REVISED 12/16

# Regulatory Analysis Form

(Completed by Promulgating Agency)

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

***INDEPENDENT REGULATORY REVIEW COMMISSION***

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(1) Agency: Department of Environmental Protection

(2) Agency Number:

Identification Number: 7-542

IRRC Number: 3206

(3) PA Code Cite: 25 Pa. Code Chapter 78a

(4) Short Title: Unconventional Well Permit Application Fees

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

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(6) Type of Rulemaking (check applicable box):

- ☒ Proposed Regulation
- ☐ Final Regulation
- ☐ Final Omitted Regulation
- ☐ Emergency Certification Regulation;
  - ☐ Certification by the Governor
  - ☐ Certification by the Attorney General

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

The purpose of the proposed rulemaking is to increase the unconventional well permit application fee from $5,000 for nonvertical unconventional wells and $4,200 for vertical unconventional wells to $12,500 for all unconventional well permit applications. Because these proposed fee amendments only apply to Chapter 78a and not Chapter 78, conventional well operators are not affected by the amendments. 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 Environment Protection's (Department) Office of Oil and Gas Management (collectively, the Oil and Gas Program or Program), support current Oil and Gas Program activities, fund additional positions where needed and modernize the Program.

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

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

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

Section 3211(d) of the 2012 Oil and Gas Act provides that "each application for a well permit shall be accompanied by a permit fee, established by the Environmental Quality Board, which bears a reasonable relationship to the cost of administering this chapter." 58 Pa.C.S. § 3211(d).

The Department has an obligation, as specified in 25 Pa.Code §§ 78.19(e) and 78a.19(b), to provide the Environmental Quality Board with an evaluation of the Chapter 78 and 78a well permit application fees at least every three years and recommend any changes to the fees necessary "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." The oil and gas well permit application fees were last modified in June 2014. Therefore, conducting such an evaluation and recommending as needed changes to the fees to the Environmental Quality Board (Board) is mandated at this time by Chapters 78 and 78a.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This proposed rulemaking is needed because the current revenue generated by the well permit application fees are not sufficient to cover the cost of the Oil and Gas Program's efforts to administer the 2012 Oil and Gas Act. Applicants for permits to drill oil and gas wells pay a permit application fee established by the Board. These well permit application fees, the $6 million Impact Fee provided to the Department by 58 Pa.C.S. 2314(c.1)(3) (relating to distribution of fee), and any fines levied against the oil and gas industry are placed into the Well Plugging Fund in accordance with 58 Pa.C.S. § 3271(a). The money in the Well Plugging Fund covers the entire operation of the Program. Significantly, the Impact Fee is not dedicated solely to the Oil and Gas Program. The Department is allocated the $6 million Impact Fee 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." 58 Pa.C.S. § 2314(c.1)(3). Allocation of these funds depends on the Department's immediate needs. Therefore, the Impact Fee is not included the well permit application fee analysis.

The well permit application fee does not include the Oil and Gas 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. 58 Pa.C.S. § 3271(b). 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. 58 Pa.C.S. § 3271(c). 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 Act 13).
As noted above in response to question (9), conducting an evaluation of the well permit application fee and recommending changes to the fee to the Board is mandated at this time by Chapters 78 and 78a. Since 2015,

the Department has been monitoring the declining Well Plugging Fund balance and evaluating the need for additional staff and revenue by means of a regulatory fee package.

If the current unconventional well permit application fee of $5,000 is not revised, the Oil and Gas Program would need to receive 5,000 horizontal unconventional well permit applications per year to be fiscally sustainable in FY 2019-2020. Indeed, through the first quarter of 2018 the Oil and Gas Program is on track to receive fewer than 1,700 unconventional well permit applications. By comparison, the Oil and Gas Program received less than 2,000 unconventional well permit applications in FY 2016-2017. In FY 2016-2017 well permit application fee (1,993 applications) and Impact Fee revenues totaled $15.7 million but costs to run the Program exceeded $22 million. In Fiscal Year (FY) 2015-2016, well permit application fee (1,646 applications) and Impact Fee revenues totaled $13.9 million but costs to run the Program exceeded $21.6 million. As stated in the *3-Year Regulatory Fee and Program Cost Analysis Report to the Environmental Quality Board* (3-Year Report) provided to the Board at its April 17, 2018 meeting, the projected cost to fund the Oil and Gas Program at current staffing levels in Fiscal Year (FY) 2019-2020 will be approximately $25 million. Recent and current well permit application volumes will render the Well Plugging Fund insolvent by the first quarter of FY 2019-2020.

In response to declining Well Plugging Fund balance, the Oil and Gas Program reduced staff over time from 226 employees to 190 employees today. The Oil and Gas Program also reduced operating costs by 38%. Operating expenses only account for 10% of total program costs, therefore any future cost savings, absent this fee increase, would have to come from a reduction in staff. At the current disparity between fee revenues and costs to run the Program, the Oil and Gas Program would need to reduce its complement by almost 70 additional positions (or an additional 37%) in order to make up the annual net loss in the Program. This is an untenable approach that would render the Program incapable to meet it statutory obligations and the expectations of Pennsylvania citizens and the industry.

As a result of the significant reduction in staff referenced above, the Program struggles to meet its gas storage field inspection goals, consistently achieve appropriate permit review time frames, adequately fund training opportunities for staff and put on training for industry. Important program development initiatives, such as policies, best practices and technical guidance documents, have been put on hold because of a lack of sufficient staff to develop and update these important pieces of the Oil and Gas Program. In short, the Program is challenged to provide an adequate level of high quality service to the public and to the oil and gas industry. Service quality and Program capabilities will diminish significantly if no action is taken to increase funding.

