Fund 001- SAP Fund 60083)*	\$23,266,000	\$20,559,000	\$22,795,000	\$23,016,000
* 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 seek to drill and operate natural gas wells in unconventional formations. According to the U.S. Small Business Administration, businesses with less than 1,250 employees are considered to be small businesses for North American Industry Classification System (NAICS) Codes 211120

(Crude Petroleum Extraction) and 211130 (Natural Gas Extraction). Based on these NAICS codes, an industry association that represents the majority of exploration, production, midstream and supply chain partners of unconventional natural gas drilling in Pennsylvania asserts that the majority of companies engaged in unconventional natural gas extraction are small businesses. As such, the Department assumes that the 80 operators of unconventional well sites in Pennsylvania that are currently documented in the Department's permitting records qualify as small businesses and will be impacted by this rulemaking.

- (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.

This rulemaking increases the well permit application fee to \$12,500 for unconventional gas wells that cost approximately \$8 million to drill. As noted above in the response to Question 18, this fee increase means that the average unconventional well permit will now account for .16% of the cost to drill an unconventional well. This increased fee is minimal when considered as part of the overall cost of an average unconventional project. As such, it is not anticipated that this rulemaking will adversely impact companies that operate natural gas wells in unconventional formations that qualify as small businesses.

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

There are no less intrusive or costly alternatives to this regulation available to the Department at this time given the Department's legal authority and projected number of well permit applications.

- (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 or farmers any differently than other members of the general public. Therefore, this rulemaking does not include special provisions that address such needs. As noted in the responses to Questions 18 and 24, the impact on unconventional well operators that qualify as small businesses is believed to be minimal and therefore no special provisions have been developed as part of the proposed rulemaking.

- (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 alternative regulatory provisions to address the disparity between the Oil and Gas Program's income generated by the well permit application fees and the Department's cost of administering the 2012 Oil and Gas Act with the objective of ensuring the well permit application fees meet all Program costs and the Program is self-sustaining. The options considered included increasing unconventional well permit application fees, increasing conventional well permit application fees, enacting annual gas well registration fees, and considering fees for other authorizations required of the Department, similar to the fees charged by states such as Ohio, Texas, Arkansas and Oklahoma.

While enacting annual gas well registration fees or considering fees for other authorizations the Department requires were considered, these options would significantly change how or when fees are currently collected. This would result in process changes for both the oil and gas industry as well as the Department. Furthermore, charging fees for other approval requests submitted to the Oil and Gas Program would be just as unpredictable as well permit applications and would create even more uncertainty in program funding. As such, the Department determined that these were not viable funding options at this time.

In terms of deciding whether to increase unconventional or conventional well permit application fees, the Department considered the following information related to Program costs and permit application volumes. Conventional well drilling has declined significantly over the last few years. In FY 2015-2016, the Program received 287 conventional well permit applications generating \$97,750. In FY 2016-2017, the Program received 205 conventional well permit applications generating \$84,300. In FY 2017-2018, the Program received 225 conventional well permit applications generating \$76,973. If the Program projects that it will receive 240 conventional well permit applications annually at the average conventional well permit application fee of \$365, the Program can anticipate receiving \$87,600 per year from conventional well permit application fees under the existing fee structure. The revenue from these fees represent less than .5% of the Program's annual operating costs.

The cost to drill a conventional oil well is approximately \$115,000, and the cost to drill a conventional gas well is approximately \$250,000. The three-year average conventional well permit application fee paid was \$365. Thus, the average conventional well permit accounts for between .15% and .3% of the cost to drill a conventional well. The cost to drill an unconventional well is approximately \$8 million. The \$12,500 unconventional well permit application fee established by this rulemaking accounts for .16% of the cost to drill an unconventional well. Accordingly, the fees are comparable in terms of the percentage of the costs to drill wells.

Furthermore, the Department considered that the conventional industry may account for approximately 40% of the costs to administer the Program. In doing so, the Department considered proportional costs related to fee amounts. Based on the Program's projected budget of \$25 million to sustain current staff and operating costs, the conventional industry's proportional costs would be \$10 million. If the Program projects that it will receive 240 conventional well permit applications annually, the conventional well permit application fee would need to be set at a flat rate of nearly \$42,000 per application to account for the conventional industry's proportional costs. Increasing the conventional well permit applications fees from the average of \$365 to \$42,000 per well permit application is not reasonable or appropriate given the costs to drill conventional wells and because most, if not all, conventional well operators are small businesses.

Based on the information above, the one-time nature of the well permit and Program costs, the Department determined not to increase the conventional well permit application fees. Instead, it was determined that the most viable option would be to simply increase the current unconventional well permit application fee. This approach results in the least burdensome alternative to the regulated community while providing sufficient funds to enable the 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;

No changes to reporting, recordkeeping, or other administrative procedures are included in this rulemaking. As noted in the responses to Questions 18 and 24, the impact on unconventional well operators, who qualify as small businesses, is believed to be minimal and therefore no less stringent compliance or reporting requirements to further minimize that impact were considered.

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

No changes to reporting, recordkeeping, or other administrative procedures are included as part of this rulemaking as the impact to unconventional well operators that qualify as small businesses is believed to be minimal.

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

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 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.

All unconventional operators are already subject to the well permit application fee imposed by 25 Pa. Code § 78a.19. As noted above, the impact on all unconventional well operators, who qualify as small businesses, is believed to be minimal and therefore no exemptions were considered.

(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.

Pursuant to sections 78.19(e) and 78a.19(b), “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(e) and 78a.19(b). In turn, the Department prepared the *3-Year Regulatory Fee and Program Cost Analysis Report* (Fee Report) to form the basis of this regulation.

This final-form rulemaking, along with the Fee Report, is intended to meet this regulatory requirement and includes a recommendation to increase the current fee structure to sustain the Program at existing staff levels and operating costs while providing a funding buffer or the ability to add needed staff and program enhancements.

The Department relied on standard comparative financial statements to assist in determining the solvency 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 included in the Fee Report identifies the insufficient account balance that would be expected given the current revenue collections and expenditures. The comparative financial statement also 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.

In addition to the Fee Report, an attachment (Attachment A) has been included to show the Program's expenses compared with projected revenues with and without the fee increase included in this rulemaking. It also shows the expenses needed add necessary staff and program enhancements.

The Department projects the number of unconventional well permit applications based on the Fee Report's analysis of unconventional well permit application trends for Fiscal Years 2014-2015, 2015-2016, and 2016-2017.

Based on the above, the Department projects the costs to Program at its reduced complement of 190 employees and operating costs at approximately \$25 million as explained in the table below.

Expense	Cost (in dollars)
Staff (190 positions at \$106,000 per staff person)	20,140,000
Operating Expenses (FY2018-19)	4,519,000
<b>TOTAL Cost</b>	<b>24,659,000</b>

The Department's well permit application projections are reasonable given the challenges in predicting the number of well permit applications. It is significant that in F Y 2017-2018, the Department received 1,674 unconventional well permit applications. And in FY 2018-2019, the Department received 1,684 unconventional well permit applications. For the first half of FY 2019-2020, the Department is on track to receive fewer than 1,600 unconventional well permit applications. The variability of unconventional well permit applications can be attributed to various market and industry changes. The price of natural gas has remained low, which industry analysts suggest is the result of supply-demand imbalances between the Appalachian region and the rest of the United States market. It might also be because the first few years of Marcellus Shale gas development constituted an initial boom and was not representative of drilling patterns in a more mature shale production market. Also, improvements in technology are allowing operators to extract more gas from each well, thus requiring fewer wells to satisfy the same demand. All of these trends are outside of the Program's control, may be subject to a vacillating commodity markets, and not readily predictable.

Because of this reasonable uncertainty, it is critical that the other sources of revenue currently available to the Program, including conventional well permit application fees and the \$6 million distributed to the Department from the Impact Fee established by 58 Pa.C.S. Chapter 23 (relating to Unconventional Gas Well Fee) currently allocated to the Program, provide a funding buffer in the event that the actual permit applications the Department receives in the years following this final-form rulemaking do not meet the permit application projections. If that happens, the Program will need these other revenue sources to sustain the Program. If not, these funds will be allocated for the additional Program needs described below.

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

- |   |                        |
|---|------------------------|
| A. The length of the public comment period:   | <u>30 days</u>         |
| B. The date or dates on which any public meetings or hearings will be held:                   | <u>N/A</u>             |
| C. The expected date of delivery of the final-form regulation:                                | <u>Quarter 1, 2020</u> |
| D. The expected effective date of the final-form regulation:                                  | <u>Quarter 2, 2020</u> |
| E. The expected date by which compliance with the final-form regulation will be required:     | <u>Quarter 2, 2020</u> |
| F. The expected 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.

Sections 78.19(e) and 78a.19(b) require the Department to evaluate the well permit application 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 §§ 78.19(e) and 78a.19(b).

# Attachment A

## **Scenario 1: Program Maintenance**

The total annual revenue needed to maintain the Department's Oil and Gas Program at a reduced complement level of 190 employees at current operating costs is \$24,659,000. The amount of annual revenue generated from the current permit fee is not sufficient to maintain the current program (i.e., \$16,077,000). If the permit fee is not increased, the Department's Oil and Gas Program will be insolvent by the fourth quarter of FY2019/20.

At the projected permit volumes, the fee increase in this final-form rulemaking will generate enough revenue to maintain the Department's Oil and Gas Program at this reduced complement threshold and provide a funding buffer, if needed, or provide for additional staff and program enhancements (i.e., \$31,077,000).

### **ACTUAL EXPENSES (Reduced Complement)**

Expense	Cost (in dollars)
Staff (190 positions)	20,140,000
Operating Expenses (FY2018-19)	4,519,000
<b>TOTAL Cost</b>	<b>24,659,000</b>

### **ACTUAL REVENUE – WITHOUT FEE INCREASE**

**\$5K PERMIT FEE + CONVENTIONAL PERMIT FEE + IMPACT FEE**

Expense	Cost (in dollars)
Unconventional Permit Fees (2,000 permits x \$5,000)	\$10,000,000
Conventional Permit Fees (FY2018-19)	77,000
Impact Fee	6,000,000
<b>TOTAL Revenue</b>	<b>16,077,000</b>

### **PROJECTED REVENUE – WITH FEE INCREASE**

**\$12.5 PERMIT FEE + CONVENTIONAL PERMIT FEE + IMPACT FEE**

Expense	Cost (in dollars)
Unconventional Permit Fees (2,000 permits x \$12,500)	\$25,000,000
Conventional Permit Fees (FY2018-19)	77,000
Impact Fee	6,000,000
<b>TOTAL Revenue</b>	<b>31,077,000</b>

## Attachment A

### **Scenario 2: Full Staff and Program Enhancements**

The total revenue needed to add needed staff to adequately and effectively administer the Program complement (i.e., 49 additional employees) and add necessary staff and IT costs is \$31,153,000. At the projected permit volumes, the fee increase in this final-form rulemaking would generate \$31,077,000. Significantly, there is reasonable uncertainty in projecting permit volumes. In Fiscal Year 2017-2018, the Department received 1,674 unconventional well permit applications. And in Fiscal Year 2018-2019, the Department received 1,684 unconventional well permit applications. For the first half of Fiscal Year 2019-2020, the Department is on track to receive fewer than 1,600 unconventional well permit applications. At present permit volumes, the proposed permit fee increase would only generate \$26,077,000, which falls short by more than \$5,000,000. At current permit volumes, the projected fee increase will not provide sufficient annual revenue to add needed staff and fund IT costs.

### **EXPENSES FOR FULL STAFF AND IT COSTS**

Expense	Cost (in dollars)
Personnel (190 positions)	20,140,000
Personnel (49 additional positions)	5,194,000
Operating Expenses/Fixed Assets (FY2018-19)	4,519,000
IT Costs	1,300,000
<b>TOTAL Cost</b>	<b>31,153,000</b>

### **PROJECTED REVENUE – WITH FEE INCREASE (1,600 permits)**

**\$12.5 PERMIT FEE + CONVENTIONAL PERMIT FEE + IMPACT FEE**

Expense	Cost (in dollars)
Unconventional Permit Fees (1,600 permits x \$12,500)	\$20,000,000
Conventional Permit Fees (FY2018-19)	77,000
Impact Fee	6,000,000
<b>TOTAL Revenue</b>	<b>26,077,000</b>

### **PROJECTED REVENUE – WITH FEE INCREASE (2,000 permits)**

**\$12.5 PERMIT FEE + CONVENTIONAL PERMIT FEE + IMPACT FEE**

Expense	Cost (in dollars)
Unconventional Permit Fees (2,000 permits x \$12,500)	25,000,000
Conventional Permit Fees (FY2018-19)	77,000
Impact Fee	6,000,000
<b>TOTAL Revenue</b>	<b>31,077,000</b>

**PERMIT APPLICATION TO DRILL AND OPERATE  
 AN UNCONVENTIONAL WELL  
 Record of Notification**

US Well No. (API No.)

<b>Signature of Applicant</b>		I hereby certify that, for all interested parties identified on the plat of this application for which written consent or an "Affidavit of Non-Delivery of Certified Mail" has not been uploaded, copies of the well plat have been sent via certified mail and I have received a return receipt verifying delivery.		Date	
Signature of Person Authorized to Submit Application		Name of Signer (Print or Type)		Date	
<p>List the following: surface landowners and water purveyors with water supplies within 3,000 feet; municipality where the well will be drilled; adjacent municipality; municipalities within 3,000 feet of the vertical well bore; gas storage operator if within 3,000 feet. Mark the boxes, "X," which show the parties' interests. Use additional forms if you need more space. You are required to notify each of these parties.</p> <p><b>Notification: Signature below name indicates the party's acknowledgement of receipt of the well location plat and serves as proof of notification</b></p>		<p>Surface Landowner</p> <p>Gas Storage Operator</p> <p>Surface Landowners &amp; Water Purveyors with water supplies &lt;3000'</p> <p>Municipalities</p>		<p>Notification</p> <p>Note the means and attach proof.</p> <p>Certified Mail Dates</p> <p>Return Receipt</p> <p>Address Affidavit</p> <p>Written Consent</p>	
Print Name:	Address:	Sent			
Signature					
Print Name:	Address:				
Signature					
Print Name:	Address:				
Signature					
Print Name:	Address:				
Signature					
Print Name:	Address:				
Signature					
<b>Record of Written Consent</b>					
Written Consent: Signature below indicates the party's approval of the well location or indicates written consent and waives the 15-day objection period where applicable.					
Check applicable box					
Print and Sign Name:		Surface Owner		Building within 500 feet	
Address:	Date	<input type="checkbox"/>	Water Well within 500 feet	<input type="checkbox"/>	<input type="checkbox"/>
Address:	Date	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Address:	Date	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>





## PERMIT APPLICATION TO DRILL AND OPERATE AN UNCONVENTIONAL WELL

*Please read instructions before you begin filling in this form.*

### WELL INFORMATION

Well Operator		DEP ID#	Well API No. 37- - - -	Well Farm Name		Well #	
Address			LAT	NAD 83	Project Number	Serial #	
			LONG -				
City	State	Zip Code	Municipality Name/ City, Borough, Township		County		
Phone No.	Fax No.	Email		USGS 7.5 min. quadrangle map	Section		
24/7 Emergency Phone Contact No.:		ESGP Permit No.		Well Pad (cluster) Name/Identification			
911 address of well site (if available)							
Surface Elev.	Deepest Formation to be Penetrated		Anticipated TVD		<b>PERMIT TYPE</b> Check applicable. Application is to <input type="checkbox"/> Modify existing well permit	<b>TYPE OF WELL</b> Check applicable. <input type="checkbox"/> Gas <input type="checkbox"/> Comb. (gas & oil/condensate)	<b>APPLICATION FEE INCLUDED</b> <input type="checkbox"/> \$ 12,750.00
Target Formation(s) Proposed for Production		Anticipated Target Top/Bottom TVD					
Number of wellbore laterals proposed under this application		Total feet of wellbore to be drilled under this application		Fl.		<b>Configuration</b> <input type="checkbox"/> Vertical <input type="checkbox"/> Horizontal <input type="checkbox"/> Deviated <input type="checkbox"/> Multiple laterals	<b>Bond Agreement Id:</b> 
PNDI Attached: <input type="checkbox"/> Any threatened or endangered "hit" must include a demonstration of how the impact will be avoided or minimized and mitigated, or justification that section 78a.15(e) applies.							
Application submitted as: <input type="checkbox"/> Coal well (Attach Coal Module) <input type="checkbox"/> Non coal well (Attach justification)							
COORDINATION WITH REGULATIONS AND OTHER PERMITS						Yes	No
1. Will the well be subject to the Oil and Gas Conservation Law? If "No," go to 2)						<input type="checkbox"/>	<input type="checkbox"/>
a. If "Yes" to #1, is the well at least 330 feet from outside lease or unit boundary?						<input type="checkbox"/>	<input type="checkbox"/>
b. Does the location fall within an area covered by a spacing order?						<input type="checkbox"/>	<input type="checkbox"/>
c. If the well will be multilateral, identify the wellbores on the sketch on page 3 of the plat that will be completed as conservation and non-conservation.							
2. Will the proposed limit of disturbance of the well site be within 100 feet measured horizontally from any watercourse or any high quality of exceptional value body of water or any wetland one acre or greater in size?						<input type="checkbox"/>	<input type="checkbox"/>
If yes, attach the following if applicable: a site-specific E&S control plan, a permit consistent with Chapter 102, applicable portions of the Pollution Prevention Control Plan, applicable portions of the Well Site Emergency Response Plan, applicable portions of the Site Containment Plan, the permit number of a Water Obstruction and Encroachment Permit issued pursuant to Chapter 105, or justification that section 78a.15(e) applies.						<input type="checkbox"/>	<input type="checkbox"/>
Will the well or well site be located within a defined 100 year floodplain or where the floodplain is undefined, within 100 feet of the top of the bank of a perennial stream or within 50 feet of the top of the bank of an intermittent stream.						<input type="checkbox"/>	<input type="checkbox"/>
If yes, attach a plan that identifies the additional measure, facilities or practices to be employed during well site construction, drilling and operations to protect the waters of the Commonwealth						<input type="checkbox"/>	<input type="checkbox"/>