In conducting its fee analysis, the Department did not include conventional well permits because the conventional industry currently submits approximately 200 permit applications per year and is unable to materially support Program costs through applicable fees. Conventional well permits provided only $61,050 in 2017 (0.24% of needed program funding) and even less revenue in 2016. The Department does not anticipate receiving any appreciable increase in conventional oil and gas permit applications in the future.

The number of unconventional permits received by the Department fluctuates significantly each year. As such, accurately forecasting the number of permits received annually is not practical. Thus, it is entirely foreseeable that the current fee proposal will not be adequate to fund the Program. Indeed, through the first quarter of 2018 the Oil and Gas Program is on track to receive fewer than 1,700 unconventional well permit applications. This considerable uncertainty, and the additional Program needs described below, is why the $6 million Impact Fee is not included in the Department's well permit application fee analysis. The Department also did not include penalties in its well permit application fee analysis because relying on penalties to fund program expenses is not appropriate and is contrary to sound public policy.

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

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

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

N/A. 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?

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

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

Permit to drill, reopen, convert or plug-back
Expedite fees ($250.00)
Fees for drill, reopen, convert or plug-back ($500.00)

Urban Fees:
Population under 10,000 ($500.00)
Population under 15,000 ($750.00)
Population over 15,000 or incorporated municipal area ($1000.00)
Mandatory pooling application fee ($5000.00)
Revision or reissuance of a permit to drill, reopen, convert or plug-back ($250.00)

Temporary Inactive Status:
$100.00 for first year, $250.00 for second year, $500.00 for third year and beyond.

Permit to Plug and Abandon a well:
Application Fee ($250.00)
Expedite Fee ($500.00)

Disposal of Brine
Permit fee ($1000.00)
Disposal fee ($.05/bbl in state)
Disposal fee ($.20/bbl out of state)

Registration certificate and identification for brine haulers
Application fee ($50.00)

Surface application of brine by local governments
Plan fee for application of brine ($50.00)

Unitization:
Application filing fee ($10,000.00)

Notice of assignment or transfer of interest in lease:
Well transfer fee ($100.00)

Revised Unit fee ($50.00)
Revised Location Fee ($250.00)
Post drilling map fee-- ($50.00)

The cost to drill a typical unconventional well is approximately $8 million. The current unconventional well permit fee is $5,000. An increase of $7,500 to a flat fee of $12,500 for an unconventional well represents .001% of the overall cost to drill a well and will have no impact on Pennsylvania's competitiveness with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation will not affect any other regulations or agencies.

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

The Department consulted with the Oil and Gas Technical Advisory Board (TAB) in the development of this 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 an increase of the unconventional well permit application fee as an agenda item during the last three 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 televised press conference by Governor Wolf and Secretary McDonnell on January 26, 2018.

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

This regulation affects companies that operate natural gas wells in unconventional formations, such as the Marcellus Shale. According to the U.S. Small Business Administration, for NAICS codes 211120 (Crude Petroleum Extraction) and 211130 (Natural Gas Extraction), businesses with less than 1,250 employees are considered to be small businesses. 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.

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

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

This proposed rulemaking affects companies that operate natural gas wells in unconventional formations, such as the Marcellus Shale. According to the U.S. Small Business Administration, for NAICS Codes 211120 (Crude Petroleum Extraction) and 211130 (Natural Gas Extraction), businesses with less than 1,250 employees are considered to be small businesses. 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.

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

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

Increasing the well permit application fee by approximately $7,500 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 reduce its permitting and inspection staff by more than 70 people unless other funding sources are used, such as the General Fund. 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.

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

The revenues generated from the fee increase will enable the Department to continue funding the direct and indirect costs of administering the 2012 Oil and Gas Act. Direct and indirect costs include personnel costs for carrying out Oil and Gas Program activities including processing of permits and conducting site inspections, operating expenses and the purchase of fixed assets such as sampling supplies, monitoring equipment and vehicles which are all associated with ensuring compliance with the 2012 Oil and Gas Act.

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

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

The proposed rulemaking increases the 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.

The Department projects that approximately 2,000 well permit applications will be received annually (in comparison to approximately 200 conventional well permit applications) following this adoption of these amendments. This would 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 proposed regulations.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The fees that are collected by the Department are utilized solely to offset the direct and indirect costs of administering Pennsylvania's Oil and Gas Program. The fees collected will enable the Department to continue operating an effective Oil and Gas Program while enabling additional positions that will assist the Department in administering newly enacted statutory requirements.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The proposed 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 |
|---|---|---|---|---|---|---|
| **SAVINGS:** | $ | $ | $ | $ | $ | $ |
| **Regulated Community** | $0 | $0 | $0 | $0 | $0 | $0 |
| **Local Government** | $0 | $0 | $0 | $0 | $0 | $0 |
| **State Government** | $0 | $0 | $0 | $0 | $0 | $0 |
| **Total Savings** | $0 | $0 | $0 | $0 | $0 | $0 |
| **COSTS:** | | | | | | |
| **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 |
| **Total Costs** | $15,000,000 | $15,000,000 | $15,000,000 | $15,000,000 | $15,000,000 | $15,000,000 |
| **REVENUE LOSSES:** | | | | | | |
| **Regulated Community** | $0 | $0 | $0 | $0 | $0 | $0 |
| **Local Government** | $0 | $0 | $0 | $0 | $0 | $0 |
| **State Government** | $0 | $0 | $0 | $0 | $0 | $0 |
| **Total Revenue Losses** | $0 | $0 | $0 | $0 | $0 | $0 |

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

| Program | FY -14/15 | FY -15/16 | FY -16/17 | Current FY through 2/21/18) |
|---|---|---|---|---|
| Well Plugging Restricted Revenue Account (Fund 001-SAP Fund 60083)*<br><br>* Expenditures and commitments | $16,220,000 | $16,634,000 | $16,371,000 | $8,116,000 |

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

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

This regulation affects companies that operate natural gas wells in unconventional formations, such as the Marcellus Shale. According to the U.S. Small Business Administration, for NAICS Codes 211120 (Crude Petroleum Extraction) and 211130 (Natural Gas Extraction), businesses with less than 1,250 employees are considered to be small businesses. 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. It is estimated that half of the unconventional operators in Pennsylvania may qualify as small businesses.

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

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

This rulemaking will not impose a reporting or recordkeeping requirement.

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

Although unconventional well permit application fees will increase, it is not anticipated that this rulemaking will adversely impact small businesses. As noted above, the increased well permit application fee represents less than 0.001% of the capital required to drill a single unconventional well. Even though it is estimated that half of the unconventional operators in Pennsylvania may qualify as small businesses, this increased cost for such businesses is minimal when considered as part of the overall cost of the project. The universe of oil and gas operators that drill conventional oil and gas wells are more likely to qualify as small businesses. However, the proposed rulemaking does not alter the current fee structure for conventional oil and gas well permits.

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

There is no less intrusive alternative to this regulation.

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

This rulemaking does not affect groups or persons including minorities, the elderly or farmers; therefore, this rulemaking does not include special provisions that address such needs. As noted above, the impact on unconventional well operators who 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 regulatory options to amend the existing well permit application fee structure for unconventional gas well permits. The options included assessing increased permit fees, annual gas well registration fees, and fees for conventional well permits and any other authorization required of the Department, similar to the fees charged by Ohio. It was determined that the most viable option would be to simply increase the current unconventional well permit application fee. This approach is the most viable as it does not significantly change how or when the fees are currently collected; only the amount collected is changed. Also, the increase is minimal (0.001%) compared to the overall cost to drill an unconventional well and will have no impact on Pennsylvania's competitiveness with other states (see response to question (12)). The existing sliding scale fee for conventional wells will not be adjusted so will remain unchanged. This approach results in the least burdensome alternative to small businesses while providing sufficient funds to enable to Department to continue to operate an effective oil and gas regulatory program.

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

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

While some unconventional operators may be considered a small business as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, no changes to reporting, recordkeeping, or other administrative procedures are proposed as part of this rulemaking. As noted above, 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;

While some unconventional operators may be considered a small business as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, no changes to reporting, recordkeeping, or other administrative procedures are included as part of this rulemaking. As noted above, the impact on unconventional well operators who qualify as small businesses, is believed to be minimal and therefore no less stringent schedules or deadlines for compliance or reporting to further minimize that impact were considered.

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

While some unconventional operators may be considered a small business as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, no changes to reporting, recordkeeping, or other administrative procedures are included as part of this rulemaking. As noted above, the impact on unconventional well operators who qualify as small businesses, is believed to be minimal and therefore no consolidation or simplification of compliance or reporting requirements to further minimize that impact were considered.

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

The proposed rulemaking does not include design or operational standards.

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

While certain unconventional operators may meet the definition of small business under the Regulatory Review Act, Act 76 of 2012, those operators are already subject to the well permit application fee imposed by 25 Pa.Code § 78a.19. As noted above, the impact on unconventional well operators who qualify as small businesses, is believed to be minimal and therefore exemption of small businesses to further minimize that impact were considered.

The universe of oil and gas operators that drill conventional oil and gas wells are more likely to qualify as small businesses. However, the proposed rulemaking does not alter the current fee structure for conventional oil and gas well permits.

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

Declining revenue from the collection of oil and gas well permit application fees is the basis for revising the current fee structure that has been in place since June 2014. 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).

This rulemaking, along with the 3-Year Report, is intended to meet this regulatory requirement and includes a recommendation to increase the current fee structure to ensure all costs of administering the 2012 Oil and Gas Act are met and such that the Oil and Gas Program is sustained until the next 3-year fee review.

The Department relied on standard comparative financial statements to assist in determining the solvency and of the Well Plugging Restricted Revenue Account and to conduct an analysis of the future viability of the account balance based on anticipated revenue and expenditures. The comparative financial statement included in the 3-Year 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.

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

| | |
|---|---|
| A. The length of the public comment period: | 30 days |
| B. The date or dates on which any public meetings or hearings will be held: | NA |
| C. The expected date of delivery of the final-form regulation: | Quarter 2, 2019 |
| D. The expected effective date of the final-form regulation: | Quarter 3, 2019 |
| E. The expected date by which compliance with the final-form regulation will be required: | Quarter 3, 2019 |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | NA |

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

Sections 78.19(e) and 78a.19(b) requires 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 rulemaking as required by sections 78.19(e) and 78a.19(b).

8000-PM-OOGM0001bU Rev. 5/2017

pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF OIL AND GAS MANAGEMENT

# 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 . LONG - . NAD 83 | Project Number | Serial # |
| 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 |
|---|---|---|
| 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 Ft.

**PNDI Attached:** ☐ 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: ☐ Coal well (Attach Coal Module) ☐ Non coal well (Attach justification)