COORDINATION WITH REGULATIONS AND OTHER PERMITS (cont'd)		Yes	No
3. Will the vertical wellbore section penetrate or be within 3,000 feet of an active gas storage reservoir boundary?		<input type="checkbox"/>	<input type="checkbox"/>
a. If Yes, print the names of:	Storage Field: _____ Operator: _____		
4. Is the proposed well location within the permitted area of a landfill?		<input type="checkbox"/>	<input type="checkbox"/>
5. Will the vertical wellbore section of the unconventional well be drilled within 500 feet from any existing building or an existing water supply?		<input type="checkbox"/>	<input type="checkbox"/>
a. If "Yes," is written consent from the owner attached?		<input type="checkbox"/>	<input type="checkbox"/>
b. If written consent is not attached, is a variance request (form 8000-FM-OOGM0058) attached?		<input type="checkbox"/>	<input type="checkbox"/>
5.1. Will the vertical wellbore of the unconventional well be drilled within 1,000 feet from any existing water well, surface water intake, reservoir or other water supply extraction point used by a water purveyor?		<input type="checkbox"/>	<input type="checkbox"/>
a. If "Yes," is written consent from the owner attached?		<input type="checkbox"/>	<input type="checkbox"/>
b. If written consent is not attached, is a variance request (form 8000-FM-OOGM0058) attached?		<input type="checkbox"/>	<input type="checkbox"/>
6. Is this permit application for a well that will be drilled on a well site for which construction was completed prior to April 16, 2012?		<input type="checkbox"/>	<input type="checkbox"/>
a. If "Yes," was there a permitted well at this well site prior to April 16, 2012?		<input type="checkbox"/>	<input type="checkbox"/>
b. If the answer to question no. 6a is "Yes", provide the US Well Number (API No.) of the well permitted at this site prior to April 16, 2012. _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the well be located where it may impact a public resource as outlined in the "Coordination of a Well Location with Public Resources" form 8000-PM-OOGM0076? If yes, attach a completed copy of the form.		<input type="checkbox"/>	<input type="checkbox"/>
8. Will any portion of the well site be in a Special Protection High Quality <input type="checkbox"/> (HQ) or Exceptional Value <input type="checkbox"/> (EV) watershed? Provide name of special protection watershed _____		<input type="checkbox"/>	<input type="checkbox"/>
9. Is this well part of a development which requires an Earth Disturbance Permit for Oil and Gas Activities disturbing more than 5 acres? If yes, list the number of the ESCGP approval if the permit has been issued. _____ If no, is this well part of a development that involves 1 to less than 5 acres of earth disturbance over the life of the project and is the answer to question no. 8 "Yes"? If yes, attach a site-specific E&S control plan.		<input type="checkbox"/>	<input type="checkbox"/>
10. Is the well to be located within a H/S area pursuant to §78a.77a?		<input type="checkbox"/>	<input type="checkbox"/>
11. Attach a current Ownership & Control form 8000-FM-OOGM0118 with the first application submitted after the effective date of the final "Environmental Protection Performance Standards at Oil and Gas Well Sites" rulemaking, or if there have been any changes to parent and subsidiary business corporations.			
<b>Signature of Applicant</b>	The person signing this form attests that they have the authority to submit this application on behalf of the applicant, and that the information, including all related submissions, is true and accurate to the best of their knowledge.		
Signature of Person Authorized to Submit Application	(Print or Type)	Name of Signer: Title:	Date
Application Preparer/Contact:		Phone:	

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

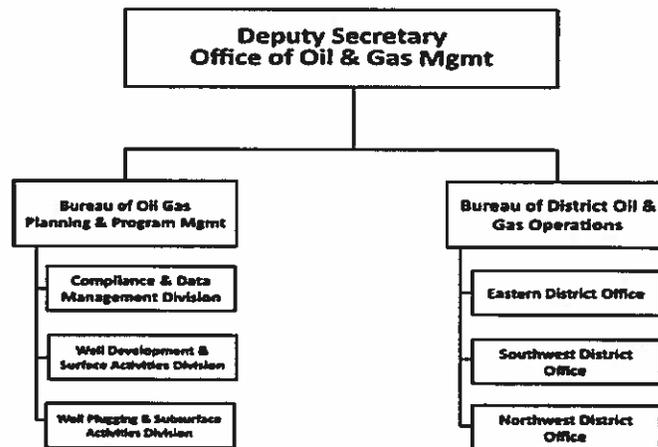
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Pursuant to 25 Pa. Code §§ 78.19(e) (conventional oil and gas wells) and 78a.19(b) (unconventional gas wells), at least every 3 years the Department of Environmental Protection (DEP) will provide the Environmental Quality Board (EQB) with an evaluation of the well permit fees received. DEP last submitted a well permit fee report to the EQB at its January 21, 2014 meeting. In accordance with regulatory requirements, DEP has conducted a comprehensive review of its resource needs to administer the oil and gas oversight program along with projected revenues. This 3-Year Regulatory Fee and Program Cost Analysis Report summarizes that review and analysis. In short, DEP's inspection and program administration responsibilities have increased; however, the number of well permits submitted to DEP does not generate sufficient revenue to cover the costs of administering DEP's oil and gas program. Current fiscal trends will result in a deficit in the first quarter of FY 2019-20.

The well permit fee is paid with the permit application at the beginning of a well's operating life; therefore, it is a one-time source of revenue that is used to fund continuing obligations. A well typically remains active for decades before being plugged, during which time the cost for DEP to conduct investigations of the well site must be borne by the receipt of new drilling permit application fees. While in prior years DEP received enough oil and gas drilling permit fees to meet its basic financial needs, current permit volumes are insufficient to maintain DEP's Office of Oil and Gas Management (Oil and Gas Program) into the future. Despite the lack of funding to support the Oil and Gas Program, its oversight responsibilities have increased.

### BACKGROUND:

DEP's Oil and Gas Program is responsible for overseeing the environmentally responsible development of Pennsylvania's oil and gas resources. The office consists of two bureaus. The organization chart for the Office of Oil and Gas Management is depicted below.



The Bureau of Oil and Gas Planning and Program Management is located in DEP's central office (Harrisburg) and is responsible for administrative, policy and regulatory development functions.

The Bureau of District Oil and Gas Operations consists of three district oil and gas offices located in the oil and gas producing regions of the state and is responsible for permitting, inspection, compliance and enforcement functions.

The Bureau of Oil and Gas Planning and Program Management includes the following three divisions:

*Well Development and Surface Activities* – This division is responsible for developing policies and guidance related to surface activities associated with well site and gathering line design, construction, and operation. This includes waste management and engineered components such as erosion and sediment control structures, post construction stormwater management features, spill and release reporting and remediation, and stream and wetland crossings and encroachments.

*Well Plugging and Sub-Surface Activities* – This division consists of the Subsurface Activities Section and the Well Plugging Section. The Subsurface Activities Section is responsible for the management of subsurface oil and gas activities and offers expertise in drilling, casing, cementing, completion, workover, and production activities and operations. The Well Plugging Section maintains and implements DEP’s Orphaned and Abandoned Well Plugging Program.

*Compliance and Data Management* – This division works closely with DEP's Bureau of Information Technology to oversee the development, operation and maintenance of data management systems that track reports, notifications, records, applications and other information or documents that are submitted to DEP by the regulated community. This division is also responsible for assisting in the development of statewide data management tools such as electronic well permitting and mobile site inspection as well as statewide enforcement efforts related to electronic data submittal.

The Bureau of District Oil and Gas Operations includes three district offices that implement the operational programs in the eastern, northwest, and southwest areas of the state. Staff in the district offices are responsible for permitting and inspecting oil and gas well sites and gathering lines and responding to complaints. The district staff are also responsible for compliance and enforcement activities. The district offices are located in Williamsport, Meadville and Pittsburgh.

The full range of responsibilities and achievements of the Office of Oil and Gas Management can be reviewed in its 2016 Annual Report.

## **PROGRAM FUNDING HISTORY:**

### Original Well Permit Fee

The Oil and Gas Act, which was originally passed on December 19, 1984 and replaced in 2012 by Act 13 (the Act), initially established a \$100 fee for oil and gas well permits. Section 3211(d) of the Act allows the EQB 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.

### 2009 Permit Fee Rulemaking

In April 2009, in response to the dramatic increase in program resources required to regulate unconventional gas development, the EQB increased permit fees for Marcellus Shale wells through a final-omitted rulemaking. The fee structure implemented through that rulemaking increased fees from a flat \$100 to a sliding scale based on the length of the well bore.

At the same time the final-omitted rulemaking was adopted, another rulemaking was developed by the EQB that was functionally equivalent to the final-omitted rulemaking. This latter rulemaking was initiated to allow for public review and comment on the issue of fees.

### 2013 Permit Fee Rulemaking

As a result of the passage of the Act in 2012, additional statutory provisions increased DEP's workload across the agency and particularly in the Office of Oil and Gas Management. On April 23, 2013, DEP presented a proposed rulemaking to the Oil and Gas Technical Advisory Board that streamlined the sliding-scale permit fee structure that EQB adopted in 2009. The 2013 proposed rulemaking eliminated the sliding scale for unconventional operators in lieu of a fixed fee of \$5,000 for horizontal unconventional wells and \$4,200 for vertical unconventional wells. At the time of the proposal, the average fee of an unconventional well permit was \$3,200. The existing sliding-scale permit fee structure for conventional operators was not changed.

The proposed rulemaking was adopted by the EQB on July 16, 2013 with publication for a 30-day public comment period. The proposed rulemaking was published in the *Pennsylvania Bulletin* on September 14, 2013. On January 21, 2014, EQB adopted the final rulemaking and the Independent Regulatory Review Commission approved this final rulemaking on May 1, 2014. The rulemaking became effective on June 14, 2014 when published as final in the *Pennsylvania Bulletin*.

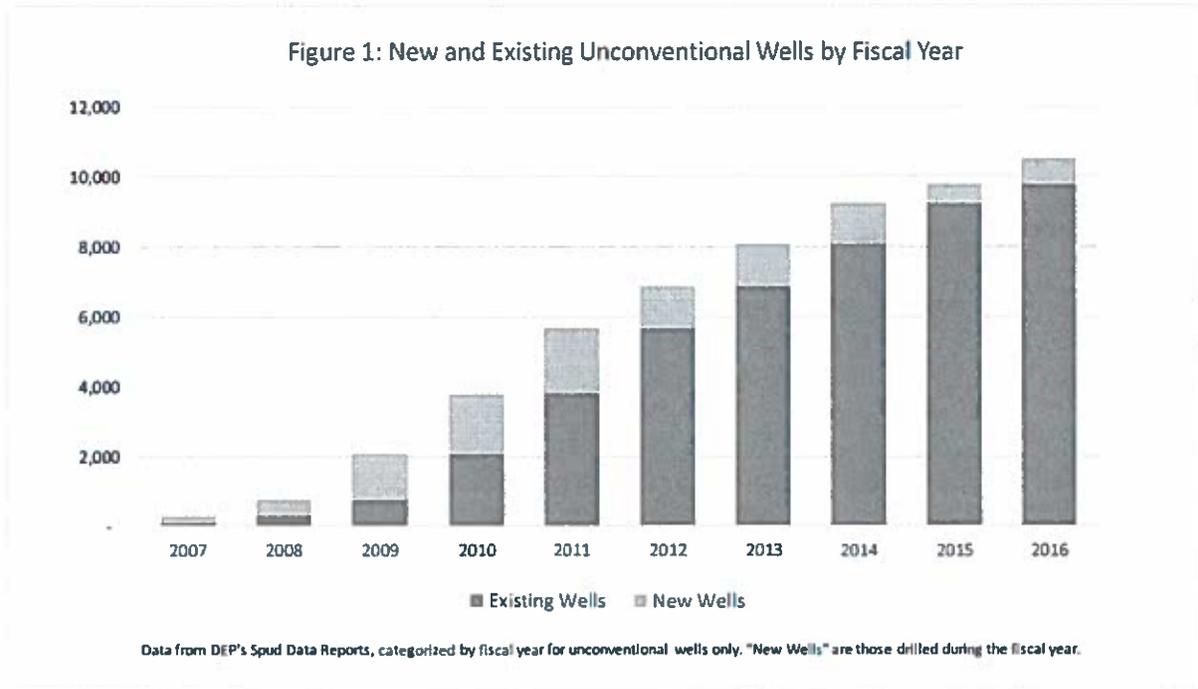
## **ANALYSIS:**

### Workload

Although well permitting and drilling volumes have recently tapered, DEP's workload has increased since DEP's oversight responsibilities do not end when a well is permitted and drilled. For each well that has been drilled in Pennsylvania there are associated well sites, gathering pipelines, access roads, water withdrawal locations, well development impoundments and other support facilities with their own authorization and inspection obligations. In addition, after a permit application is submitted and the fee is paid, the well is drilled and put into production necessitating inspections during the operating life of the well. The initial permit fee provides no ongoing revenue to the Oil and Gas Program for work conducted in future years.

As shown in Figure 1, the universe of active unconventional gas wells has been steadily increasing since 2007 to the present time. Since the unconventional natural gas industry began ramping up in 2007, the number of unconventional gas wells has increased more than ten-fold or

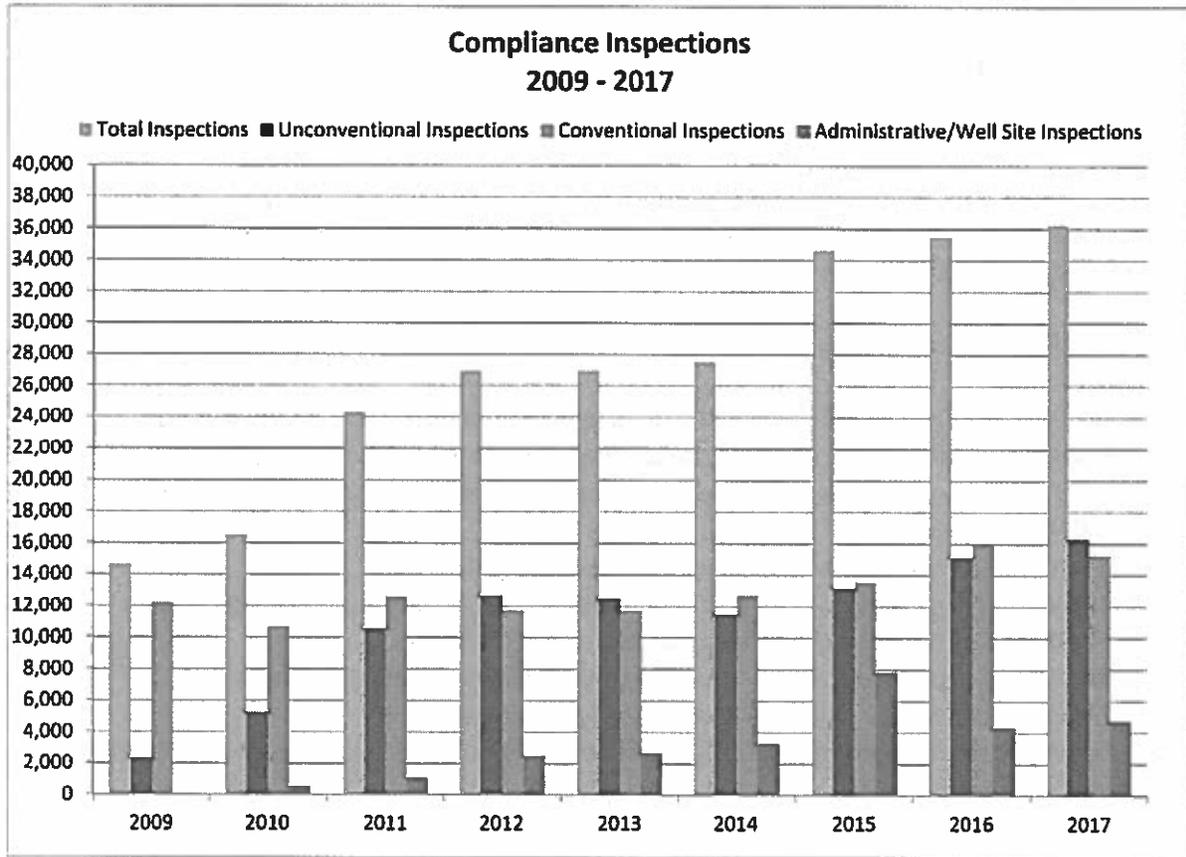
1,000%. Given that the estimated lifespan of an unconventional gas well can exceed 20 years, the number of active gas wells is projected to continue to increase over the next 10 to 15 years before the total inventory of active gas wells begins to stabilize.



DEP employs Oil and Gas Inspectors and Water Quality Specialists to inspect sub-surface and surface related oil and gas operations, respectively. DEP inspectors are also responsible for responding to stray methane gas inspections and citizen complaints related to stray gas events and water supply impacts.

For every well drilled in Pennsylvania, DEP must commit resources to inspect and monitor the increasing universe of wells. As depicted in Figure 2, DEP has increased the total number of compliance inspections at conventional and unconventional well sites from 14,651 to 36,268 between calendar year 2009 and 2017. This represents an increase of more than 147 percent for the number of inspections that have been conducted by DEP staff over this timeframe.

Figure 2: “DEP Compliance Inspections (CY 2009 – 2017)



New wells are accompanied with new infrastructure, including support facilities, water withdrawals, well development impoundments, access roads, and gathering pipelines, further increasing DEP’s oversight obligation, that are not accounted for in the permit fee. There are also several other activities that do not generate fees, such as water withdrawals, alternative waste management facilities, permit transfers, monthly production reports and other data management issues.

Cost-Saving Measures

In response to the decrease in permit revenue, DEP’s Office of Oil and Gas Management has implemented multiple cost-saving measures to conserve available funds until a sustainable funding stream is implemented. First, DEP has reduced its oil and gas staff complement from 226 employees to 190 employees. Staff costs are the largest expenditure required to administer an effective Oil and Gas Program. During FY2016-17, personnel costs were on average \$1.6 million per month, while operating expenses and fixed asset purchases averaged less than \$125,000 per month.

The Office of Oil and Gas Management has also reduced operating costs, including the purchase of fixed assets and supplies. Over the past three fiscal years, DEP’s oil and gas program has

reduced operating and fixed asset costs from \$2,456,084 to \$1,497,356. This represents a 39% reduction in costs.

### New Policy Initiatives

As a result of increased workload described above and the continually advancing oil and gas industry, DEP has increasing responsibilities to develop guidance, update forms, provide training, improve data management and to study and evaluate new and evolving issues all to ensure that the Oil and Gas Program operates effectively and efficiently while providing clarity to the regulated community. Examples include:

- Develop implementation guidance, training, procedures and forms to implement Chapter 78a
- Industry and DEP training on well site/natural gas gathering line permitting issues
- Review of underground injection control well permit applications
- Development of seismic protocols and monitoring for hydraulic fracturing and underground injection
- Coordination of coal and natural gas interests and issues
- Evaluation of methane and stray gas emissions from orphan and abandoned wells
- Evaluation of natural gas storage in underground reservoirs
- Addressing orphan and abandoned well issues efficiently and effectively
- Development of data submission and management tools
- Development of electronic permitting platforms for all permits issued by the Office of Oil and Gas Management
- Development of mobile inspection platforms for both surface and subsurface inspections

### Plugging Orphan and Abandoned Wells

An ongoing issue that remains severely underfunded relates to orphan and abandoned oil and gas wells (legacy wells) across Pennsylvania. In 2000, the Independent Petroleum Association of America estimated that 325,000 legacy wells exist in the Commonwealth. Since 1956, 131,000 wells have been permitted to operate in Pennsylvania and DEP has located 8,300 legacy wells and has recorded them in an electronic database. This results in approximately 200,000 legacy wells that are currently unaccounted for in Pennsylvania.