**PERMIT TYPE**
Check applicable.
Application is to
☐ Modify existing well/permit

**TYPE OF WELL**
Check applicable.
☐ Gas
☐ Comb. (gas & oil/condensate)

Configuration
☐ Vertical
☐ Horizontal
☐ Deviated
☐ Multiple laterals

**APPLICATION FEE**
INCLUDED (plus surcharges)
☐ $ 12,750.00

Bond Agreement Id: _____

| 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). | ☐ | ☐ |
| a. If "Yes" to #1, is the well at least 330 feet from outside lease or unit boundary? | ☐ | ☐ |
| b. Does the location fall within an area covered by a spacing order? | ☐ | ☐ |
| 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 form any watercourse or any high quality of exceptional value body of water or any wetland one acre or greater in size? | ☐ | ☐ |
| 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. | ☐ | ☐ |
| 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. | ☐ | ☐ |
| 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 | ☐ | ☐ |

| 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? | ☐ | ☐ |
| a. If Yes, print the names of: Storage Field: _____ Operator: _____ | | |
| 4. Is the proposed well location within the permitted area of a **landfill**? | ☐ | ☐ |
| 5. Will the vertical wellbore section of the unconventional well be drilled within 500 feet from any existing building or an existing water supply? | ☐ | ☐ |
| a. If "Yes," is written consent from the owner attached? | ☐ | ☐ |
| b. If written consent is not attached, is a variance request (form 8000-FM-OOGM0058) attached? | ☐ | ☐ |
| 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? | ☐ | ☐ |
| a. If "Yes," is written consent from the owner attached? | ☐ | ☐ |
| b. If written consent is not attached, is a variance request (form 8000-FM-OOGM0058) attached? | ☐ | ☐ |
| 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? | ☐ | ☐ |
| a. If "Yes," was there a permitted well at this well site prior to April 16, 2012? | ☐ | ☐ |
| 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. _____ | ☐ | ☐ |
| 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. | ☐ | ☐ |
| 8. Will any portion of the well site be in a Special Protection High Quality ☐ (HQ) or Exceptional Value ☐ (EV) watershed?<br>Provide name of special protection watershed _____. | ☐ | ☐ |
| 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. _____<br>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. | ☐ | ☐ |
| 10. Is the well to be located within a $H_2S$ area pursuant to §78a.77a? | ☐ | ☐ |
| 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. | | |

| **Signature of Applicant** | 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:<br>Title: | Date |
| Application Preparer/Contact: | | | Phone: |

8000-PM-OOGM0001bU Rev. 5/2017
Record of Notification / Written Consent

pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF OIL AND GAS MANAGEMENT

# PERMIT APPLICATION TO DRILL AND OPERATE AN UNCONVENTIONAL WELL

## Record of Notification

US Well No. (API No.)

| Signature of Applicant | 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. | | |
|---|---|---|---|
| Signature of Person Authorized to Submit Application | *(Print or Type)* | Name of Signer:<br>Title: | Date |

List the following: surface landowner; 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.

**Notification: Signature below name indicates the party's acknowledgement of receipt of the well location plat and serves as proof of notification**

| | | | Surface Landowner | Gas Storage Operator | Surface Landowners & Water Purveyors with water supplies <3000' | Municipalities | Notification (Note the means and attach proof.) Certified Mail Dates: Sent | Return Receipt | Address Affidavit | Written Consent |
|---|---|---|---|---|---|---|---|---|---|---|
| Print Name:<br>Signature | Address: | | | | | | | | | |
| Print Name:<br>Signature | Address: | | | | | | | | | |
| Print Name:<br>Signature | Address: | | | | | | | | | |
| Print Name:<br>Signature | Address: | | | | | | | | | |
| Print Name:<br>Signature | Address: | | | | | | | | | |

## Record of Written Consent

**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: Surface Owner | Water Well within 500 feet | Building within 500 feet |
|---|---|---|---|---|---|
| **Print and Sign Name:** | **Address:** | **Date** | ☐ | ☐ | ☐ |
| **Print and Sign Name:** | **Address:** | **Date** | ☐ | ☐ | ☐ |
| **Print and Sign Name:** | **Address:** | **Date** | ☐ | ☐ | ☐ |

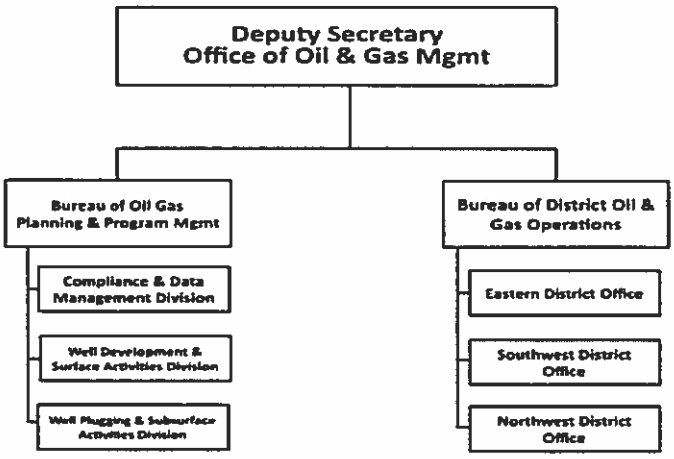
# 3-YEAR REGULATORY FEE AND PROGRAM COST ANALYSIS REPORT TO THE ENVIRONMENTAL QUALITY BOARD

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:**

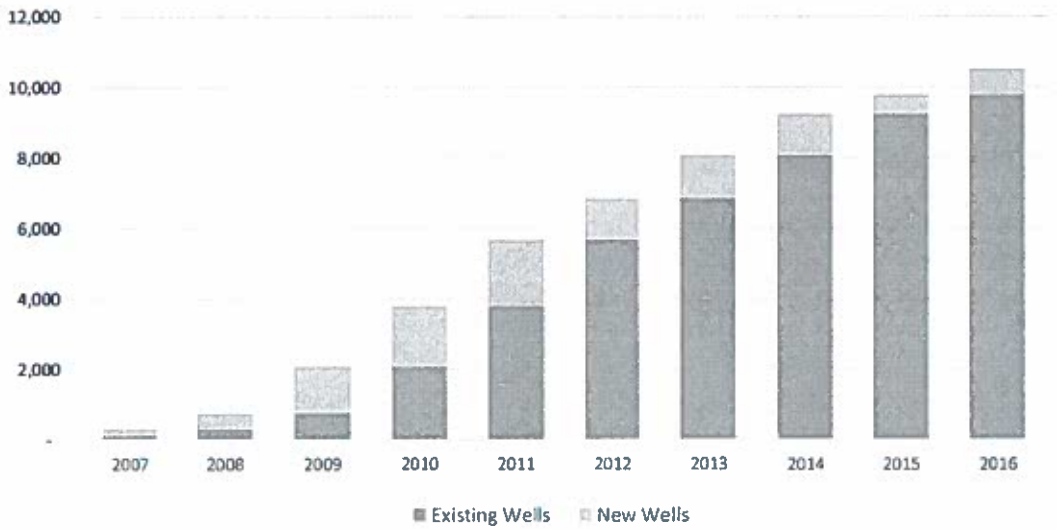
Workload

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.