Legacy wells pose risks to human health and the environment and these risks will continue to increase in future years if this situation is not addressed. Currently, DEP does not have the financial resources to adequately address this problem. For example, this fiscal year DEP received less than \$755,000 to plug abandoned wells from the surcharges contained in the Act. 58 Pa.C.S. § 3271(b) – (c). This is only sufficient to address wells that pose an imminent risk to public safety and DEP was only able to plug four such wells this fiscal year.

The Well Plugging Fund contains no surplus monies to aid in the plugging of abandoned and orphan wells. Despite its name, the purpose of the Well Plugging Fund is to pay for the general operations of the Oil and Gas Program, and its plugging operations are funded by the Abandoned Well Plugging Fund and the Orphan Well Plugging Fund. The Abandoned and Orphan Well

Plugging Funds receive revenue from a nominal permit surcharge authorized by the 2012 Oil and Gas Act (\$150 per oil well permit and \$250 per gas well permit). 58 Pa.C.S. § 3271. The permit surcharge is grossly insufficient to cover the cost of properly plugging all orphan and abandoned wells that currently exist in Pennsylvania. At current surcharge rates and per-well plugging costs, DEP will not have any material impact on reducing the number of unplugged orphan and abandoned wells in Pennsylvania for more than 100 years.

**Current Revenue and Permit Fee Status:**

The cost to operate the Office of Oil and Gas Management is funded through the receipt of well permit fees, civil penalties and \$6 million in impact fees that are allocated annually to DEP in accordance with the 2012 Oil and Gas Act. 58 Pa.C.S. § 2314(c.1)(3). The \$6 million impact fee could, by law, be distributed to support DEP's Oil and Gas, Clean Water, and Clean Air Programs, but the Department has been unable to do so since all such funding has been required to maintain a positive balance in the Well Plugging Fund. No General Fund revenue is used to support the Office of Oil and Gas Management.

As shown in Attachment A, permit fee revenue increased from \$9.5 million in FY2012-13 to \$13.5 million in FY2014-15. This increase is attributed to moving from the sliding scale permit fee to the fixed permit fee; however, permit revenues did not remain at this level. Permit fee income dropped by more than 41% in fiscal year 2015-16 and remained 28% below the FY2014-15 income threshold in the second fiscal out-year, due to the decline in permit applications received from oil and gas operators. The number of permits received from FY2014-15 to FY2016-17 are listed below.

	<b>Number of Unconventional Permits Received</b>
FY2014-15	2,533
FY2015-16	1,646
FY2016-17	1,993

Expenditures, in contrast to revenues, have remained steady with limited growth, and are tied to the Program's responsibilities. Personnel remains the dominant expenditure, approximately 90% of total operating costs. These personnel are necessary to review permit applications and inspect facilities, in service to the oil and gas industry and the health and safety of Pennsylvania's citizens.

**CONCLUSION:**

When the unconventional well permit fee was amended in June 2014, DEP projected that the \$5,000 flat fee would be adequate to support the full complement of 226 Oil and Gas Program staff, provided DEP received 2,600 unconventional well permits annually (along with \$6 million in impact fees). While that projection was accurate during the pendency of the previous rulemaking, the number of oil and gas permits received in FY2015-16 and FY2016-17 was significantly lower than anticipated.

Although the number of unconventional natural gas permits have fallen off dramatically, the volume of natural gas produced by unconventional operators has continued to steadily rise. In calendar year 2016, the total volume of natural gas produced in Pennsylvania climbed to an all-time high of 5.1 trillion cubic feet. Pennsylvania continues to maintain the distinction as the second largest producer of natural gas in the nation, behind Texas.

Given the low number of permits received over the past two fiscal years and all indications that permit volumes are not expected to rebound in the near term, the current well permit fee is no longer sufficient to fund DEP's Oil and Gas Program; even with substantial cost-saving measures that have been implemented as described above. While revenues are declining, the Oil and Gas Program's responsibility to inspect and monitor existing wells continues to increase as the inventory of active oil and gas wells grows in addition to the other workload requirements and policy initiatives described above.

Despite reductions in staff and operating expenditures, the Office of Oil and Gas Management will soon reach a funding deficit at current well permit fee levels. As depicted in **Attachment A**, the Well Plugging Fund is expected to reach a negative balance by the first quarter of FY 2019-20, given current expense and revenue projections.

A regulation should be developed to address the disparity between the program income generated by permit fees and DEP's costs of administering the Oil and Gas Program with an objective of ensuring fees meet program costs and are self-sustaining. 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 Environmental Quality Board revise the permit fees for all unconventional wells and charge a flat fee of \$12,500. The Department also recommends that the fees for conventional wells, which are typically vertical wells, remain unchanged.

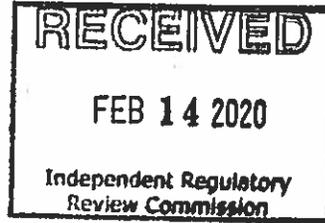
**ATTACHMENT A**

**COMPARATIVE FINANCIAL STATEMENT  
WELL PLUGGING RESTRICTED REVENUE ACCOUNT**

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
							Projection	Projection
<b>BEGINNING BALANCE:</b>	5,836,205	2,975,275	11,093,426	11,118,108	14,005,857	10,265,076	7,321,124	7,114,846
<b>Revenue:</b>								
Permit Fees	11,316,801	9,465,100	11,387,865	13,504,728	7,910,959	9,703,101	9,500,000	9,500,000
Fines and Penalties	2,287,519	2,346,923	1,419,447	4,403,553	4,076,710	9,590,432	2,000,000	2,000,000
Act 13 Impact Fees	-	12,000,000	6,000,000	6,000,000	6,000,000	-	12,000,000	6,000,000
Other Revenue	(132,900)	51,479	(96,981)	66,415	(101,327)	(168,185)	(454,522)	(75,000)
<b>Total Revenue:</b>	13,471,420	23,863,502	18,710,331	23,974,696	17,886,341	19,125,347	23,045,478	17,425,000
<b>Total Funds Available:</b>	19,307,625	26,838,777	29,803,757	35,092,803	31,892,199	29,390,423	30,366,602	24,539,846
<b>Expenditures:</b>								
Personnel	(14,300,038)	(13,069,356)	(16,263,904)	(17,984,651)	(19,450,600)	(19,777,394)	(20,155,000)	(21,153,000)
Operating	(1,552,936)	(1,733,091)	(1,472,626)	(1,809,728)	(1,457,284)	(1,392,752)	(2,154,756)	(2,234,659)
Fixed Assets	-	(332,120)	(383,578)	(646,356)	(73,888)	(104,604)	(242,000)	(358,000)
Transfers and Other	(479,376)	(610,785)	(565,541)	(646,210)	(645,351)	(794,550)	(700,000)	(700,000)
<b>Total Expenditures:</b>	(16,332,350)	(15,745,352)	(18,685,649)	(21,086,946)	(21,627,122)	(22,069,300)	(23,251,756)	(24,445,659)
<b>ENDING BALANCE:</b>	2,975,275	11,093,426	11,118,108	14,005,857	10,265,076	7,321,124	7,114,846	94,187

Note: The Act 13 Impact Fee payment for 2016-17 was received after the end of the fiscal year, and therefore is not shown until 2017-18.





FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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

By: (Deputy Attorney General)

DATE OF APPROVAL

Check if applicable Copy not approved. Objections attached.

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

DEPARTMENT OF ENVIRONMENTAL PROTECTION ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-542

DATE OF ADOPTION JANUARY 21, 2020

By: Patrick McDonnell

TITLE PATRICK MCDONNELL CHAIRPERSON

EXECUTIVE OFFICER CHAIRPERSON OR SECRETARY

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

By: Marissa J. Lehe

FEB 11 2020

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 FINAL RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION ENVIRONMENTAL QUALITY BOARD

Unconventional Well Permit Application Fees

25 Pa. Code Chapter 78a



**NOTICE OF FINAL RULEMAKING**  
**TITLE 25—ENVIRONMENTAL PROTECTION**  
**ENVIRONMENTAL QUALITY BOARD**  
**[ 25 PA. CODE CH. 78A ]**

**Unconventional Well Permit Application Fee Amendments**

The Environmental Quality Board (Board) amends §§ 78a.1 and 78a.19 (relating to definitions; and permit application fee schedule) to read as set forth in Annex A. This final-form rulemaking satisfies the obligation of the Department of Environmental Protection (Department), as specified in § 78.19(e) (relating to permit application fee schedule) and § 78a.19(b), to provide the Board with an evaluation of the well permit application fees in Chapters 78 and 78a (relating to oil and gas wells; and unconventional wells) and recommend regulatory amendments to address any disparity between the income generated by well permit application fees and the cost of administering 58 Pa.C.S. Chapter 32 (relating to development) (2012 Oil and Gas Act) by the Department's Office of Oil and Gas Management (Oil and Gas Program or Program). This final-form rulemaking increases the well permit application fees from \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells to \$12,500 for all unconventional well permit applications to sustain the Program at current staff levels and operating costs. This final-form rulemaking does not amend the current fees for conventional well permit applications. This final-form rulemaking also removes definitions for "nonvertical unconventional well" and "vertical unconventional well" related to well permit applications as well permit application fees will now be the same for all unconventional well permit applications.

This final-form rulemaking was adopted by the Board at its meeting on January 21, 2020.

*A. Effective Date*

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

*B. Contact Persons*

For further information, contact Kurt Klappkowski, 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 Elizabeth Davis, Assistant Director, 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 Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department's web site at [www.dep.pa.gov](http://www.dep.pa.gov) (select "Public Participation," then "Environmental Quality Board (EQB)").

### *C. Statutory Authority*

This final-form rulemaking is being made under the authority of 58 Pa.C.S. § 3274, which directs the Board to adopt regulations necessary to implement the 58 Pa.C.S. Chapter 32 (relating to development), 58 Pa.C.S. §§ 3201–3274 (2012 Oil and Gas Act); 58 Pa.C.S. § 3211(d), which authorizes the Board to establish well permit application fees that bear a reasonable relationship to the cost of administering the 2012 Oil and Gas Act; 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 Summary*

The purpose of this final-form rulemaking is to increase unconventional well permit application fees to sustain the Program at current staff levels and operating costs. This fee increase is needed because the current revenue generated by the well permit application fees are not adequate to cover the Program's current costs despite recent staff reductions and the implementation of several cost-saving measures.

The fee increase in this final-form rulemaking is intended to cover the costs to sustain the existing Program. The other sources of revenue currently available to the Program, including conventional well permit application fees and the \$6 million distributed to the Department from the Impact Fee established by 58 Pa.C.S. Chapter 23 (relating to Unconventional Gas Well Fee) currently allocated to the Program, are needed to provide a funding buffer. This buffer is necessary in the event that the actual permit applications the Department receives in the years following this final-form rulemaking do not meet the permit application projections that form the basis of this final-form rulemaking, as well as restore the Program to a full staff complement of 226 people, hire necessary additional staff and fund program enhancements.

### *Statutory Framework for Well Permit Application Fees*

The Department is tasked with implementing the 2012 Oil and Gas Act. Under Section 3202 of the 2012 Oil and Gas Act (relating to declaration of purpose of chapter), the purposes of the 2012 Oil and Gas Act are to:

- (1) Permit optimal development of oil and gas resources of this Commonwealth consistent with protection of the health, safety, environment and property of Pennsylvania citizens.
- (2) Protect the safety of personnel and facilities employed in coal mining or exploration, development, storage and production of natural gas or oil.
- (3) Protect the safety and property rights of persons residing in areas where mining, exploration, development, storage or production occurs.
- (4) Protect the natural resources, environmental rights and values secured by the Constitution of Pennsylvania. (58 Pa.C.S. § 3202).

The 2012 Oil and Gas Act contains requirements regarding the exploration, development and recovery of oil and gas resources in this Commonwealth, including permitting, bonding, well location restrictions, protecting water supplies, containment, well control emergencies, restoration, plugging, reporting and enforcement. See 58 Pa.C.S. §§ 3201–3274. Regulations found at 25 Pa. Code Chapter 78 (relating to Oil and Gas Wells) and Chapter 78a (relating to Unconventional Wells) implement the 2012 Oil and Gas Act. The Department administers the 2012 Oil and Gas Act and its implementing regulations through the functions of the Program, including data management, staffing, well permitting, surface activity permitting, inspections, compliance, and policy and program development.

Section 3211(d) of the 2012 Oil and Gas Act provides: “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 [the 2012 Oil and Gas Act].” 58 Pa.C.S. § 3211(d). A well permit application fee is a one-time payment submitted with each well permit application that is deposited into the Well Plugging Fund as a dedicated revenue source for the Program. This fee is set by the Board in regulation and must be reasonably related to the cost of the Program to administer the 2012 Oil and Gas Act. The fees do not provide ongoing revenue to the Program. For that reason, the fees received in a given year must fund all of the Program’s functions beyond permitting.

Based on this funding mechanism, the Board has established reasonable fees to fund Program costs. Prior fee increases have established a fee structure based on several factors, including annual well permit applications projections, the different types of wells, total well bore length, the costs to develop the different well types and ability to pay.

In accordance with 25 Pa. Code §§ 78.19(e) and 78a.19(b), the Department evaluates these fees and recommends regulatory amendments to the Board every three years 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 the Program is self-sustaining.

### ***Prior Well Permit Applications Fee Increases***

The Oil and Gas Act, originally enacted in 1984, established a \$100 well permit application fee. See 58 P.S. §§ 691.201(d), repealed by the act of February 14, 2012, P.L. 87, No. 13, § 3(2). This fee remained in place for 25 years. In 2009 and 2014, the Board increased well permit application fees to fund the Program’s increasing expenses and to establish a fee structure that sets different amounts for the different types of wells, including unconventional, conventional and home use wells. As stated above, the Board has established reasonable fees to fund Program costs for these different types of wells based on several factors, including annual well permit application projections, total well bore length, the costs to develop the different well types and ability to pay.

### ***Declining Well Permit Revenues***

When the Board last amended the unconventional well permit fees in 2014, it eliminated a sliding scale and established a flat fee of \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells. The Board projected that those increased fees would be adequate to support the Program with a full complement of 226 staff provided the Program receives 2,600 unconventional well permits annually.

However, while that projection was accurate during the pendency of that rulemaking, the number of unconventional well permit applications received since that time has been lower than anticipated. In Fiscal Year (FY) 2014-2015, the Program received 2,533 unconventional well permit applications. In FY 2015-2016, the Program received 1,646 unconventional well permit applications. And in, FY 2016-2017, the Program received 1,993 unconventional well permit applications. As a result, the well permit application fees have not generated the revenue needed to fund Program costs.

### ***Cost-Saving Measures***

Because of declining unconventional well permit application fee revenues, the Program reduced staff over time from 226 employees to 190 employees today. The Program also reduced operating costs, including the purchase of fixed assets and supplies. Over three years, the Program reduced operating and fixed asset costs by 38%.

### ***Increasing Workload***

Despite declining well permit application revenues, the Program's workload has increased. Each year more wells are drilled than plugged resulting in a growing inventory of wells to be inspected to ensure compliance with the 2012 Oil and Gas Act and its implementing regulations. There is also a growing number of support facilities, including gathering pipelines, well development impoundments, water withdrawals and other support facilities, with separate authorizations and inspection obligations. As the result of a continually growing oil and gas industry, the Program has increasing responsibilities to develop guidance, update forms, provide training, improve data management, and to study and evaluate new and evolving issues all to ensure that the Program operates effectively and efficiently while providing clarity to the regulated community. Equally important are the Program's responsibilities related to gas storage as well as orphaned and abandoned wells. Finally, the Program must ensure that it responds to complaints, emergencies and requests for public records related to the implementation of the 2012 Oil and Gas Act. All of these activities are essential program functions beyond well permit application reviews that are necessary to administer the 2012 Oil and Gas Act and are paid for by the one-time well permit application fees.

As a result, the Program now struggles to meet its gas storage field inspection goals, consistently achieve appropriate permit review time frames, adequately fund training opportunities for staff and provide trainings for the industry. Important Program development initiatives, such as policies, best practices and technical guidance documents, have been put on hold indefinitely due to the lack of sufficient staff to develop and update these important pieces of the Program

necessary to administer the 2012 Oil and Gas Act. In short, the Program is challenged to provide an adequate level of high-quality service to the public and to the industry.

***Fee Report***

To thoroughly address prior inaccurate well permit application projections and to comply with 25 Pa. Code §§ 78.19(e) and 78a.19(b), which require the Department to provide an evaluation of well permit applications fees and recommend regulatory changes every three years, the Department prepared and presented to the Board a 3-Year Regulatory Fee and Program Cost Analysis Report (Fee Report) at the Board’s April 17, 2018, meeting. A copy of the Report is available from the persons listed in Section B.

The Fee Report provided that the Program’s projected budget to sustain the Program with 190 staff and operating costs in FY 2018-2019 would be approximately \$25 million. Given this projected budget and the current well permit application fees, the Program would need to receive 5,000 nonvertical unconventional well permit applications per year to sustain the Program. However, based on the average of annual well permit applications the Department received in FYs 2015-2016, 2016-2017 and 2017-2018 discussed above, the Department anticipated receiving 2,000 unconventional well permit applications per year. For that reason, the Department recommended that the Board revise the unconventional well permit application fee to \$12,500. This analysis provided the basis for the proposed rulemaking.

***Current Projections***

Based on the Fee Report’s analysis of unconventional well permit application trends for FYs 2014-2015, 2015-2016, and 2016-2017, the Program continues to anticipate that it will receive approximately 2,000 unconventional well permit applications per year. Additionally, the Program continues to project the costs to fund the Program at its reduced complement of 190 employees and operating costs at approximately \$25 million as explained in the table below. For this reason, as recommended in the Fee Report and in the proposed rulemaking, this final-form rulemaking establishes an increased unconventional well permit application fee of \$12,500.

Expense	Cost (in dollars)
Staff (190 positions at \$106,000 per staff person)	20,140,000
Operating Expenses (FY2018-19)	4,519,000
<b>TOTAL Cost</b>	<b>24,659,000</b>

The Department’s well permit application projections are reasonable given the challenges in predicting the number of well permit applications. It is significant that in FY 2017-2018, the Department received 1,674 unconventional well permit applications. And in FY 2018-2019, the Department received 1,684 unconventional well permit applications. For the first half of FY 2019-2020, the Department is on track to receive fewer than 1,600 unconventional well permit applications. The variability of unconventional well permit applications can be attributed to

various market and industry changes. The price of natural gas has remained low, which industry analysts suggest is the result of supply-demand imbalances between the Appalachian region and the rest of the United States market. It might also be because the first few years of Marcellus Shale gas development constituted an initial boom and was not representative of drilling patterns in a more mature shale production market. Also, improvements in technology are allowing operators to extract more gas from each well, thus requiring fewer wells to satisfy the same demand. All of these trends are outside of the Department's control, may be subject to a vacillating commodity markets, and not readily predictable.

Because of this reasonable uncertainty, it is critical that the other sources of revenue currently available to the Program, including conventional well permit application fees and the \$6 million distributed to the Department from the Impact Fee established by 58 Pa.C.S. Chapter 23 (relating to Unconventional Gas Well Fee) currently allocated to the Program, provide a funding buffer in the event that the actual permit applications the Department receives in the years following this final-form rulemaking do not meet the permit application projections. If that happens, the Program will need these other revenue sources to sustain the Program. If not, these funds will be allocated for the additional Program needs described below.

#### ***Other Revenue Sources***

Once received, unconventional and conventional well permit application fees are placed in the Well Plugging Fund as a dedicated revenue source for the Program. In addition to the one-time fee that the Department receives with each well permit application, the Program has the following other sources of revenue: (1) conventional well permit application fees; (2) an appropriation from the Act 13 Impact Fees; and (3) incidental civil penalties collected for violations of the 2012 Oil and Gas Act (section 3271(a) of the 2012 Oil and Gas Act (relating to well plugging funds)). No General Fund revenue is used to support the Program.

#### ***Conventional Well Permit Application Fees***

Section 78.19(a) provides a sliding scale for conventional well permit applications based on total well bore length from \$250 for a well bore up to 2,000 feet to \$1,950 for a well bore between 11,501 feet to 12,000 feet. See 25 Pa. Code § 78.19(a). Conventional wells exceeding 12,000 feet pay \$1,950 plus \$100 for every 500 feet the well bore extends over 12,000 feet. See 25 Pa. Code § 78.19(b). Home use wells with a well bore length of 1,500 feet or less pay a \$200 well permit application fee. See 25 Pa. Code § 78.19(e).

The Department receives approximately 240 conventional well permits per year. The average conventional well permit application fee is approximately \$365.

Similar to unconventional wells, the number of conventional well permit applications has declined in recent years. This decrease in applications has resulted in less revenue from conventional well permit application fees. In FY 2015-2016, the conventional well permit application fee revenue was \$97,750. In FY 2016-2017, the conventional well permit application fee revenue was \$84,300. And in FY 2017-2018, the conventional well permit application fee revenue was \$76,973. In the proposed rulemaking, the Board stated the conventional well permit

application fees were not included in the fee analysis for this rulemaking. To clarify, these fees are included in the Program's overall budget, and the revenue collected from the fees represents less than 0.5% of the Program's annual operating costs.

### *Act 13 Impact Fee*

Act 13 of 2012, 58 Pa.C.S. §§ 2301–3504 (Act 13), established an annual impact fee for the unconventional well industry and provided for the collection and distribution of these fees (Act 13 Impact Fees). Under Section 2314 of Act 13, all Act 13 Impact Fees are collected and deposited in the Unconventional Gas Well Fund administered by the Pennsylvania Public Utility Commission. In accordance with Section 2314(c.1)(3), \$6 million of the annual fees collected are distributed to the Department “for the administration of [Act 13] and the enforcement of acts relating to clean air and clean water.” See 58 Pa.C.S. § 2314(c.1)(3).

During the proposed rulemaking process, the Board stated that the \$6 million distributed to the Department from the Act 13 Impact Fee were not included in the fee analysis. To clarify, these fees are included in the Program's overall budget. Currently, the \$6 million appropriated to the Department from the Act 13 Impact Fees is allocated to the Program. Significantly, these fees are not dedicated solely to the Program and may be used to support the Department's air and water programs. Allocation of these funds ultimately depends on the Department's immediate needs. The Department has determined that it is currently appropriate for the Program to receive all \$6 million dollars from the Department's Act 13 Impact Fee appropriation due to declining well permit application revenue.

### *Civil Penalties*

The Program also receives revenue from fines and civil penalties assessed for violations of the 2012 Oil and Gas Act. The Department has not included fines and civil penalties in its well permit application fee analysis, because relying on penalties to fund fundamental elements of a regulatory program is not appropriate and is contrary to sound public policy.

### *Chapter 102 and Chapter 105 Fees*

The Department receives fees from permit applications under 25 Pa. Code Chapters 102 and 105, including the Erosion and Sediment Control General Permit. These fees are not currently distributed to the Program. Instead, they are deposited into the Clean Water Fund. These fees are committed to funding critical operations that support County Conservation Districts as well as Department staff who, among other responsibilities, provide support and training to staff within the Program that review Chapter 102 and 105 permit applications and inspect permitted projects. In the Department's analysis of these fees, it was determined that if the Chapter 102 and Chapter 105 permit application fees were re-allocated to the Program, the Program would receive less of the \$6 million from the Act 13 Impact Fees because the Chapter 102 and Chapter 105 programs would then need a portion of those funds to make up for this reallocation.

## *Legacy Wells*

Significantly, the well permit application fee does not include the Program's costs to plug orphaned and abandoned wells. Section 3271(b) of the 2012 Oil and Gas Act requires a \$50 surcharge paid in addition to the well permit application fee. This surcharge is deposited into a restricted revenue account known as the Abandoned Well Plugging Fund to indemnify the Commonwealth for the cost of plugging abandoned wells. Section 3271(c) of the 2012 Oil and Gas Act requires a \$100 surcharge for oil wells and a \$200 surcharge for gas wells paid in addition to the well permit application fee. These surcharges are deposited into a restricted revenue account known as the Orphan Well Plugging Fund for the Department to plug orphan wells. These surcharges have not changed since the act of December 19, 1984 (P.L. 1140, No. 223) (58 P.S. §§ 601.101—601.605) (repealed by the act of February 14, 2012 (P.L. 87, No. 13)). Significantly, these permit surcharges are insufficient to cover the cost of properly plugging all legacy wells in Pennsylvania.

## *Program Enhancements and Restoring Program Staff Complement*

In the event that the actual number of permit applications that the Program receives meet the permit application projections in this final-form rulemaking, the \$6 million Act 13 Impact Fee revenue and conventional well permit application fees are available for needed program enhancements, restoring staff complement and adding necessary staff to administer the 2012 Oil and Gas Act and its implementing regulations.

The Program estimates that approximately \$6.5 million is needed for the following program enhancements and staffing needs. The Department developed these estimates for this final-form rulemaking. These estimates clarify and update prior estimates in the Fee Report and proposed rulemaking. Notably, the staffing numbers have been updated to reflect that the Program recently reorganized the Office of Oil and Gas Management to create three new management positions to oversee statewide subsurface and surface permitting. Additionally, the current estimated cost of an employee based on standard benefits and average salary is \$106,000 and prior estimates were based on a prior estimated cost of \$100,000 per employee.

### *Enhanced electronic data management*

The Program will allocate a portion of any available revenue to information technology projects for the Program. These include enhancing the current mobile digital inspections tools, digitizing forms and developing new databases that will better enable analysis of the effectiveness of the regulatory programs. This investment in technology will yield efficiencies for the Program 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 Program's work more transparent to the public as electronic documents can be easily made available online.

Enhancements to the mobile digital inspection platform and mobile devices will create additional improvements and efficiencies through the establishment of a risk-based inspection protocol. Through the protocol, wells will be ranked and color coded based on a hierarchy of need for an

inspection. This will give inspectors and supervisors a simple way of prioritizing their work and ensuring that all wells are inspected an appropriate number of times during all phases of a well's life.

The Program also intends to digitize all other oil and gas related forms. These include the well record and completion report, alternative waste management authorization request, well plugging forms and others. Electronic receipt and storage of the permitting documents and forms will also result in significant savings in terms of records storage and of staff time and costs associated with requests from the public to access records. The public will enjoy greater access to timely data and information as the Department receives it.

Finally, the Department intends to develop additional databases to house information it collects to enable better analysis of Program effectiveness. Two of these databases include water sample results and spills. The Program receives thousands of ground and surface water sample results; these records are not managed in a manner that allows analysis over time and location. A properly designed data management system would give the Department the ability to analyze trends in water quality across this Commonwealth. Similarly, the spills database could produce reports on spill volumes, types, locations and causes, which could provide the basis of Program enhancements and industry improvements.

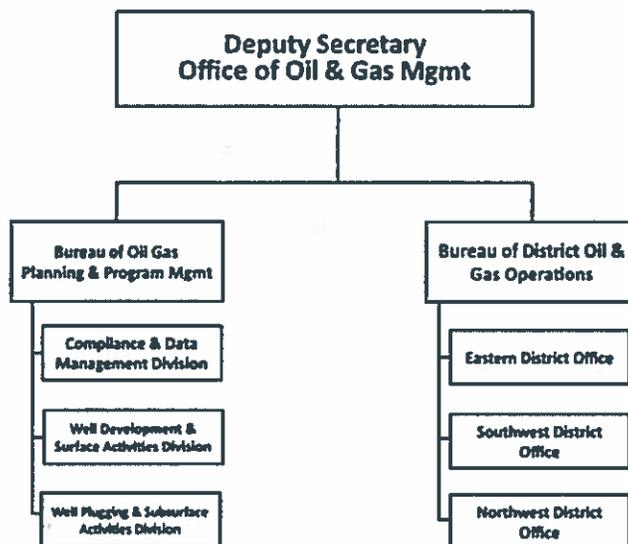
The enhanced electronic data management needs previously described are not new concepts. They are simply needs that are not yet met because the Department lacks the resources to pay for the information technology services required to meet these needs and create these tools. The Program currently pays the Bureau of Information Technology (BIT) \$700,000 each year. However, BIT services to the Program actually cost \$2 million annually. Allocating an additional \$1.3 million to fully fund these program enhancements will enable the Program to support the Program's information technology needs.

#### *Additional Program Staffing*

As discussed above, as a result of declining unconventional well permit application fee revenue following the 2014 fee rulemaking, the Program reduced staff from 226 employees to 190 employees. Allocating the other revenue sources to additional program staffing will enable the Program to restore previously reduced staff positions and add staff needed to administer the 2012 Oil and Gas Act and its implementing regulations.

In 2016, the Program conducted an analysis of permitting, inspections and compliance processes and developed a tool to aid in Program planning. To develop the current workload analysis, annual permitting, inspection and compliance-related data from 2017 was entered into the workload tool. This workload tool provides a high-level assessment of current staffing needs within the Program based on current data. However, the workload tool is limited and does not capture all of the various job duties performed by the Program. For example, it does not analyze staffing levels within the Bureau of Oil and Gas Planning and Program Management (BPPM) because of the significant variability of the work performed by those staff. The output of the model is confined to the Bureau of District Oil and Gas Operations (DOGO) staff only.

The Program consists of two Bureaus:



*The Bureau of District Oil and Gas Operations*

DOGO consists of three district offices primarily headquartered in three regional office locations (Pittsburgh, Meadville and Williamsport) in the oil and gas producing regions of this Commonwealth. DOGO staff are responsible for permitting, inspection, compliance and enforcement functions.

DOGO includes the following:

Permitting

When the above-referenced staff reductions and cost-saving measures occurred, it included nine permitting positions. As a result, the Program faced challenges related to meeting permit review timeframes. To address this shortcoming, the Program reorganized the Office of Oil and Gas Management to create three new management positions to oversee statewide subsurface and surface permitting. The Program also reclassified certain vacant positions to well permit geologist positions. The well permit review timeframes then improved. For example, in the Southwestern District Office, the well permit review timeframes decreased from over 100 days to an average of approximately 35 days. For Erosion and Sediment Control General Permits, the review times decreased from more than 230 to approximately 125 days.

To further improve review timeframes, the Program needs to restore the nine previously eliminated permitting positions and fund the three new management positions resulting from the reorganization. These 12 positions would cost approximately \$1.27 million.

## Inspections

Inspections staff perform the majority of the Program's field inspection and investigatory work. Inspector positions include water quality specialists, oil and gas inspectors, environmental protection specialists and field geologists. These inspectors are also responsible for responding to citizen complaints regarding oil and gas activities throughout the Commonwealth. More inspectors of all types are needed across this Commonwealth. Two areas of critical need involve the inspection of gas storage wells and oil and gas inspectors focused drilling and construction of new wells and plugging legacy wells.

The workload tool estimates 16 additional inspectors are needed including three just for gas storage wells inspections at a cost of \$1.7 million to fund these positions.

## Compliance

Compliance specialists perform a variety of important job duties, including handling and management of enforcement and compliance cases, development and execution of compliance documents, and document gathering of responsive information for the many requests from the public for records. Compliance specialists perform the majority of the duties responding to requests for records as many of the requests are for records regarding the Program's enforcement efforts to ensure compliance with the 2012 Oil and Gas Act. Compliance specialists are vital to the Program's administration of the 2012 Oil and Gas Act as they directly interface with the citizens of this Commonwealth residing in areas of active oil and gas development.

The workload tool estimates that 11 additional compliance positions are needed to perform these various duties at a cost of \$1.17 million annually to fund these positions.

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

BPPM is in the Department's Central Office (Harrisburg) and is responsible for administrative, policy and regulatory development functions.

BPPM includes the following:

#### Division of Well Development and Surface Activities

The Division of Well Development and Surface Activities is responsible for developing policies and guidance regarding surface activities associated with well site and gathering line design, construction and operation. This includes waste management and engineered components, such as erosion and sediment control structures, postconstruction stormwater management features, spill and release reporting and remediation, and stream and wetland crossings and encroachments.

## Division of Well Plugging and Subsurface Activities

The Division of Well Plugging and Subsurface Activities includes the Subsurface Activities Section and the Well Plugging Section. The Subsurface Activities Section is responsible for the management of subsurface oil and gas activities and offers expertise in drilling, casing, cementing, completion, workover, and production activities and operations. The Well Plugging Section maintains and implements the Department's Orphaned and Abandoned Well Plugging Program.

## The Division of Compliance and Data Management

The Division of Compliance and Data Management works closely with BIT to oversee the development, operation and maintenance of data management systems that track reports, notifications, records, applications and other information or documents that are submitted to the Department by the regulated community. This division is also responsible for assisting in the development of Statewide data management tools, such as electronic well permitting and mobile site inspection, as well as Statewide enforcement efforts related to electronic data submissions.

As a result of staff reductions, BPPM has postponed several policy development projects including updated guidance documents, public information, internal training, external training, modernized well plugging regulations, standards for storing mine influenced water in well development impoundments and an established area of alternative methods for hydraulically fracturing Utica wells in western Pennsylvania. The Program estimates that 11 BPPM positions at a cost of \$1.17 million would enable the Program to begin work on these and other important projects.

In sum, based on prior staff reductions and the workload tool, the Program estimates that it needs 49 additional positions at a cost of approximately \$5.2 million to administer the 2012 Oil and Gas Act and its implementing regulations. Because of new permit review tools and mobile inspection tools, the Program will continue to evaluate staffing and hire staff when necessary and when funds are available.

## ***No Increase to Conventional Well Permit Application Fees***

As stated in the Fee Report, the Department decided to not increase conventional well permit application fees for conventional wells as a solution to correcting this funding imbalance. Significantly, Section 3211(d) of the 2012 Oil and Gas Act requires that well permit application fees bear a "reasonable relationship" to the cost of administering the 2012 Oil and Gas Act. The determination to increase only unconventional well permit application fees and not conventional well permit applications is (1) within the Board's granted authority under Section 3274 of the 2012 Oil and Gas Act to promulgate regulations to establish a permit application fee under Section 3211(d) of the 2012 Oil and Gas Act for each application for a well permit which bears a reasonable relationship to the cost of administering the 2012 Oil and Gas, (2) advances the purposes of the 2012 Oil and Gas Act in Section 3202 of the 2012 Oil and Gas Act, and (3) is not contrary to the express language in the 2012 Oil and Gas Act.

Conventional well drilling has declined significantly over the last few years. In FY 2015-2016, the Program received 287 conventional well permit applications generating \$97,750. In FY 2016-2017, the Program received 205 conventional well permit applications generating \$84,300. In FY 2017-2018, the Program received 225 conventional well permit applications generating \$76,973. If the Program projects that it will receive 240 conventional well permit applications annually at the average conventional well permit application fee of \$365, the Program can anticipate receiving \$87,600 per year from conventional well permit application fees under the existing fee structure. These fees are included in the Program's overall budget, and the revenue collected from the fees represents less than 0.5% of the Program's annual operating costs.

The cost to drill a conventional oil well is approximately \$115,000, and the cost to drill a conventional gas well is approximately \$250,000. The three-year average conventional well permit application fee paid was \$365. Thus, the average conventional well permit accounts for between .15% and .3% of the cost to drill a conventional well. The cost to drill an unconventional well is approximately \$8 million. The \$12,500 unconventional well permit application fee established by this rulemaking accounts for .16% of the cost to drill an unconventional well. Accordingly, the fees are comparable in terms of the percentage of the costs to drill wells.

In developing the analysis for this final-form rulemaking, the Department considered that the conventional industry may account for approximately 40% of the costs to administer the Program. In doing so, the Department considered proportional costs related to fee amounts. Based on the projected budget of \$25 million to sustain current staff and operating costs, the conventional industry's proportional costs would be \$10 million. If the Program projects that it will receive 240 conventional well permit applications annually, the conventional well permit application fee would need to be set at a flat rate of nearly \$42,000 per application to account for the conventional industry's proportional costs. Increasing the conventional well permit applications fees from the average of \$365 to \$42,000 per well permit application is not reasonable or appropriate given the costs to drill conventional wells and because most, if not all, conventional well operators are small businesses.

It is reasonable for the conventional industry to pay less for well permit applications than the unconventional industry and for the Board to maintain the conventional well permit application fee at its current sliding scale structure. For these reasons, conventional well permit application fees are part of the Program's budget allocated for restoring staff, funding program enhancements or, if necessary, providing a funding buffer.

### ***Public Outreach***

The Department consulted with the Oil and Gas Technical Advisory Board (TAB) in the development of the proposed rulemaking to raise the unconventional well permit application fee to \$12,500 and discussed the final rulemaking at the TAB meeting on September 19, 2019.

## *E. Summary of Regulatory Requirements*

### *Current fee structure*

The current well permit application fee structure in § 78a.19 assesses a flat well permit application fee of \$5,000 for every nonvertical unconventional well permit and \$4,200 for every vertical unconventional well permit.