Figure 1: New and Existing Unconventional Wells by Fiscal Year

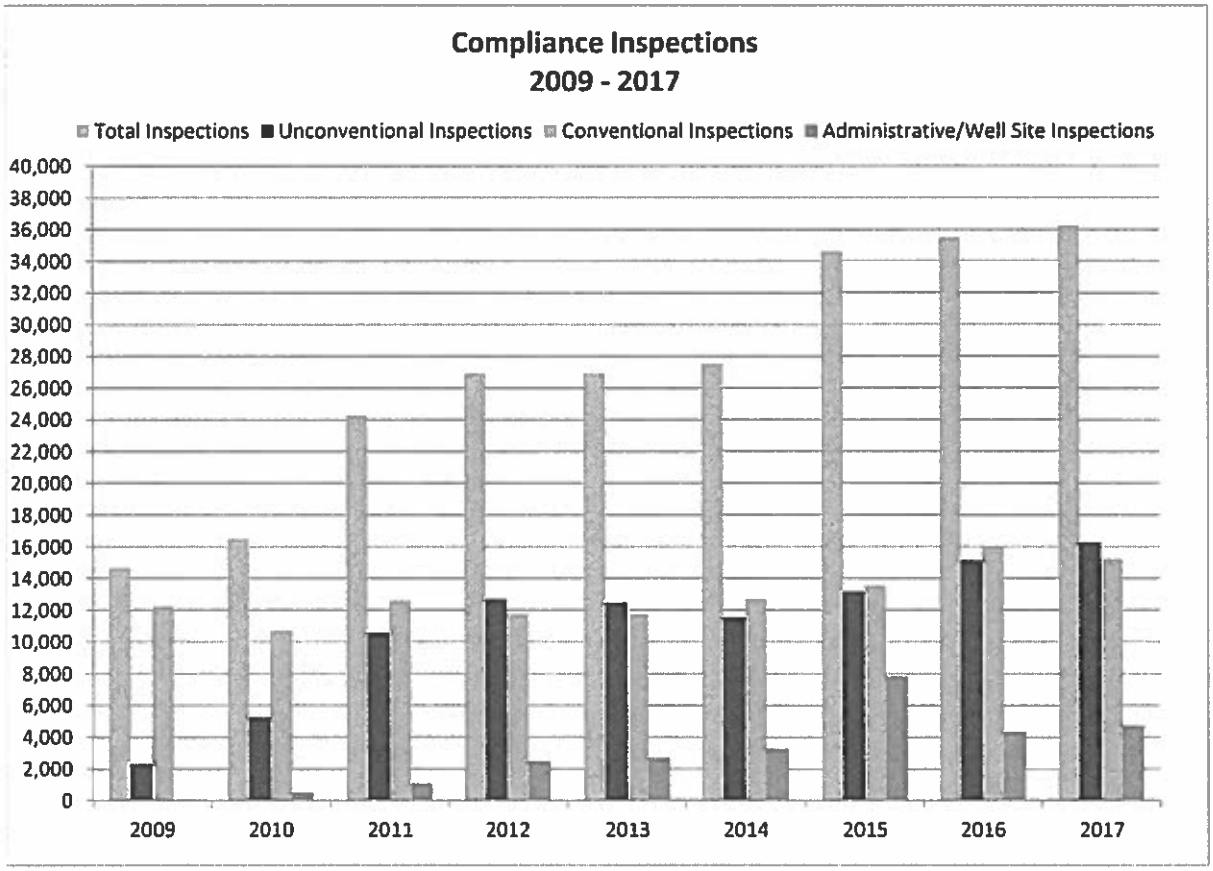



Data from DEP's Spud Data Reports, categorized by fiscal year for unconventional wells only. "New Wells" are those drilled during the fiscal year.

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.

| | **Number of Unconventional Permits Received** |
|---|---|
| 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 Projection | FY 2018-19 Projection |
|---|---|---|---|---|---|---|---|---|
| **BEGINNING BALANCE:** | 5,836,205 | 2,975,275 | 11,093,426 | 11,118,108 | 14,005,857 | 10,265,076 | 7,321,124 | 7,114,846 |
| **Revenue:** | | | | | | | | |
| 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) |
| **Total Revenue:** | 13,471,420 | 23,863,502 | 18,710,331 | 23,974,696 | 17,886,341 | 19,125,347 | 23,045,478 | 17,425,000 |
| **Total Funds Available:** | 19,307,625 | 26,838,777 | 29,803,757 | 35,092,803 | 31,892,199 | 29,390,423 | 30,366,602 | 24,539,846 |
| **Expenditures:** | | | | | | | | |
| 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) |
| **Total Expenditures:** | (16,332,350) | (15,745,352) | (18,685,649) | (21,086,946) | (21,627,122) | (22,069,300) | (23,251,756) | (24,445,659) |
| **ENDING BALANCE:** | 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.**

CDL-1

# FACE SHEET
# FOR FILING DOCUMENTS
# WITH THE LEGISLATIVE REFERENCE BUREAU

**(Pursuant to Commonwealth Documents Law)**

RECEIVED
IRRC

2018 JUL -2 P 3:15

DO NOT WRITE IN THIS SPACE

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

By: [signature]