### *Final-form fee structure*

This final-form rulemaking amends §§ 78a.1 and 78a.19 to increase the well permit application fee on all unconventional wells to \$12,500. This final-form rulemaking also removes definitions for “nonvertical unconventional well” and “vertical unconventional well” related to well permit applications so that permit application fees will now be the same for all unconventional well permit applications. Assuming the Program will receive approximately 2,000 unconventional well permit applications annually following this final-form rulemaking, \$12,500 per unconventional well permit application is needed to sustain the Program at current staff levels and operating costs.

As discussed in Section D of this preamble, this final-form rulemaking does not amend the current conventional well permit application fees in 25 Pa. Code § 78.19.

## *F. Changes from Proposed to Final-Form Rulemaking:*

This final rulemaking Annex A does not contain any changes from the proposed rulemaking Annex A.

## *G. Summary of Major Comments and Responses*

The proposed rulemaking was adopted by the Board at its meeting on May 16, 2018, and published in the *Pennsylvania Bulletin* on July 14, 2018, with a 30-day comment period (48 Pa. B. 4100). No public hearings were held. The public comment period closed on August 13, 2018.

The Board received 51 comments from 14 commenters. One commenter was neutral on the rulemaking. Two commenters offered comments in support of the rulemaking while 10 commenters opposed the rulemaking. The Independent Regulatory Review Commission (IRRC) also submitted comments on September 12, 2018.

### *Consider Alternate Sources of Funding*

The Board received comments from commenters that did not believe that well permit fees should be such a disproportionate source of program funding and that the Board should work with stakeholders to find an alternative, more stable source of funding. These commenters recommended forming a workgroup to identify cost saving measures, using General Fund money, re-allocating Chapter 102 and 105 permit fees that are paid by the oil and gas industry

from the Clean Water and Dam Safety Programs to the Oil and Gas Program, and use of the \$6 million Impact Fee.

The Board will work with stakeholders to identify more stable sources of funding. Re-allocating general funds or permit fees received by other programs to the Program is not an option, as those programs are also underfunded. The Department noted that the Program currently receives the entire \$6 million Impact Fee even though that fee could be allocated to the Clean Air and Clean Water Programs in addition to or instead of the Oil and Gas Program.

*Clarify Benefits of Well Permit Fee Increase*

Commenters requested that the Board identify cost saving measures that could be undertaken through an audit or workload analysis.

The Department implemented cost saving measures by reducing 36 positions and reducing operational costs by 38%. However, these cost savings have resulted in operational shortcomings which this rulemaking, along with the conventional well permit fees and the \$6 million Impact Fee, is intended to address. The Program also developed a sophisticated workload analysis tool and used that tool to provide a detailed explanation for why additional staffing and financial resources are needed.

*Justify that the Fee is Reasonably Related to the Cost of Administering the Program*

The Board received comments that a 150% increase in the cost of an unconventional well permit fee is disproportional to the Program's costs to administer a program that oversees both the conventional and unconventional industry.

In response, the Board relies on Section 3211(d) of the 2012 Oil and Gas Act. As prescribed by Section 3211(d), a well permit application fee is a one-time payment submitted with each well permit application that is deposited into the Well Plugging Fund as a dedicated revenue source for the Program. This fee is set by the Board in regulation and must be reasonably related to the cost of the Program to administer the 2012 Oil and Gas Act. The fees do not provide ongoing revenue to the Program. For that reason, the fees received in a given year must fund all of the Program's functions beyond permitting.

Since 1984, the Board has increased the well permit application fees, in 2009 and 2014, to fund the Program's increasing expenses and established different amounts for the different classes of wells, including unconventional, conventional and home use wells. The Board established different amounts for these different classes of wells based on the cost of the Program related to well permit application projections, total well bore length for conventional wells, the costs to develop each class of well and the ability of the applicant to pay. The Board ensures that the well permit application fees bear a reasonable relationship to Program costs by using these factors to establish the different fee amounts.

The Board disagrees that fees must be based on proportional costs by industry sector. Section 3211(d) does not require that the fees be determined by the proportional costs of the Department

based on the different segments of the industry. Section 3211(d) only requires that these fees bear a “reasonable relationship” to costs. Nonetheless, in developing this final-form rulemaking, the Board considered proportional costs related to fee amounts. The Board also considered that conventional well drilling has declined over recent years with only 225 conventional well permit applications submitted in FY 2017-18. In contrast, the Department received 1,706 unconventional well permit applications in 2018. This demonstrates that the unconventional industry is applying for the vast majority of the permits issued by the Department. The Board also considered the revenue generated by conventional well permit application fees. In FY 2017-18, the conventional well permit application fee revenue was \$76,973. The revenue collected from the fees represents less than 0.5% of the Program’s annual operating costs. Further, the average conventional well permit fee accounts for between .14% and .3% of the cost to drill a conventional well. With the fee increase included in this rulemaking, the unconventional well permit application fee would cost .16% of the cost to drill an unconventional well.

Based on the information above, the one-time nature of the well permit and Program costs, the Board decided not to increase the conventional well permit application fees. The determination to increase only unconventional well permit application fees and not conventional well permit applications is (1) within the Board’s granted authority under Section 3274 of the 2012 Oil and Gas Act to promulgate regulations to establish a permit application fee under Section 3211(d) of the 2012 Oil and Gas Act for each application for a well permit which bears a reasonable relationship to the cost of administering the 2012 Oil and Gas Act, (2) advances the purposes of the 2012 Oil and Gas Act in Section 3202 of the 2012 Oil and Gas Act, and (3) is not contrary to the express language in the 2012 Oil and Gas Act.

As such, the Board asserts that the existing conventional well permit application fees and the increase fee for unconventional well permit established in the final-form rulemaking bear a reasonable relationship to the cost of administering the Oil and Gas Program for both industries.

#### *New Fee Will Negatively Impact Small Businesses & Pennsylvania’s Competitiveness*

Some commenters expressed concern that the increased unconventional well permit application fee would negatively impact Pennsylvania small businesses and the Commonwealth’s ability to compete for business compared to other gas producing states.

In developing the rulemaking, the Board thoroughly considered the impact of raising fees on companies engaged in unconventional natural gas extraction that qualify as small businesses and what impact that could have on Pennsylvania’s competitiveness for future business. While a majority of the 80 unconventional natural gas extraction operators that will be impacted by this rulemaking qualify as small businesses, the increased unconventional well permit application fee will now account for .16% of the cost to drill an unconventional well that costs approximately \$8 million to drill. Furthermore, the Marcellus and Utica Shales are the premier shale gas plays in the United States with Pennsylvania being the premier state in which to drill these wells. While the well permit fee in Pennsylvania will be higher than in other states, other state regulatory agencies receive significant funding from a severance tax to fund their oil and gas program operations and charge fees for a variety of activities other than well permit applications.

Due to the relatively small percentage that the well permit application fee will cost unconventional operators in the scheme of developing a well and the fee structure that Pennsylvania has compared to other states, the new unconventional well permit application fee will not negatively impact unconventional operators that qualify as small businesses or harm Pennsylvania's ability to be competitive with other gas producing states.

#### *New Fees will not Assure Faster Permit Review Times*

Commenters contended that the new fee will not result in faster permit reviews, which are the greatest challenge faced by the Department, and that additional permit reviewers should be prioritized over other staffing needs.

The Board acknowledged that the Oil and Gas Program was struggling to meet permit review timeframes in 2017. This was a direct result of the reduction in staff by 36 positions in response to a lack of revenue from well permit fees. To address this shortcoming, the Program reorganized the Office of Oil and Gas Management to create three new management positions to oversee statewide subsurface and surface permitting. The Program also reclassified certain vacant positions to well permit geologist positions. The well permit review timeframes then improved. For example, in the Southwestern District Office, the well permit review timeframes decreased from over 100 days to an average of approximately 35 days. For Erosion and Sediment Control General Permits, the review times decreased from more than 230 to approximately 125 days.

As discussed above, the Program estimates that additional 12 permitting staff is needed to further improve review timeframes. The fee increase in this final-form rulemaking is to sustain the Program at current staff levels and operating costs. The other sources of revenue, including conventional well permit application fees and the \$6 million distributed to the Department from the Act 13 Impact Fees, provide a funding buffer in the event that the actual permit applications the Department receives in the years following this final-form rulemaking do not meet the permit application projections. If that happens, the Program will need these other revenue sources to sustain the Program. If not, these funds will be allocated for needed program enhancements, restoring staff complement and adding necessary staff to administer the 2012 Oil and Gas Act and its implementing regulations. Because of new permit review tools and mobile inspection tools, the Program will continue to evaluate staffing and hire staff when necessary and when funds are available.

#### *H. Benefits, Costs and Compliance*

##### *Benefits*

The increased unconventional well permit application fee revenue will be used to sustain the Program at current staff levels and operating costs in order to administer the 2012 Oil and Gas Act and ensure the responsible development of oil and natural gas in this Commonwealth.

As long as the Department receives the projected number of unconventional well permit applications that form the basis of this final-form rulemaking in order to sustain the Program at

its current staffing and operating costs, the other sources of revenue currently available to the Program, including conventional well permit application fees and the \$6 million distributed to the Department from the Impact Fee established by 58 Pa.C.S. Chapter 23 (relating to Unconventional Gas Well Fee) currently allocated to the Program, can be used to restore the Program to a full staff complement of 226 people, hire necessary additional staff and fund program enhancements.

#### *Compliance costs*

The fee paid for unconventional well permit applications is currently a \$5,000 fee for each nonvertical unconventional well and \$4,200 for each vertical unconventional well permit. The proposed fee increase is \$12,500 for all unconventional well permit applications. This is an increase of \$7,500 for each nonvertical unconventional well application and \$8,300 for each vertical unconventional well application. The Department assumes that if approximately 2,000 well permit applications are received annually the final-form rulemaking would result in an additional annual incremental permit application cost of \$15 million to the regulated community.

This final-form rulemaking does not require new legal, accounting or consulting procedures.

#### *Compliance assistance plan*

The Department plans to educate and assist the public and regulated community in understanding the proposed 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 fee structure.

#### *Paperwork requirements*

This final-form rulemaking does not create any additional paperwork requirements. Minor changes to the unconventional well permit application form, Permit Application to Drill and Operate an Unconventional Well (Document # 8000-PM-OOGM0001BU), will be necessary to implement this final-form rulemaking and a draft version of that form was submitted to IRRC.

#### *I. 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.

### *J. Sunset Review*

The Board is not establishing a sunset date for these regulations, since they are needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary. In addition, in accordance with §§ 78.19(e) and 78a.19(b), the Department will evaluate these fees and recommend regulatory amendments 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 the Program is self-sustaining. This report and any proposed regulatory amendments will be presented to the Board no later than three years after the promulgation of the final-form rulemaking.

### *K. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 2, 2018, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to 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(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered all comments from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on \_\_\_\_\_, 20\_\_, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_, 20\_\_ and approved the final-form rulemaking.

### *L. Findings*

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, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 48 Pa.B. 4100.
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this preamble.

**M. Order**

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

- (a) The regulations of the Department, 25 Pa. Code Chapter 78a, is amended to read as set forth in Annex A.
- (b) The Chairperson of the Board shall submit this regulation 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 regulation to IRRC and the Committees as required by the Regulatory Review Act.
- (d) The Chairperson of the Board shall certify this regulation and deposit them with the Legislative Reference Bureau as required by law.
- (e) This regulation shall take effect immediately upon publication in the Pennsylvania Bulletin.

**PATRICK McDONNELL, Chairperson  
Environmental Quality Board**

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION**

**PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Subpart C. PROTECTION OF NATURAL RESOURCES**

**ARTICLE I. LAND RESOURCES**

**CHAPTER 78a. UNCONVENTIONAL WELLS**

**Subchapter A. GENERAL PROVISIONS**

**§ 78.1. Definitions.**

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:

\* \* \* \* \*

*Nonporous material*—Nontoxic earthen mud, drill cuttings, fire clay, gel, cement or equivalent materials approved by the Department that will equally retard the movement of fluids.

[*Nonvertical unconventional well*—

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

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

*Observation well*—A well used to monitor the operational integrity and conditions in a gas storage reservoir, the reservoir protective area, or strata above or below the gas storage horizon.

\* \* \* \* \*

*Unconventional well or well*—A bore hole drilled or being drilled for the purpose of or to be used for the production of natural gas from an unconventional formation.

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

*WMP—Water management plan*—A plan associated with drilling or completing a well in an unconventional formation that demonstrates that the withdrawal and use of water sources within this Commonwealth protects those sources, as required under law, and protects public health, safety and welfare.

\* \* \* \* \*

## **Subchapter B. PERMITS, TRANSFERS AND OBJECTIONS**

### **PERMITS AND TRANSFERS**

#### **§ 78a.19. Permit application fee schedule.**

(a) An applicant for an unconventional well shall pay a permit application fee [**according to the following:] of \$12,500.**

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

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

(b) 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.



**pennsylvania**  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

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

**COMMENT AND RESPONSE  
DOCUMENT**

**25 Pa. Code Chapter 78a  
48 Pa.B. 4100 (July 14, 2018)  
Environmental Quality Board Regulation #7-542  
(Independent Regulatory Review Commission #3206)**

# **Unconventional Well Permit Application Fee Amendment Comment and Response Document**

## **INTRODUCTION**

On May 16, 2018, the Environmental Quality Board (EQB) adopted a proposed rulemaking to increase unconventional well permit application fees in 25 Pa. Code § 78a.19 to support the administration of 58 Pa.C.S. Chapter 32 (relating to development) (2012 Oil and Gas Act) by the Department of Environmental Protection's (Department or DEP) Office of Oil and Gas Management (Oil and Gas Program or Program). On July 2, 2018, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment in accordance with Section (5) of the Regulatory Review Act (71 P.S. §745.5(a)). The proposed rulemaking was published in the *Pennsylvania Bulletin* on July 14, 2018, (48 Pa.B. 4100) with provision for a 30-day comment period that closed on August 13, 2018. Comments were received from thirteen commenters. IRRC submitted comments to DEP on September 12, 2018. This Comment and Response Document provides summaries of the comments received and responses. All comments submitted can be viewed on eComment located on DEP's website at <https://www.ahs.dep.pa.gov/eComment/>.

## **LIST OF COMMENTERS ON THE PROPOSED RULEMAKING**

1. David J. Spigelmyer, President  
Marcellus Shale Coalition  
400 Mosites Way, Suite 101  
Pittsburgh, PA 15205
2. The Honorable Donna Oberlander, Gas and Oil Caucus Chair (and members)  
House of Representatives  
P.O Box 202063  
Harrisburg, PA 17120-2063
3. Stephanie Catarino Wissman, Executive Director  
Associated Petroleum Industries of Pennsylvania  
300 North Second Street  
Suite 902  
Harrisburg, PA 17101
4. Kevin J. Moody, General Counsel  
Pennsylvania Independent Oil and Gas Association  
Northridge Plaza II  
115 VIP Drive, Suite 210  
Wexford, PA 15090

5. Jeremy Matinko, Environmental Compliance Manager  
Range Resources-Appalachia, LLC  
3000 Town Center Boulevard  
Canonsburg, PA 15317
6. Scott C. Blauvelt, P.G., Director of Environmental Health & Safety  
JKLM Energy, LLC  
2200 Georgetowne Drive, Suite 500  
Sewickley, PA 15143
7. Christopher M. Trejchel, Assistant General Counsel  
Seneca Resources  
5800 Corporate Drive, Suite 300  
Pittsburgh, PA 15237
8. John Walliser, Senior Vice President, Legal and Government Affairs  
Pennsylvania Environmental Council (PEC)  
810 River Avenue, Suite 201  
Pittsburgh, PA 15212
9. Emily Krafjack, private citizen  
1155 Nimble Hill Road  
Mehoopany, PA 18629
10. Robert Cross, President (and board members)  
Responsible Drilling Alliance  
P.O. Box 502  
Williamsport, PA 17703
11. Chad Eisenman, Legislative and Regulatory Advisor  
Chevron Appalachia, LLC  
700 Cherrington Parkway  
Coraopolis, PA 15108
12. Elam M. Herr, Assistant Executive Director  
Pennsylvania State Association of Township Supervisors (PSATS)  
4855 Woodland Drive  
Enola, PA 17025
13. Dave Fogelman, private citizen  
Comments received via email on 07/17/2018
14. David Sumner, Executive Director  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

## SUMMARY OF COMMENTS AND RESPONSES

### Definition of Vertical and Nonvertical Unconventional Well

1. **Comment:** EQB proposes to delete “Nonvertical unconventional well” and “Vertical unconventional well” from the Definitions section of the regulation. The commenters are concerned that the EQB does not thoroughly explain this deletion in the Preamble and requested that the EQB explain the need for the deletion of these two terms from the regulation in the final rulemaking. (9) (14)

**Response:** The Department amended § 78a.1 to delete the terms “Nonvertical unconventional well” and “Vertical unconventional well,” because the fee structure in § 78a.19 establishes a fee for all unconventional wells without a distinction between nonvertical and vertical unconventional wells. Additionally, these terms now do not appear in any section of the Unconventional Oil and Gas Regulations in 25 Pa. Code Chapter 78a. These specific terms are also not used in the 2012 Oil and Gas Act or the other statutes that provide statutory authority for the Chapter 78a regulations. Because these terms are not used in the applicable law, it is not necessary or appropriate to include them in the definitions.

### Consider Alternate Sources of Funding

2. **Comment:** Multiple commenters noted that funding for the Program should not be reliant solely on permit application fees. Instead, the commenters suggested that the Department should partner with the regulated community, stakeholders and the legislature to seek more stable sources of funding and consider advocating for permit reforms, such as extending the length of time for which a permit is valid or fees for activities such as withdrawals and permit transfers. They also encouraged the Department to pursue other methods of funding as the final-form rulemaking is being developed. (3) (5) (11) (14)

**Response:** The Department agrees with the recommendation that it seek input from stakeholders on additional funding options. The Department is committed to working with all interested stakeholders to identify a more reliable, long-term source of funding.

The Department is also receptive to considering new legislative permitting options, such as multiple year and multiple well permitting. One funding avenue that the Department has already explored is charging fees for other approval requests submitted to the Program. However, the Department determined that each of these submissions were as unpredictable as well permit applications and thus would create even more uncertainty in program funding.

Until an alternative funding source is secured, the Department is limited to its existing resources and must avail itself to the funding mechanism established by Section 3211(d) of the 2012 Oil and Gas Act. Section 3211(d) of the 2012 Oil and Gas Act provides: “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 [the 2012 Oil and Gas Act].” 58 Pa.C.S. § 3211(d). As prescribed by Section 3211(d) of the 2012 Oil and Gas Act, a well permit application fee is a one-time payment

submitted with each well permit application that is deposited into the Well Plugging Fund as a dedicated revenue source for the Program. This fee is set by the Board in regulation and must be reasonably related to the cost of the Program to administer the 2012 Oil and Gas Act.