(Deputy Attorney General)

6-19-18

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 May 16, 2018

BY [signature]

TITLE PATRICK MCDONNELL
CHAIRMAN

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY [signature]

JUN 01 2018
DATE OF APPROVAL

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

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

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

Unconventional Well Permit Application Fees

25 Pa. Code Chapter 78a

**PROPOSED RULEMAKING**
**ENVIRONMENTAL**
**QUALITY BOARD**
**[ 25 PA. CODE CH. 78a]**
**Unconventional Well Permit Application Fee Amendments**

The Environmental Quality Board (Board) proposes to amend 25 Pa. Code §§ 78a.1 (relating to definitions) and 78a.19 (relating to permit application fee schedule) to read as set forth in Annex A. This proposed rulemaking complies with 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 Chapter 78 and 78a well permit application fees and recommend regulatory changes to address any disparity between income generated by the 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 (collectively, the Oil and Gas Program or Program). The proposed 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. Because these proposed fee amendments only apply to 25 Pa. Code Chapter 78a and not Chapter 78, conventional well operators are not affected by the amendments.

This proposed rulemaking was adopted by the Board at its meeting on May 16, 2018.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Kurt Klapkowski, Director, Bureau of Oil and Gas Planning and Program Management, Rachel Carson State Office Building, 15th Floor, 400 Market Street, P. O. Box 8765, Harrisburg, PA 17105-8765, (717) 772-2199; or Elizabeth Davis, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department's website at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board (EQB)").

C. *Statutory Authority*

This proposed rulemaking is authorized under 58 Pa.C.S. § 3274 (relating to regulations), which directs the Board to adopt regulations necessary to implement the 2012 Oil and Gas Act; 58 Pa.C.S. § 3211(d) (relating to well permits), 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 Purpose*

The Department is tasked with implementing the requirements of 58 Pa.C.S. Chapter 32 (relating to development) (58 Pa.C.S. §§ 3201–3274) (2012 Oil and Gas Act). 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 related to the exploration, development and recovery of Pennsylvania's oil and gas resources, including permitting, bonding, well location restrictions, protecting water supplies, containment, well control emergencies, restoration, plugging, reporting, and enforcement. The Department administers the 2012 Oil and Gas Act through the functions of the Oil and Gas Program, including data management, staffing, well permitting, surface activity permitting, inspections, compliance and policy and program development.

In accordance with Section 3211(d) of the 2012 Oil and Gas Act, the Board has the authority to establish a well permit application fee that bears a reasonable relationship to the cost of administering the 2012 Oil and Gas Act. Applicants for permits to drill oil and gas wells therefore pay a permit application fee to the Department, as established by the Board. This one-time well permit application fee must be placed in the Well Plugging Fund as a dedicated revenue source for the Oil and Gas Program. In addition to the well permit application fee, the Program is supplemented by: (a) the Impact Fee established by the 58 Pa.C.S. §§ 2301–3504 (relating to oil and gas) (Act 13), which provides $6 million to the Department annually (58 Pa.C.S.§ 2314(c.1)(3)); and (b) incidental civil penalties collected for violations of the 2012 Oil and Gas Act (58 Pa.C.S. § 3271(a)).

Significantly, the well permit application fee does not include the Oil and Gas 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. 58 Pa.C.S. § 3271(b). 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. 58 Pa.C.S. § 3271(c). 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 Act 13).

Since 1984, the well permit application fee has been increased two times, in 2009 and then in 2014 based upon permit application projections. Those projections and costs to run the Program have proved inaccurate since the 2014 rulemaking. To thoroughly address prior inaccurate projections and to comply with sections 78.19(e) and 78a.19(b), the Department prepared and presented to the Board a *3-Year Regulatory Fee and Program Cost Analysis Report* (3-Year Fee Report or Report) at the Board's April 17, 2018 meeting. A copy of the Report is available from the persons listed in Section B. As stated in the Report, the Department has decided not to consider raising the well permit application fee for conventional wells in this proposal. The conventional industry currently submits approximately 200 permit applications per year and is unable to materially support Program costs through applicable fees. Conventional well permits provided only $61,050 in 2017 (0.24% of needed program funding) and even less revenue in 2016. The Department does not anticipate receiving any appreciable increase in conventional oil and gas permit applications in the future.

If the current unconventional well permit application fees of $5,000 for nonvertical unconventional wells and $4,200 for vertical unconventional wells are not revised, the Oil and Gas Program would need to receive 5,000 nonvertical unconventional well permit applications per year to be fiscally sustainable in Fiscal Year (FY) 2019-2020. Indeed, through the first quarter of 2018 the Oil and Gas Program is on track to receive fewer than 1,700 unconventional well permit applications for FY 2017-18. By comparison, the Oil and Gas Program received less than 2,000 unconventional well permit applications in FY 2016-2017. In FY 2016-2017 well permit application fee (1,993 applications) and Impact Fee revenues totaled $15.7 million but costs to run the Program exceeded $22 million. In FY 2015-2016, well permit application fee (1,646 applications) and Impact Fee revenues totaled $13.9 million but costs to run the Program exceeded $21.6 million. As stated in the Report, the projected cost to fund the Oil and Gas Program at current staffing levels in FY 2019-2020 will be approximately $25 million. Recent and current unconventional well permit application volumes will render the Well Plugging Fund insolvent by the first quarter of FY 2019-2020.