- 3. Comment:** The commenters encouraged the Department to identify and pursue opportunities for cost savings or other efficiencies that could aid the Department in balancing costs for the regulated community and ensuring permittees are receiving the greatest value until additional funding options are identified. (3) (8)

**Response:** As explained in the Department's *3 Year Regulatory Fee and Program Cost Analysis Report*, the Program has implemented multiple cost-saving measures to conserve available funds until a sustainable funding stream is implemented. These measures were taken as a direct result of the decreased revenue from permit application fees in recent years.

The most significant cost-saving measure taken by the Program was the reduction of its staff complement from 226 employees to 190 employees. Staff costs are the largest expenditure required to administer an effective Program and account for 93% of the Program's budget. By reducing the Program's staff by 36 positions, the Department has saved approximately \$3.6 million annually.

The Program also reduced operating costs, including the purchase of fixed assets and supplies. Over three years, the Program reduced operating and fixed asset costs by 38% from \$2,456,084 to \$1,497,356. This included an elimination of staff meetings, training opportunities, and postponing vehicle and computer purchases.

Any future cost savings would have to come from a further reduction in staff. At the current disparity between fee revenues and the cost to administer the 2012 Oil and Gas Act, the Program would need to reduce its staff complement by more than an additional 100 positions to make up the annual net loss in the Program. This is an untenable approach that would render the Program incapable of meeting its statutory obligations under the 2012 Oil and Gas Act and the expectations of the citizens and the industry in this Commonwealth.

However, the Department is committed to working with all interested stakeholders to develop an effective and efficient regulatory program.

#### **Use of General Fund Monies**

- 4. Comment:** The Fiscal Year (FY) 2018-19 budget included \$140 million in the General Fund for the Department, of which \$2.5 million was new General Fund monies to support the addition of 35 Departmental employees dedicated to permit review and enforcement. The commenters noted that none of those General Fund monies were allocated to support the Department's Oil and Gas Program. As a result, the commenters suggested that a reasonable amount of those funds should have been used to supplement the Department's Oil and Gas Program and requested to know more about the Department's rationale for not utilizing/requesting General Fund dollars to support the program. (1) (2) (3) (4) (5) (6) (14)

**Response:** The Department appropriately utilized the \$2.5 million referenced in the comment to support its Safe Drinking Water Program, which is vital to ensuring that the Commonwealth's citizens have safe, clean drinking water.

Shifting General Fund appropriations to the Oil and Gas Program instead of how the Department has used the funds referenced in this comment will only create a new crisis for a different Department program. The Department would have to reallocate taxpayer money from programs that protect drinking water and monitor air quality in areas impacted by natural gas drilling to fund oversight of the oil and gas industry. As such, DEP must rely on the authority in the 2012 Oil and Gas Act to administer the Oil and Gas Program through the well permit application fees.

It should be noted that if the Department was to be allocated additional General Fund monies to support the Oil and Gas Program in the future, the Department would factor this into its fee analysis to inform what the well permit application fee should be in the future.

### **Use of Chapter 102 and Chapter 105 Funds**

5. **Comment:** Commenters requested that the Department provide transparent information to the regulated community, the Independent Regulatory Review Commission, the standing legislative oversight committees and the public regarding other available sources of funding, including from special funds administered by the Department. Most notably, commenters were interested in learning more about why the permit fees associated with the review of Chapter 102 and 105 permits are not allocated to the Department's Oil and Gas Program. Some commenters suggested that funds from those permit fees should be credited to the Oil and Gas Program. (1) (3) (5)

**Response:** The rulemaking's documents have been updated to include information about the Program's funding sources as requested by the commenters.

The fees from permit applications under 25 Pa. Code Chapters 102 and 105, including the Erosion and Sediment Control General Permit (ESCGP), are not currently distributed to the Oil and Gas Program. Instead, they are currently deposited into the Clean Water Fund. These fees are committed to funding critical operations that support County Conservation Districts as well as DEP staff who, among other responsibilities, provide support and training to staff within the Oil and Gas Program that review Chapter 102 and 105 permit applications and inspect permitted projects.

In the Department's analysis of these fees, it was determined that if the Chapter 102 and Chapter 105 permit application fees were reallocated to the Program, the Program would receive less of the \$6 million from the Act 13 Impact Fees, because the Chapter 102 and Chapter 105 programs would then need a portion of those funds to make up for this reallocation. Currently, the Act 13 Impact Fee allocates \$6 million annually to DEP for "the administration of [58 Pa.C.S. §§ 2301–3504 (relating to oil and gas) (Act 13)] and the enforcement of acts relating to clean air and clean water." *See* 58 Pa.C.S. § 2314(c.1)(3). Currently, the \$6 million appropriated to the Department from the Act 13 Impact Fees is

allocated to the Program. Significantly, these fees are not dedicated solely to the Program and may be used to support the Department's air and water programs. Allocation of these funds ultimately depends on the Department's immediate needs. The Department has determined that it is currently appropriate for the Program to receive all \$6 million dollars from the Department's Act 13 Impact Fee appropriation due to declining well permit application revenue.

Because of this, the Oil and Gas Program would most likely receive a lesser amount of the Act 13 Impact Fees if the Chapter 102 and Chapter 105 permit application fees were re-allocated to the Oil and Gas Program.

6. **Comment:** One commenter stated that other industries regulated by DEP can obtain Chapter 102 and Chapter 105 Program permits through county conservation districts while most oil and gas operators do not have this option. As Oil and Gas Program employees conduct the bulk of the Chapter 102 and 105 permit reviews related to oil and gas operations, the commenter suggested that the Department consider allowing this option in order to lessen the workload of Program employees. (1)

**Response:** The Department's review of Chapter 102 and 105 permits is currently structured to ensure consistency and to strengthen oversight.

The Department strives to review permit applications as consistently and efficiently as possible. To that end, the Oil and Gas Program recently reorganized to establish a state-wide surface activities permit program. Additionally, permit staff work closely with inspectors to ensure that facilities are constructed in the manner for which they are permitted. The Department believes that this approach provides a consistent and thorough review of permits that is expected by both the industry and the public.

#### **Use of \$6 Million Impact Fee**

7. **Comment:** Multiple commenters requested that the Department explain why the \$6 million annual allocation from the Act 13 Impact Fee was not included in the Oil and Gas Program's operating budget and the Department's fee analysis. As the commenters noted, the Impact Fee is statutorily allocated for the "administration of this act and the enforcement of acts relating to clear air and clean water." 58 Pa.C.S. §2314(c.1)(3). (1) (2) (4) (5) (14)

One commenter stated that the Impact Fee should not be included in the Oil and Gas Program's operating budget or fee analysis as this funding cannot be relied on with certainty. (9)

**Response:** As stated in the proposed rulemaking, the Program is funded by the following sources of revenue: (1) well permit application fees; (2) an appropriation from the Act 13 Impact Fees; and (3) incidental civil penalties collected for violations of the 2012 Oil and Gas Act (Section 3271(a) of the 2012 Oil and Gas Act (relating to well plugging funds)). To clarify, the Act 13 Impact Fees are included in the Program's overall budget. However, the Act 13 Impacts Fees were not considered as part of the Department's fee analysis that

forms the basis of this rulemaking because the purpose of this rulemaking is to sustain the Program at current staff levels and operating costs.

The Act 13 Impact Fees are needed to provide a funding buffer in the event that the actual permit applications the Department receives in the years following this final-form rulemaking do not meet the permit application projections that form the basis of this final-form rulemaking, as well as restore the Program to a full staff complement of 226 people, hire necessary additional staff and fund program enhancements.

Maintaining a funding buffer is critical because of the reasonable uncertainty in projecting the number of well permit applications. The variability of unconventional well permit applications can be attributed to various market and industry changes. The price of natural gas has remained low, which industry analysts suggest is the result of supply-demand imbalances between the Appalachian region and the rest of the United States market. It might also be because the first few years of Marcellus Shale gas development constituted an initial boom and was not representative of drilling patterns in a more mature shale production market. Also, improvements in technology are allowing operators to extract more gas from each well, thus requiring fewer wells to satisfy the same demand. All of these trends are outside of the DEP's control, may be subject to a vacillating commodity markets, and not readily predictable.

It is significant that in FY 2017-2018, the Department received 1,674 unconventional well permit applications. And in FY 2018-2019, the Department received 1,684 unconventional well permit applications. For the first half of FY 2019-2020, the Department is on track to receive fewer than 1,600 unconventional well permit applications.

Therefore, a funding buffer is necessary in the event that the actual permit applications the Department receives in the years following this final-form rulemaking do not meet the permit application projections. If not, these funds will be allocated for needed program enhancements, restoring staff complement and adding necessary staff to administer the 2012 Oil and Gas Act and its implementing regulations. The Program estimates that approximately \$ 6.5 million are needed for program enhancements and staffing needs.

Moreover, the \$6 million appropriated to the Department from the Act 13 Impact Fees is currently allocated to the Program. Significantly, these fees are not dedicated solely to the Program and may be used to support the Department's air and water programs. Allocation of these funds ultimately depends on the Department's immediate needs. The Department has determined that it is currently appropriate for the Program to receive all \$6 million dollars from the Department's Act 13 Impact Fee appropriation due to declining well permit application revenue.

## Clarify Benefits of Well Permit Fee Increase

8. **Comment:** In the Regulatory Analysis Form (RAF), the Department discussed benefits to the public while reporting costs to the State to implement the rule as zero. The commenter suggested that it is difficult for the Department to request additional funding to administer its Program if there are no costs. (4)

**Response:** Question 21 in the Regulatory Analysis Form requires the Department to provide specific estimates of the costs and/or savings to the state government associated with the implementation of the final-form rulemaking. In response to this question, the Department states that there are no anticipated additional costs or savings to state government associated with this final-form rulemaking because the Department already collects a well permit application fee.

The costs to the Program to administer the 2012 Oil and Gas Act are explained in the Preamble and in response to Question 10 in the Regulatory Analysis Form. The Program projects that the costs to fund the Program at its reduced complement of 190 employees and operating costs are approximately \$25 million as explained in the table below.

Expense	Cost (in dollars)
Staff (190 positions at \$106,000 per staff person)	20,140,000
Operating Expenses (FY2018-19)	4,519,000
TOTAL Cost	24,659,000

9. **Comment:** One commenter asked how the additional revenues generated through this proposed fee increase will be utilized by DEP's Office of Oil and Gas Management. (3)

**Response:** The revenue generated from the increased unconventional well permit application fee will be used to sustain the Program at its current staff complement of 190 employees and at current operating costs.

When the Board last amended the unconventional well permit fees in 2014, it eliminated a sliding scale and established a flat fee of \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells. The Board projected that those increased fees would be adequate to support the Program with a full complement of 226 staff provided the Program receives 2,600 unconventional well permits annually.

However, while that projection was accurate during the pendency of that rulemaking, the number of unconventional well permit applications received since that time has been lower than anticipated. In FY 2014-2015, the Program received 2,533 unconventional well permit applications. In FY 2015-2016, the Program received 1,646 unconventional well permit applications. And in, FY 2016-2017, the Program received 1,993 unconventional well permit

applications. As a result, the well permit application fees have not generated the revenue needed to fund Program costs.

Because of declining unconventional well permit application fee revenues, the Program reduced staff over time from 226 employees to 190 employees today. The Program also reduced operating costs, including the purchase of fixed assets and supplies. Over three years, the Program reduced operating and fixed asset costs by 38%. And, despite declining well permit application revenues, the Program's workload has increased.

Each year more wells are drilled than plugged resulting in a growing inventory of wells to be inspected to ensure compliance with the 2012 Oil and Gas Act and its implementing regulations. There is also a growing number of support facilities, including gathering pipelines, well development impoundments, water withdrawals and other support facilities, with separate authorizations and inspection obligations. As the result of a continually growing oil and gas industry, the Program has increasing responsibilities to develop guidance, update forms, provide training, improve data management and to study and evaluate new and evolving issues all to ensure that the Program operates effectively and efficiently while providing clarity to the regulated community. Equally important are the Program's responsibilities related to gas storage as well as orphaned and abandoned wells. Finally, the Program must ensure that it responds to complaints, emergencies and requests for public records related to the implementation of the 2012 Oil and Gas Act. All of these activities are essential program functions beyond well permit application reviews that are necessary to administer the 2012 Oil and Gas Act and are paid for by the one-time well permit application fees.

As a result, the Program now struggles to meet its gas storage field inspection goals, consistently achieve appropriate permit review time frames, adequately fund training opportunities for staff and provide training for the industry. Important Program development initiatives, such as policies, best practices and technical guidance documents, have been put on hold indefinitely due to the lack of sufficient staff to develop and update these important pieces of the Program necessary to administer the 2012 Oil and Gas Act. In short, the Program is challenged to provide an adequate level of high-quality service to the public and to the industry.

Accordingly, the revenue generated from the fee increase in the final-form rulemaking is to sustain the Program at its current staff complement of 190 employees and at current operating costs. The other sources of revenue currently available to the Program, including conventional well permit application fees and the \$6 million distributed to the Department from the Impact Fee established by 58 Pa.C.S. Chapter 23 (relating to Unconventional Gas Well Fee) currently allocated to the Program, are needed to provide a funding buffer in the event that the actual permit applications the Department receives in the years following this final-form rulemaking do not meet the permit application projections that form the basis of this final-form rulemaking, as well as restore the Program to a full staff complement of 226 people, hire necessary additional staff and fund program enhancements.

10. **Comment:** Multiple commenters requested that the Department conduct a detailed workload analysis to identify the benefits it provides to the public and to identify which tasks it completes are mandated by statute, in response to regulatory requirements, driven by policy, or are discretionary. (3) (4)

One commenter expressed opposition to increasing the Department's staffing levels. (11)

**Response:** The Department has provided an updated and clarified estimate of staffing needs in the Preamble. These estimates differ from estimates provided in the Fee Report and proposed rulemaking. Notably, the staffing numbers have been updated to reflect that the Program recently reorganized the Office of Oil and Gas Management to create three new management positions to oversee statewide subsurface and surface permitting. Additionally, the current estimated cost of an employee based on standard benefits and average salary is \$106,000 and prior estimates were based on a prior estimated cost of \$100,000 per employee.

By way of background, as explained in the Preamble, the Department is tasked with implementing the 2012 Oil and Gas Act. Under Section 3202 of the 2012 Oil and Gas Act (relating to definition of purpose of chapter), the purposes of the 2012 Oil and Gas Act are to:

- (1) Permit optimal development of oil and gas resources of this Commonwealth consistent with protection of the health, safety, environment and property of Pennsylvania citizens.
- (2) Protect the safety of personnel and facilities employed in coal mining or exploration, development, storage and production of natural gas or oil.
- (3) Protect the safety and property rights of persons residing in areas where mining, exploration, development, storage or production occurs.
- (4) Protect the natural resources, environmental rights and values secured by the Constitution of Pennsylvania.

The 2012 Oil and Gas Act contains requirements regarding the exploration, development and recovery of oil and gas resources in this Commonwealth, including permitting, bonding, well location restrictions, protecting water supplies, containment, well control emergencies, restoration, plugging, reporting and enforcement. See 58 Pa.C.S. §§ 3201–3274. The regulations at 25 Pa. Code Chapter 78 (relating to Oil and Gas Wells) and Chapter 78a (relating to Unconventional Wells) implement the 2012 Oil and Gas Act. The Department administers the 2012 Oil and Gas Act and its implementing regulations through the functions of the Program, including data management, staffing, well permitting, surface activity permitting, inspections, compliance, and policy and program development.

In the Preamble, the Department provides estimated staffing needs. These estimates clarify and update prior estimates in the Fee Report and proposed rulemaking.

To develop the current workload analysis, annual permitting, inspection and compliance-related data from 2017 was entered into the workload tool. This workload tool provides a

high-level assessment of current staffing needs within the Program based on current data and the Program's existing 190 employees. However, the workload tool is limited and does not capture all of the various job duties performed by the Program. For example, it does not analyze staffing levels within the Bureau of Oil and Gas Planning and Program Management (BPPM) because of the significant variability of the work performed by those staff. The output of the model is confined to the Bureau of District Oil and Gas Operations (DOGO) staff only.

The Program consists of two Bureaus: The Bureau of District Oil and Gas Operations and the Bureau of Oil and Gas Planning & Program Management.

#### *The Bureau of District Oil and Gas Operations*

DOGO consists of three district offices primarily headquartered in three regional office locations (Pittsburgh, Meadville and Williamsport) in the oil and gas producing regions of this Commonwealth. DOGO staff are responsible for permitting, inspection, compliance and enforcement functions.

DOGO includes the following:

#### Permitting

When the Program reduced staff and employed cost-saving measures in response to declining well permit application revenues following the 2014 fee increase, it included 9 permitting positions. As a result, the Program faced challenges related to meeting permit review timeframes. To address this shortcoming, the Program reorganized the Office of Oil and Gas Management to create three new management positions to oversee statewide subsurface and surface permitting. The Program also reclassified certain vacant positions to well permit geologist positions. The well permit review timeframes then improved. For example, in the Southwestern District Office, the well permit review timeframes decreased from over 100 days to an average of approximately 35 days. For Erosion and Sediment Control General Permits, the review times decreased from more than 230 to approximately 125 days.

To further improve review timeframes, the Program needs to restore the nine previously eliminated permitting positions and fund the three new management positions resulting from the reorganization at a cost of approximately \$1.27 million.

#### Inspections

Inspections staff perform the majority of the Program's field inspection and investigatory work. Inspector positions include water quality specialists, oil and gas inspectors, environmental protection specialists and field geologists. These inspectors are also responsible for responding to citizen complaints regarding oil and gas activities throughout the Commonwealth. More inspectors of all types are needed across this Commonwealth. Two areas of critical need involve the inspection of gas storage wells and oil and gas inspectors focused on the drilling and construction of new wells and plugging legacy wells.

The workload tool estimates 16 additional inspectors are needed, including three just for gas storage wells inspections, at a cost of \$1.7 million to fund these positions.

### Compliance

Compliance specialists perform a variety of important job duties, including handling and management of enforcement and compliance cases, development and execution of compliance documents, and document gathering of responsive information for the many requests from the public for records. Compliance specialists perform the majority of the duties associated with responding to requests for records as many of the requests are for records regarding the Program's enforcement efforts to ensure compliance with the 2012 Oil and Gas Act. Compliance specialists are vital to the Program's administration of the 2012 Oil and Gas Act as they directly interface with the citizens of this Commonwealth residing in areas of active oil and gas development.

The workload tool estimates that 11 additional compliance specialists are needed to perform these various duties at a cost of \$1.17 million annually to fund these positions.

### *The Bureau of Oil and Gas Planning and Program Management:*

BPPM is in the Department's Central Office (Harrisburg) and is responsible for administrative, policy and regulatory development functions. When the above-referenced staff reductions and cost-saving measures occurred, it included 11 BPPM positions. As a result, BPPM has postponed several policy development projects including updated guidance documents, public information, internal training, external training, modernized well plugging regulations, standards for storing mine influenced water in well development impoundments and an established area of alternative methods for hydraulically fracturing Utica wells in western Pennsylvania. Restoring these 11 BPPM positions would enable the Program to begin work on these and other important projects.

BPPM includes the following:

#### Division of Well Development and Surface Activities

The Division of Well Development and Surface Activities is responsible for developing policies and guidance regarding surface activities associated with well site and gathering line design, construction and operation. This includes waste management and engineered components, such as erosion and sediment control structures, postconstruction stormwater management features, spill and release reporting and remediation, and stream and wetland crossings and encroachments.

#### Division of Well Plugging and Subsurface Activities

The Division of Well Plugging and Subsurface Activities includes the Subsurface Activities Section and the Well Plugging Section. The Subsurface Activities Section is responsible for the management of subsurface oil and gas activities and offers expertise in drilling, casing,

cementing, completion, workover, and production activities and operations. The Well Plugging Section maintains and implements the Department's Orphaned and Abandoned Well Plugging Program.

#### The Division of Compliance and Data Management

The Division of Compliance and Data Management works closely with the Bureau of Information Technology to oversee the development, operation and maintenance of data management systems that track reports, notifications, records, applications and other information or documents that are submitted to the Department by the regulated community. This division is also responsible for assisting in the development of statewide data management tools, such as electronic well permitting and mobile site inspection, as well as statewide enforcement efforts related to electronic data submissions.

In summary, based on prior staff reductions and the workload tool, the Program estimates that 239 employees are needed to administer the 2012 Oil and Gas Act and its implementing regulations. The purpose of the fee increase established by the final-form rulemaking is to sustain the Program's current staff complement of 190 employees. The other sources of revenue discussed in the Preamble, including conventional well permit application fees and the \$6 million distributed to the Department from the Act 13 Impact Fees, provide a funding buffer in the event that the actual permit applications the Department receives in the years following this final-form rulemaking do not meet the permit application projections. If that happens, the Program will need these other revenue sources to sustain the Program. If not, these funds will be allocated for needed program enhancements, restoring staff complement and adding necessary staff to administer the 2012 Oil and Gas Act and its implementing regulations.

11. **Comment:** One commenter suggested that the Department should establish a working group to assist in the development and deployment of cost reduction measures to ensure that permittees are receiving the greatest value. (3)

**Response:** The Department will continuously evaluate measures to reduce costs provided such cost reductions do not negatively affect the efficient implementation of the 2012 Oil and Gas Act. The Department does not believe a work group is necessary to evaluate cost saving measures at this time.

12. **Comment:** One commenter questioned why the Department deemed it "critical" to add staff to increase inspections of storage wells. They asserted that storage wells are already subject to significant operating, reporting and record keeping requirements pursuant to U.S. Department of Transportation (Pipeline and Hazardous Materials Safety Administration (PHMSA) and Federal Energy Regulatory Commission (FERC) rules and regulations. (7)

**Response:** Storage wells operate under significantly different conditions than production wells as they are constantly under pressure. Storage well failure, as seen with the Aliso Canyon incident in California, have the potential to result in safety and environmental risks.

Neither PHMSA nor FERC have the capacity to inspect storage wells twice a year as is the Department's policy.

The Department analyzed the storage field wells in Pennsylvania and noted that over 50% of storage wells were drilled prior to 1960 or have an unknown spud date. Also, Pennsylvania has the second highest number of storage wells in close proximity to homes in the country (within 200 meters). Further, as many as 24% of storage wells have "single point of failure" construction characteristics similar to the failed Aliso Canyon well. As such, diligent inspection of these storage wells is appropriately considered a priority.

### **Support Well Permit Fee Increase**

13. **Comment:** Multiple commenters expressed their support for the permit fee amendments. Some commenters feel that the increased fees represent a reasonable relationship to the costs of administering the Oil and Gas Program, while other commenters believe the increased fees will result in tangible benefits for both the regulated industry and the public. One commenter offered support but also expressed that this rulemaking does not resolve the uncertainty with respect to the sufficiency of future revenues. Another commenter suggested that the increased revenue from the permit fee amendments should be used to add new staff and properly enhance the Department's electronic data management tools and capabilities. (8) (9) (10)

**Response:** The Department acknowledges these comments. Please see the response to Comment 2 for more information regarding the possibility of alternate funding sources. In response to comments related to staffing and future revenues, please see the responses to Comments 9 and 10.

14. **Comment:** While in support of increasing the unconventional well permit application fee, one commenter believes that the proposed increased fee structure is inadequate to sufficiently fund the DEP Oil and Gas Program. Instead, the commenter suggested the permit fee should be increased from \$12,500 per unconventional well permit to \$15,000 per unconventional well permit and the Environmental Quality Board should establish a new permit fee in the amount of \$5,000 per each unconventional well that is hydraulically re-fractured. (9)

**Response:** The purpose of this final-form rulemaking is to increase unconventional well permit application fees to sustain the Program at current staff levels and operating costs. The Program projects that the costs to fund the Program at its reduced complement of 190 employees and operating costs at approximately \$25 million. Please see the response to Comment 8 for more information. The Program reasonably anticipates that it will receive approximately 2,000 unconventional well permit applications per year. For these reasons, as recommended in the Fee Report and in the proposed rulemaking, this final-form rulemaking establishes an increased unconventional well permit application fee of \$12,500.

Additionally, the other sources of revenue discussed in the Preamble, including conventional well permit application fees and the \$6 million distributed to the Department from the Act 13 Impact Fees, provide a funding buffer in the event that the actual permit applications the

Department receives in the years following this final-form rulemaking do not meet the permit application projections. If that happens, the Program will need these other revenue sources to sustain the Program. If not, these funds will be allocated for needed program enhancements, restoring staff complement and adding necessary staff to adequately and effectively administer the 2012 Oil and Gas Act and its implementing regulations.

The Department will reassess the permit fee in three years (or sooner) pursuant to 25 Pa Code §78a.(b) if the well permit application fee and other revenue sources included in the Program's budget do not sufficiently fund the Program.

### **Oppose Well Permit Fee Increase**

15. **Comment:** Multiple commenters are opposed to the well permit application fee increase. Many of these commenters feel that an 150% increase in permit fees is not proportional to the costs incurred by the Oil and Gas Program to oversee the unconventional natural gas industry. One commenter expressed concern that the permit fee revenue would be used for functions that occur outside of the scope of oil and gas operations. Another commenter shared that raising the permit fees will not assure an increase in efficiency, performance or accountability of DEP staff. (1) (3) (4) (5) (7) (13)

**Response:** Please see the responses to Comments 9 and 10 related to Program staffing.

To the extent that the commenters assert that the fees are not proportional, please see the response to Comment 21.

The Department is tasked with implementing the 2012 Oil and Gas Act. Under Section 3202 of the 2012 Oil and Gas Act (relating to declaration of purpose of chapter), the purposes of the 2012 Oil and Gas Act are to:

- (1) Permit optimal development of oil and gas resources of this Commonwealth consistent with protection of the health, safety, environment and property of Pennsylvania citizens.
- (2) Protect the safety of personnel and facilities employed in coal mining or exploration, development, storage and production of natural gas or oil.
- (3) Protect the safety and property rights of persons residing in areas where mining, exploration, development, storage or production occurs.
- (4) Protect the natural resources, environmental rights and values secured by the Constitution of Pennsylvania. (58 Pa.C.S. § 3202).

The 2012 Oil and Gas Act contains requirements regarding the exploration, development and recovery of oil and gas resources in this Commonwealth, including permitting, bonding, well location restrictions, protecting water supplies, containment, well control emergencies, restoration, plugging, reporting and enforcement. See 58 Pa.C.S. §§ 3201–3274. The regulations at 25 Pa. Code Chapter 78 (relating to Oil and Gas Wells) and Chapter 78a (relating to Unconventional Wells) implement the 2012 Oil and Gas Act. The Department administers the 2012 Oil and Gas Act and its implementing regulations through the functions

of the Program, including data management, staffing, well permitting, surface activity permitting, inspections, compliance, and policy and program development.

Section 3211(d) of the 2012 Oil and Gas Act provides: “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 [the 2012 Oil and Gas Act].” 58 Pa.C.S. § 3211(d).

As prescribed by Section 3211(d) of the 2012 Oil and Gas Act, a well permit application fee is a one-time payment submitted with each well permit application that is deposited into the Well Plugging Fund as a dedicated revenue source for the Program. This fee is set by the Board in regulation and must be reasonably related to the cost of the Program to administer the 2012 Oil and Gas Act. The fees do not provide ongoing revenue to the Program. For that reason, the fees received in a given year must fund all of the Program’s functions beyond permitting.

16. **Comment:** One commenter asked if the well permit fee would be reduced if the Department receives more than 2,000 well permits per year or if the permit fee would be increased again if fewer than 2,000 well permits per year are received. The commenter also wondered if a timeframe will be established on how often the well permit fees can be reassessed. (6)

**Response:** Section 78a.19(b) requires the Department to provide the EQB with an evaluation of the well permit fee at least every three years 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. *See* 25 Pa. Code § 78a.19(b). Therefore, within the next three years, the Department will evaluate the fees established by the final-form rulemaking based on the costs of the program and the number of well permit applications. Depending on that fee analysis, the Department may recommend that the well permit application fee increase, decrease, or stay the same.

#### **Neutral on Permit Fee Increase**

17. **Comment:** One commenter concluded that the rulemaking would have no effect on their membership. As such, they do not have an issue with the regulation. (12)

**Response:** DEP acknowledges this comment.

#### **Permit Review Timeframes**

18. **Comment:** Multiple commenters noted that there are no assurances that increasing the permit fee will result in decreased permit review timeframes. Some commenters stated that prior increases in funding for the Oil and Gas Program have historically not reduced or even maintained well permit review times. The commenters requested that the Department explain how the increase in permit fees will translate to shorter permit review times. One commenter also requested that the Oil and Gas Program guarantee the 45-calendar day

permit decision or otherwise reimburse the \$12,500 fee to those operators that do not have their permit reviewed within the mandated timeframe. (1), (2), (5), (6) (11) (14)

Another commenter shared that they endorse the proposed rulemaking for the purpose of meeting the Department's commitment to timely issuance of permits in accordance with the Permit Decision Guarantee. (11)

**Response:** The Department acknowledges that the Oil and Gas Program was not meeting permit review timeframes in 2017. This was a direct result of the reduction in staff by 36 positions in response to a lack of revenue from well permit fees.

To address this shortcoming, the Program reorganized the Office of Oil and Gas Management to create three new management positions to oversee statewide subsurface and surface permitting. The Program also reclassified certain vacant positions to well permit geologist positions. The well permit review timeframes then improved. For example, in the Southwestern District Office, the well permit review timeframes decreased from over 100 days to an average of approximately 35 days. For Erosion and Sediment Control General Permits, the review times decreased from more than 230 to approximately 125 days.

As discussed in the response to Comment 10, the Program estimates that an additional 12 permitting staff are needed to further improve review timeframes. The fee increase in this final-form rulemaking is to sustain the Program at current staff levels and operating costs. The other sources of revenue discussed in the Preamble, including conventional well permit application fees and the \$6 million distributed to the Department from the Act 13 Impact Fees, provide a funding buffer in the event that the actual permit applications the Department receives in the years following this final-form rulemaking do not meet the permit application projections. If that happens, the Program will need these other revenue sources to sustain the Program. If not, these funds will be allocated for needed program enhancements, restoring staff complement and adding necessary staff to administer the 2012 Oil and Gas Act and its implementing regulations. Because of new permit review tools and mobile inspection tools, the Program will continue to evaluate staffing and hire staff when necessary and when funds are available.

**19. Comment:** One commenter is concerned the Department has been relying too heavily on the electronic well permitting system as a panacea to its permitting problems. The commenter suggested that permits need to be reviewed and approved by well-trained and supported people, even if work is computerized. The commenter recommended that the Department should allocate new staff to DEP district oil and gas permitting operations rather than to the Bureau of Oil and Gas Planning and Program Development as permitting is the core issue the Department faces. (11)

**Response:** DEP agrees that electronic permitting will not, in and of itself, resolve permit review timeframe issues. Please also see the responses to Comments 9, 10 and 18.

**20. Comment:** Two commenters expressed support for the “Pittsburgh 100” program developed and endorsed by the Department’s Southwest District Office that was recently discontinued. Commenters appreciated the program’s streamlined approach to permit review. One example given was the use of phone calls and emails between staff and applicants to clarify permitting questions as a more effective means of communication compared to comment letters. The commenters hope that the best management practices discovered as part of the “Pittsburgh 100” program will be used to inform any permit approval timeframes. (3) (11)

**Response:** The Department appreciates these comments. As mentioned in the response to Comment 18, the Department reorganized the Office of Oil and Gas Management to create three new program management positions to oversee statewide surface and subsurface permitting to address the concerns raised in these comments. It is the Department’s goal to meet or decrease permit review timeframes established in the Permit Decision Guarantee policy.

### **Reasonableness Relationship**

**21. Comment:** Several commenters requested that the Department explain how the increased fee proposal bears a “reasonable relationship” to the cost of the Oil and Gas Program. This question stems from concern that the proposed fee increase places a disproportionate share of the funding responsibility upon one segment of the industry (the unconventional oil and gas operators) and therefore is contrary to the mandate that the fee bear a reasonable relationship to the cost to administer the Program. They asked the Department to examine not only the total costs of the Program, but also the proportional costs borne by the Program for oversight of the unconventional, conventional and legacy industry costs. One commenter specifically pointed out that while the conventional well industry has less volume of permit applications, it contributes significantly to the Program’s workload through compliance inspections. This commenter asked the Department to examine the total costs of the Program, but also the proportional costs borne by the program for oversight of the different industry sectors. Also, this commenter asked how the fee proposal bears a “reasonable relationship” to the cost of the program specifically in terms of its compliance monitoring activities. (1) (2) (5) (6) (9) (11) (14)

**Response:** The fee established by this final-form rulemaking is within the Board’s granted authority under Section 3274 of the 2012 Oil and Gas Act, 58 Pa.C.S. § 3274 to promulgate regulations to establish permit application fees under Section 3211(d) of the 2012 Oil and Gas Act, 58 Pa.C.S. § 3211(d) for each application for a well permit which bears a reasonable relationship to the cost of administering the 2012 Oil and Gas Act. The fee increase advances the purposes of the 2012 Oil and Gas Act by allowing the Department to adequately fund the Program tasked with implementing this act thereby ensuring protection of health, safety, environment and property while providing for the optimal development of the resource. *See* 58 Pa.C.S. § 3202. This fee increase bears a reasonable relationship to the cost of administering the 2012 Oil and Gas Act because the fee amount is derived from the Program’s projections of the number of unconventional well permit applications and costs to sustain the Program at existing staff and operating costs. The determination to increase only unconventional well permit applications and not conventional well permit application is

appropriate and reasonable and is not contrary to the express language in the 2012 Oil and Gas Act.

Section 3211(d) of the 2012 Oil and Gas Act provides: “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 [the 2012 Oil and Gas Act].” 58 Pa.C.S. § 3211(d).

As prescribed by Section 3211(d) of the 2012 Oil and Gas Act, a well permit application fee is a one-time payment submitted with each well permit application that is deposited into the Well Plugging Fund as a dedicated revenue source for the Program. This fee is set by the Board in regulation and must be reasonably related to the cost of the Program to administer the 2012 Oil and Gas Act. The fees do not provide ongoing revenue to the Program. For that reason, the fees received in a given year must fund all of the Program’s functions beyond permitting.

Since 1984, the Board has increased the well permit application fees, in 2009 and 2014, to fund the Program’s increasing expenses and established different amounts for the different classes of wells, including unconventional, conventional and home use wells. The Board established different amounts for these different classes of wells based on the cost of the Program related to well permit application projections, total well bore length for conventional wells, the costs to develop each class of well and the ability of the applicant to pay. The Board ensures that the well permit application fees bear a reasonable relationship to Program costs by using these factors to establish the different fee amounts.

The Department disagrees that fees must be based on proportional costs by industry sector. Section 3211(d) does not require that the fees be determined by the proportional costs of the Department based on the different segments of the industry. As state above, Section 3211(d) only requires that these fees bear a “reasonable relationship” to costs.

Nonetheless, in developing this final-form rulemaking, the Department considered that the conventional industry may account for approximately 40% of the costs to administer the Program for both permitting and compliance functions. In doing so, the Department considered proportional costs related to fee amounts. Based on the projected budget of \$25 million to sustain current staff and operating costs, the conventional industry’s proportional costs for would be \$10 million. If the Program projects that it will receive 240 conventional well permit applications annually, the conventional well permit application fee would need to be set at a flat rate of nearly \$42,000 per application to account for the conventional industry’s proportional costs. Increasing the conventional well permit applications fees from the average of \$365 to \$42,000 per well permit application is not reasonable or appropriate given the costs to drill conventional wells and because most, if not all, conventional well operators are small businesses.

It is reasonable for the conventional industry to pay less for well permit applications than the unconventional industry and for the Board to maintain the conventional well permit application fee at its current sliding scale structure. For these reasons, conventional well

permit application fees are part of the Program's budget allocated for restoring staff, funding program enhancements or, if necessary, providing a funding buffer.

In sum, establishing well permit application fees based on the proportional cost of each industry segment would not bear a "reasonable relationship" to Program costs.

Additionally, conventional well drilling has declined significantly over the last few years. In FY 2015-2016, the Program received 287 conventional well permit applications generating \$97,750. In FY 2016-2017, the Program received 205 conventional well permit applications generating \$84,300. In FY 2017-2018, the Program received 225 conventional well permit applications generating \$76,973. If the Program projects that it will receive 240 conventional well permit applications annually at the average conventional well permit application fee of \$365, the Program can anticipate receiving \$87,600 per year from conventional well permit application fees under the existing fee structure. The revenue from these fees represents less than .5% of the Program's annual operating costs.

The cost to drill a conventional oil well is approximately \$115,000, and the cost to drill a conventional gas well is approximately \$250,000. The three-year average conventional well permit application fee paid was \$365. Thus, the average conventional well permit accounts for between .15% and .3% of the cost to drill a conventional well. The cost to drill an unconventional well is approximately \$8 million. The \$12,500 unconventional well permit application fee established by this rulemaking accounts for .16% of the cost to drill an unconventional well. Accordingly, the fees are comparable in terms of the percentage of the costs to drill wells.

Based on the information above, the one-time nature of the well permit and Program costs, the Department decided not to increase the conventional well permit application fees. As such, the Department asserts that the existing conventional well permit application fees and the increased fee for unconventional well permits established in the final-form rulemaking bear a reasonable relationship to the cost of administering the Oil and Gas Program for both industries. In sum, the fee increase in this final-form rulemaking is authorized by Sections 3202, 3211(d) and 3274 of the 2012 Oil and Gas Act. This fee increase is consistent with the purposes of the 2012 Oil and Gas Act and with the Board's rulemaking authority.