Exacerbating the current funding imbalance is the increasing workload of the Oil and Gas Program. Each year more wells are drilled than are plugged, so the inventory of wells to be inspected to ensure compliance with 2012 Oil and Gas Act and its implementing regulations grows. Compliance assistance and monitoring activities require more field and technical staff time across the 30-county shale gas region. In addition to a growing inventory of oil and gas wells in Pennsylvania, the Oil and Gas Program must also manage and regulate a growing number of support facilities such as gathering pipelines, well development impoundments, water withdrawals and other support facilities and related infrastructure to ensure compliance with 2012 Oil and Gas Act and its implementing regulations. Equally important is the Oil and Gas Program's responsibilities related to identifying and plugging orphaned and abandoned wells. The Department estimates that more than 200,000 such wells remain unaccounted for across Pennsylvania. Finally, the Oil and Gas Program must ensure that it responds in a timely and meaningful way to complaints, inquiries and requests for public records related to the implementation of the 2012 Oil and Gas Act. All of these activities and responsibilities are

essential program functions beyond review and action on new well permit applications necessary to administer the 2012 Oil and Gas Act and are paid for by the one-time well permit application fee.

In response to declining Well Plugging Fund balance, the Oil and Gas Program reduced staff over time from 226 employees to 190 employees today. The Oil and Gas Program also reduced operating costs by 38%. Operating expenses only account for 10% of total program costs, therefore any future cost savings, absent this fee increase, would have to come from a reduction in staff. At the current disparity between fee revenues and costs to administer the 2012 Oil and Gas Act, the Oil and Gas Program would need to reduce its complement by almost 70 additional positions in order to make up the annual net loss in the Program. This is an untenable approach that would render the Program incapable to meet it statutory obligations under the 2012 Oil and Gas Act and the expectations of Pennsylvania citizens and the industry.

As a result of the significant reduction in staff referenced above, the Oil and Gas Program struggles to meet its gas storage field inspection goals, consistently achieve appropriate permit review time frames, adequately fund training opportunities for staff and put on training for industry. Important program development initiatives, such as policies, best practices and technical guidance documents, have been put on hold because of a lack of sufficient staff to develop and update these important pieces of the Oil and Gas 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 oil and gas industry. Service quality and Program capabilities will diminish significantly if no action is taken to increase funding.

Revenues are declining because fewer well permit applications are being submitted by the industry than in prior years, which 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 U.S. market. It might also be because the first few years of Marcellus Shale gas development constituted an initial boom, and was unrepresentative 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 are not expected to reverse course in the foreseeable future. Moreover, many of these trends are and will continue to be unpredictable.

Based upon the factors described above, the Department recognizes that it is possible that the current fee proposal will not be adequate to fund the Program. This reasonable uncertainty, and the additional Program needs described below, is why the $6 million Impact Fee is excluded from the Department's well permit application fee analysis. Additionally, it is not appropriate for the Department to include the Impact Fee in this analysis because these funds are not dedicated solely to the Oil and Gas Program. Rather, the Department is allocated the $6 million Impact Fee 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." 58 Pa.C.S. § 2314(c.1)(3). Allocation of these funds depends on the Department's immediate needs. For that reason, the proposed fee increase assumes no annual Impact Fee income in order to establish a

Program 'reserve' due to the expected variations in the primary funding source and the depletion of the Well Plugging Fund, the fund used until now as a reserve. The Department also excluded 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.

This proposed rulemaking increases the well permit application fee to provide adequate revenue to support the ongoing operations of the Oil and Gas Program as well as to meet future Program needs. These needs include hiring sufficient permitting, inspection, enforcement, and program development staff; providing training programs for staff and the oil and gas industry; and enhancing the Oil and Gas Program's information technology capabilities. It is imperative that the Program has the resources necessary to ensure industry compliance with environmental protection rules, improve data management and transparency, provide timely permit application reviews, respond quickly to complaints and inquiries from the public, and maintain a highly trained and knowledgeable workforce. To that end, increased revenue generated from the well permit application fee increase will be focused on the following activities necessary to administer the 2012 Oil and Gas Act:

- Enhanced Electronic Data Management
- Staffing Needs
- Well Permitting
- Surface Activity Permitting
- Inspections
- Compliance
- Policy and Program Development

*Enhanced electronic data management*
The Department will allocate a portion of the increased fee 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 both the Department and the regulated community in terms of more predictable and timely permit issuance, more effective site inspections, increased availability of staff for compliance assistance, and more streamlined reporting to and communication with the Department. It will also make the Department's work more transparent to the public as electronic documents can be easily made available online.

The ePermitting system will provide the ability to process applications for oil and gas permits online. The new system will replace the manual process for surface activity permits that requires applicants to complete paper forms and deliver multiple copies of documentation to a Department district office. The Department will also replace its current inefficient and unfinished electronic well permit system with a new system that lends itself to digital geospatial review of well permit applications.

These changes will reduce data transcription errors from entering data on paper forms into the Department's databases. The new ePermitting system is designed to increase review efficiency

through electronic workflow and to significantly decrease the time from initial application submission to a permit decision. It will enable applicants to submit online payment and provide for permit review transparency as an applicant will be able to closely follow a permit through the approval process and receive automatic notifications as it completes the outlined benchmarks. Upon approval, the system will deliver the permit electronically to the applicant, thereby eliminating the lag time from permit issuance to receipt by the applicant.

The Department 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.

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.