### **Impacts on Small Businesses**

**22. Comment:** The Regulatory Review Act (RRA) requires an agency promulgating a rulemaking to prepare and submit a Regulatory Analysis Form (RAF) which considers the impacts of the proposed rulemaking on small businesses. One commenter requested that the RAF should be edited to more adequately address the impacts to small businesses as the majority of companies engaged in unconventional natural gas extraction within Pennsylvania meet the definition of small business. (1)

**Response:** This final-form rulemaking affects companies that operate natural gas wells in unconventional formations, such as the Marcellus Shale. Based on the Department's

permitting records, there are currently 80 operators of unconventional well sites in Pennsylvania, and the number of operators is not expected to change significantly in the near term.

According to the U.S. Small Business Administration, businesses with less than 1,250 employees are considered to be small businesses for North American Industry Classification System (NAICS) Codes 211120 (Crude Petroleum Extraction) and 211130 (Natural Gas Extraction). Based on these NAICS codes, an industry association that represents the majority of exploration, production, midstream and supply chain partners of unconventional natural gas drilling in Pennsylvania asserts that the majority of companies engaged in unconventional natural gas extraction are small businesses.

In developing and finalizing this rulemaking, the Department thoroughly considered the impact of raising fees on companies engaged in unconventional natural gas extraction that qualify as small businesses. This rulemaking increases the well permit application fee to \$12,500 for unconventional gas wells that cost approximately \$8 million to drill. This means that the average unconventional well permit will now account for 0.16% of the cost to drill an unconventional well rather than 0.001% of the cost to drill for which the prior unconventional well permit fee accounted. This new permit fee is more comparable to the current well permit application fee amount paid by the conventional gas industry, in which the average conventional well permit accounts for between 0.15% and 0.3% of the cost to drill a conventional well. Please refer to the response for Comment 21 for further information about the reasonableness of the unconventional well permit application fee increase.

Furthermore, increasing the well permit application fee to \$12,500 for an unconventional gas well that costs approximately \$8 million to drill should have no impact on well drilling activity in Pennsylvania. Failure to increase the well permit application fee, however, will have a substantial negative impact to the unconventional shale gas industry and the public, as the Department would be forced to further reduce its permitting and inspection staff. This would result in increased permitting timeframes and associated slowdown of economic activity. Fewer inspectors would erode public confidence in the Department and would result in more well sites going uninspected each year. This could significantly harm the industry's social license to operate and result in several unintended consequences.

### **Competitiveness**

- 23. Comment:** Several commenters expressed concern that this rulemaking will have an adverse impact on the competitiveness of Pennsylvania as this will be the highest well permit fee in the United States. Mainly, they are concerned that it sends a “chilling message” about the business climate and discourages potential investment in Pennsylvania. Commenters requested that the Department include comparisons of the fee structures in additional unconventional oil and natural gas producing states, such as Arkansas, Colorado, New Mexico, Texas and Oklahoma, in the response to Question #12 in the RAF. (1) (2) (5) (6) (14)

**Response:** The RAF has been updated to provide an analysis of the other states' permit fees. Evaluation of this comparison highlights that the increased fees which now accounts for .16% of the cost to drill an unconventional well will not negatively affect Pennsylvania's competitiveness.

The Marcellus and Utica Shales are the premier shale gas plays in the United States, and Pennsylvania is the premier state in which to drill these wells. In 2018, DEP issued 1,868 unconventional well drilling permits; West Virginia issued 433 such permits; and Ohio issued 258 permits. Overall, 12,232 unconventional wells have been drilled (and remain active) in Pennsylvania; 3,866 unconventional wells have been drilled in West Virginia; and 3,717 unconventional wells have been drilled in Ohio. In addition, total gas production in Pennsylvania has grown each year with over 6 trillion cubic feet produced in 2018.

While the fee structures for other gas producing states were included in the RAF, it is significant to note that there are major differences between the shale gas plays in the northeast, the shale gas plays in the southwest, and shale oil plays in the south or northwest. Market prices for natural gas vary regionally due to supply, demand and infrastructure. Oil and natural gas prices have de-coupled, therefore, operators will continue to drill wells where gas prices are high or where they can recover a high volume of production. The most reasonable competitiveness comparison is to evaluate similarly situated states, which is why DEP chose the Marcellus and Utica states of New York, Ohio, West Virginia and Maryland. As noted by the commenters, two of those states have elected to ban the activity and as described above, West Virginia and Ohio significantly trail Pennsylvania in activity.

DEP acknowledges that the well permit application fee in this final-form rulemaking is higher than in other states, but other state regulatory agencies receive significant funding from a severance tax. Additionally, as the analysis in the RAF shows, the states included in the RAF analysis charge a myriad of fees for a variety of other activities, while Pennsylvania's fee structure is based solely on the well permit application fee.

#### **Provide/Improve DEP Training Opportunities**

24. **Comment:** Two commenters expressed interest in ensuring the Department provide training opportunities as a means of helping to control costs and ensure timely permit review times. One commenter suggested that the Department should partner with industry in these training efforts. (3) (7)

**Response:** The fee increase should generate sufficient revenue to allow the Program to maintain its current staffing and operating costs. This should enable the other sources of revenue available to the Program, including the conventional well permit application fee and the \$6 million Impact Fee, to be used by the Office of Oil and Gas Management to develop and deliver high quality training opportunities to its staff on a recurring basis as long as unconventional well permit application projections that serve as the basis of this fee increase are accurate.

In developing and improving future training opportunities, the Department is willing to partner with other public sector and private sector entities, including the regulated community, environmental community and public.

### **Department Operations**

25. **Comment:** One commenter asked why has the Department's personnel expenditure increased every year even though the Department has experienced a reduction in staff. (7)

**Response:** Personnel costs did decline initially. However, once stabilized, staff costs have increased annually due to increasing health care costs, pension costs, and general pay increases.

26. **Comment:** One commenter requested that the Department provide more detail in support of the Comparative Financial Statement that is attached to the RAF. Specifically, the commenter thought it would be helpful to see the Department's fiscal year expenditures for each division under the Office of Oil and Gas Management and for each office location. (7)

**Response:** The Department's Comparative Financial Statement tracks revenue categories that are applicable to the Oil and Gas Program including permit fees, fines/penalties, Act 13 Impact Fees, and other miscellaneous revenues. Expenditures are categorized as personnel, operating, fixed assets, and transfers. Although the Office of Oil and Gas Management can prepare a variety of customized financial reports to reflect actual expenditures in each District Oil and Gas Office and the Bureau of Oil and Gas Planning and Program Management, the standard Comparative Financial Statement consolidates all such expenditures in the categories referenced above sufficiently.

27. **Comment:** One commenter questioned why operating costs are projected to increase by about \$1 million even though the Department has done a good job controlling and even reducing operating costs. (7)

**Response:** The expenditures listed on the Comparative Financial Statement in FY 2011-12 through FY 2016-17 are actual costs, whereas the operating costs listed in the FY2017-18 and FY2018-19 reflect projected costs based on estimates contained in the Oil and Gas Program's annual spending plans. Spending plans are a tool used by all programs within DEP to estimate the cost of funding a program based on potential purchases. Such operating costs can include training, travel, office supplies, computer hardware, computer software, supplies, and other miscellaneous operating expenses. If actual program income does not support the purchase of items listed in the spending plan, those operational items are not purchased.

As part of the Oil and Gas Program's cost savings measures, new vehicle and new computer purchases were curtailed. In addition, travel and training programs were significantly reduced. The Oil and Gas Program intends to maintain functioning vehicles and computer systems and to begin offering training opportunities to staff and industry with the other revenue sources available to the Program, like the conventional well permit fee and the \$6 million Impact Fee, as the new revenue provided by the unconventional well permit fee will

be able to sustain the Program's current staffing and operating costs. By addressing these items, the money spent on operating costs will increase.

### **Miscellaneous**

28. **Comment:** Two commenters pointed out responses in the RAF that had inaccurate figures. Question #12 on the RAF incorrectly calculated the percentage increase of the proposed fee increase on the overall cost of drilling an unconventional well. This error was repeated in Questions #24 and #26. The commenters suggested that the calculations should be revised accordingly. (1) (14)

**Response:** The Department has corrected this error.

29. **Comment:** On June 14, DEP reviewed a proposed rulemaking with the Air Quality Technical Advisory Committee that will increase air permitting fees. If adopted, the rulemaking would levy a \$2,500 permit application fee along with an annual \$2,500 operating permit maintenance fee. One commenter asked that DEP consider the total cost increase as a result of all environmental permits that are levied on the unconventional natural gas industry since such fees have a cumulative impact on the industry. (1)

**Response:** The 2012 Oil and Gas Act and 25 Pa. Code 19a establish the fee structure and review procedures for the fees charged by the Oil and Gas Program. DEP followed those rules and properly evaluated costs to industry throughout the development of this rulemaking.

30. **Comment:** According to the Department, all 78 inspectors are either currently using, or will be using in the near future, tablet computers to conduct inspections. The Governor's Office estimated the savings to be approximately \$10,300 per inspector, which would translate to a savings of over \$800,000 for the DEP Oil and Gas Program. One commenter pointed out that the Department has failed to note the improved efficiencies and cost-savings of this initiative in the RAF. (1)

**Response:** The RAF was updated to address this comment.

31. **Comment:** One commenter asked if the Department is considering extending the current permit term from one year to three years. (6)

**Response:** DEP supports this permitting concept, but it would require a change to statute.



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2020 FEB 14 P 1:38

February 14, 2020

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

Re: Final-Omitted Rulemaking: Hazardous Waste Generator Improvements Rule (#7-543)  
Final Rulemaking: Revision of the Maximum Allowable Sulfur Content Limit for No. 2  
and Lighter Fuel Oil (#7-546)  
Final Rulemaking: Unconventional Well Permit Application Fees (#7-542)

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, please find enclosed two final-form rulemakings and one final-omitted rulemaking for review by the Independent Regulatory Review Commission (IRRC). The Environmental Quality Board (EQB or Board) adopted these rulemakings at its January 21, 2020, meeting.

**The Hazardous Waste Generator Improvements Rule (#7-543) final-omitted rulemaking** ensures the alignment of Pennsylvania's hazardous waste regulations with revisions to the Federal hazardous waste regulations. On November 28, 2016, the U.S. Environmental Protection Agency (EPA) finalized the Hazardous Waste Generator Improvements Rule (HWGIR), which substantially revised provisions in 40 CFR Parts 260 – 268 and 270, reorganizing many of the Federal generator regulations to make them more intuitive for users. The amendments included in this rulemaking will ensure the consistency of Chapters 261a – 265a with the revised Federal regulations, update the cross-references in the Pennsylvania regulations to match the revised Federal regulations and provide clarity to the public and the regulated community with respect to the references to the Federal provisions incorporated by reference.

This final-omitted rulemaking includes changes to Pennsylvania's regulations to address: the relocation of certain Federal provisions in 40 CFR Parts 260 – 265 as a result of the HWGIR; a change in the terminology used in the Federal rule from “conditionally exempt small quantity generator” to “very small quantity generator;” and the deletion of a reference in Subpart J of 40 CFR Part 262 (relating to standards applicable to generators of hazardous waste) in the HWGIR.

Public comment is omitted for this rulemaking because the substantive changes in the HWGIR were automatically incorporated by reference in Pennsylvania's regulations and the amendments in this final-omitted rulemaking are not substantive. The HWGIR was subject to a notice and



comment process when it was proposed at the Federal level on September 25, 2015. See 80 FR 57918. The amendments to 25 Pa. Code Chapters 261a – 265a are not substantive changes, but rather are minor corrections to ensure consistency with the provisions of the Federal regulations already incorporated by reference.

The Department presented a draft Annex A of this final-omitted rulemaking to the Solid Waste Advisory Committee at its meeting on September 12, 2019. The only feedback received was members wanting to ensure that the regulated community is educated and informed about the changes included in this rulemaking. As mentioned above, this rulemaking incorporates the HWGIR, which the regulated community has had to comply with since it took effect in May of 2017. To ensure the regulated community is aware of the information in the HWGIR, focused inspector training regarding the rule was provided by EPA Headquarters to Department staff at the Southcentral Regional Office on May 17, 2017. Additionally, the Hazardous Waste Management Division of the Department's Bureau of Waste Management made appropriate changes to the Hazardous Waste Management Compliance Guide (available on the Department's website) and to the Hazardous Waste Frequently Asked Questions (also available online) to reflect the HWGIR.

**The Revision of the Maximum Allowable Sulfur Content Limit for No. 2 and Lighter Fuel Oil (#7-546)** final-form rulemaking provides for the reduction of sulfur dioxide (SO<sub>2</sub>) emissions from the combustion of No. 2 and lighter commercial fuel oil (No. 2 fuel oil). The SO<sub>2</sub> emissions released by combustion of sulfur-containing No. 2 fuel oil contribute to the formation of regional haze and fine particulate matter (PM<sub>2.5</sub>) both of which are serious public health and welfare threats and affect visibility. Adopting this final rulemaking is part of the Commonwealth's strategy for meeting regional haze obligations under Section 169A of the Federal Clean Air Act, 42 U.S.C.A. § 7491, and its implementing regulations under 40 CFR Part 51, Subpart P (protection of visibility).

These amendments are consistent with the recommendations of the Mid-Atlantic/Northeast Visibility Union (MANE-VU) Regional Planning Organization. The Commonwealth is a member of MANE-VU, which was established in 2001 to assist the Mid-Atlantic and Northeast States in planning and developing their regional haze State Implementation Plan (SIP) revisions to address the impact of regional haze and visibility impairment on mandatory Federal Class I areas (which includes National parks, forests, and wilderness areas) as well as urban and rural areas within the MANE-VU region.

The proposed rulemaking was adopted by the Board at its meeting on April 16, 2019, and published in the *Pennsylvania Bulletin* on July 6, 2019, with a 66-day public comment period (49 Pa. B. 3482) that closed September 9, 2019. Three public hearings were held on August 6, 7, and 8, 2019, in Pittsburgh, Norristown, and Harrisburg, respectively. Five individuals presented testimony at the public hearings. The Board received 23 public comments in total.

On October 9, 2019, the Independent Regulatory Review Commission (IRRC) submitted comments on the proposed rulemaking. IRRC asked if the Department considered a fixed implementation date to allow the regulated community to plan for the transition to the lower sulfur content limit. IRRC also asked whether the Department considered a less costly or less intrusive



alternative method of achieving the goal of the regulation for small businesses in the fuel oil supply chain impacted by this regulation. The compliance date was revised in the final rulemaking to September 1, 2020, to provide certainty to the regulated community.

In November 2017, the Department met with representatives from the Pennsylvania Petroleum Association (Association) and member companies, including Shipley Energy, Walton, Inc., and Tevis Energy. The Association indicated that it would like the maximum allowable sulfur content limit for No. 2 fuel oil to be reduced to 15 ppm as soon as possible. On January 23, 2019, the Department met with the Association, which again expressed its eagerness to see this proposal move forward and also stated that it is recommending the use of 15 ppm fuel oil to its members.

The Department presented the draft final-form Annex A to the Air Quality Technical Advisory Committee on October 17, 2019, and to the Small Business Compliance Advisory Committee on October 23, 2019 and briefed both on the comments received. Both committees voted unanimously to concur with the Department's recommendation to present this final rulemaking to the EQB for consideration. The Department presented the draft final-form Annex A to the Citizens Advisory Council's (CAC) Policy and Regulatory Oversight (PRO) Committee on October 28, 2019. With the recommendation of the PRO Committee, on November 19, 2019, CAC concurred with the Department's recommendation to present this final rulemaking to the Board for consideration.

The **Unconventional Well Permit Application Fees (#7-542)** final-form rulemaking follows the process, as specified in sections 78.19(e) (relating to permit application fee schedule) and 78a.19(b), to provide the EQB with an evaluation of the Chapters 78 and 78a well permit application 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 to ensure compliance with the 2012 Oil and Gas Act. The Department has determined that a significant disparity exists between fee income and costs to run the Program (See Attachment A of the rulemaking package for more information). In order to continue administering the Program, the unconventional permit application fee must be increased. This final-form rulemaking reflects a reasonable fee increase.

The final-form rulemaking increases the current well permit application fees from \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells to \$12,500 for all unconventional well permit applications in order to administer the 2012 Oil and Gas Act. Since the last unconventional well permit application fee increase in 2014, well permit application fees have not generated the revenue needed to fund Program costs due to declining unconventional well permit application numbers. Nonetheless, the Program's workload has increased due to the additional well inventory, development activity, and the need for guidance and technical tools to stay current with industry environmental standards.

The proposed rulemaking was adopted by the Board at its meeting on May 16, 2018, and published in the *Pennsylvania Bulletin* on July 14, 2018, with a 30-day comment period (48 Pa. B.4100). The comment period closed August 13, 2018. The Board received comments from 14 commenters.

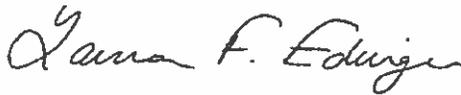


The Department consulted with the Oil and Gas Technical Advisory Board (TAB) in the development of the proposed rulemaking. The Department presented its *3-Year Regulatory Fee and Program Cost Analysis Report to the Environmental Quality Board* and discussed its proposal to raise the unconventional well permit application fee to \$12,500 at TAB's February 14, 2018, meeting. The Department also included the proposed unconventional well permit application fee increase at several meetings with the regulated community. Attendees included representatives from all the major trade groups in the unconventional industry.

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

Please contact me by e-mail at [ledinger@pa.gov](mailto:ledinger@pa.gov) or by telephone at 717.783.8727 if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Laura F. Edinger".

Laura Edinger  
Regulatory Coordinator

Enclosures



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

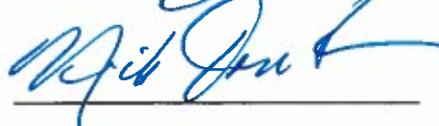
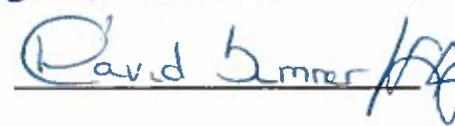
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I.D. NUMBER: 7-542  
 SUBJECT: Unconventional Well Permit Application Fees  
 AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

**TYPE OF REGULATION**

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

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
2/14/20		Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Representative Daryl Metcalfe
2/14/20		Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Representative Greg Vitali
2/14/20		Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Senator Coene Yaw
2/14/20		Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Senator Steve Santarsiero
2/14/20		INDEPENDENT REGULATORY REVIEW COMMISSION David Sumner
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