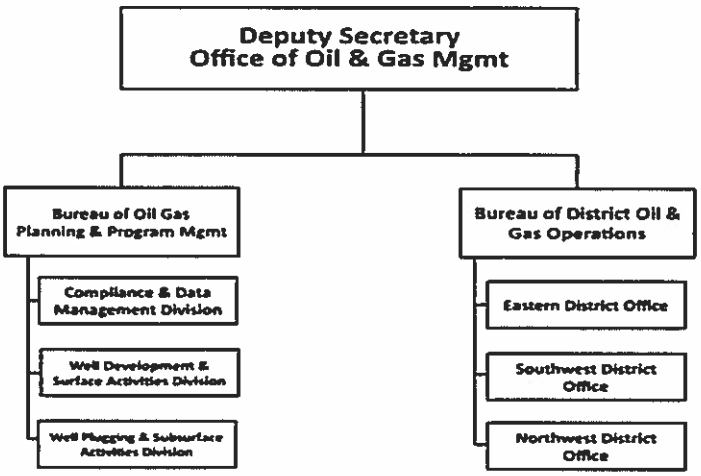
Finally, the Department intends to develop additional databases to house information it collects to enable better analysis of program effectiveness. Two such databases include water sample results and spills. The Oil and Gas program receives thousands of ground and surface water sample results but these 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 the 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 described above are not new concepts. They are simply needs that are not met because the Department lacks the resources to pay for the information technology services required to meet these needs and create these tools. The Oil and Gas Program currently pays the Bureau of Information Technology (BIT) $700,000 each year. However, BIT services to the Oil and Gas Program actually cost $2 million annually. BIT can no longer subsidize the Oil and Gas Program. Raising the well permit application fee is necessary to adequately fund the Oil and Gas Programs information technology support needs.

*Staffing needs*

The Oil and Gas Program is charged with administering the 2012 Oil and Gas Act. 58 Pa.C.S. § 3202. In December of 2016 the Program was limited to a total employee complement of 190 staff. This is a reduction from the 226 staff complement in 2015.

The Oil and Gas Program consists of two bureaus as depicted below.




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

A. BPPM 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 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.

*Compliance and Data Management* – This division works closely with the Department's 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.

B. DOGO includes the following:

Three district offices that implement the operational programs in the eastern, northwest, and southwest areas of the state. DOGO staff are primarily headquartered in three regional office locations (Pittsburgh, Meadville, Williamsport). Each District Office performs a variety of responsibilities related to oil and gas permitting, inspections and compliance.

In 2016 the Oil and Gas Program conducted an analysis of oil and gas 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 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 Oil and Gas Program. For example, it does not analyze staffing levels within BPPM because of the significant variability of the work performed by those staff. The output of the model is confined to DOGO staff only.

The workload tool was designed to be updated and refined as the program matures and various technologies are implemented. The continuing development of electronic permitting processes and modernized mobile platform-based inspection technologies are recent examples. The tool also currently cannot account for the extreme variation in complexity that certain types of District work entail (private water supply investigations and notice of termination inspections are examples).

*Well Permitting*

Currently there are seven filled program geologist positions in DOGO. These geologists review all of the well permit applications needed by operators prior to drilling and operating an oil or gas well. Assuming the Department receives an administratively and technically complete application, it takes approximately eight hours to review a new unconventional well permit application, three hours to process a renewal and one hour to transfer a well permit. With these assumptions, the workload tool indicates that approximately 11 filled positions are required to perform the permitting work that was done in 2017. There is currently a backlog of 224 well permits in the Southwest District Office and 148 in the Northwest District Office. At times, well permit reviews have exceeded 120 days while the 2012 Oil and Gas Act requires the Department to make a decision on an application in 45 days.

The Oil and Gas Program is in the process of updating its electronic well permitting system. In addition, the Program recently announced a restructuring that created a new Subsurface Activities Program Manager to assist with well permit reviews (which requires a new position). These changes along with having a full complement of 11 permit geologists would eliminate the existing well permit backlog. A full complement would also provide the Oil and Gas Program the necessary resources to meet and perhaps even exceed its statutory obligation to review well permits within 45 days of receipt. It is anticipated that these positions would require approximately $600,000 annually to fund.

*Surface Activities Permitting*

Currently there are 20 filled program positions in DOGO that review the various permits and authorizations associated with oil and gas surface activities. Seven of these positions are filled as Biologists, five are filled as Civil Engineers, and eight are filled as Environmental Engineers. The Oil and Gas Program has struggled to meet permitting timeframe requirements for erosion and sediment control permits. Average permit review times have exceeded 250 days while the Permit Decision Guarantee Policy requires decisions on administratively and technically complete applications to be made within 43 business days. To address this issue, the Program is migrating to electronic permitting for the primary erosion and sediment control permit (ESCGP) and also recently announced a restructuring that created a new Surface Activities Program Manager position (which also requires a new position).

Using permitting numbers from 2017 and the need for the new Program Manager position, the workload tool estimates that an additional five positions are needed to meet policy review times. This estimation is based on assumptions that include (among others) 18 hours of total staff time to review a new, administratively and technically complete ESCGP, 54 hours to review a new individual Dam Safety and Encroachments Act permit, and 13 hours to review a Water Management Plan. With 5 additional positions, the program would be better equipped to meet the permit review timeframes contained in the Permit Decision Guarantee Policy. It is anticipated that these positions would require approximately $500,000 annually to fund.

*Inspections*

DOGO currently has a total of 67 filled primary inspector positions. This includes 30 Water Quality Specialists, 25 Oil and Gas Inspectors, four Environmental Protection Specialists, and eight Field Geologists. These staff perform the majority of the program's field inspection and investigatory work. These inspectors are also responsible to respond to all citizen complaints related to oil and gas activities throughout the Commonwealth. When the actual number of inspections completed by the Bureau in 2017 was put into the workload tool, the tool estimates that 16 additional inspectors are needed to meet program goals. More inspectors of all types are needed across the state, but the need is intense for additional Oil and Gas Inspectors. These inspectors focus their work on the actual drilling and construction of new wells in addition to plugging and abandoning legacy wells across Pennsylvania.

One area of critical need involves the inspection of gas storage wells. There are 1,554 active gas storage wells in Pennsylvania. The Department's *Standards and Guidelines for Identifying, Tracking, and Resolving Oil and Gas Violations* (*Document # 820-4000-001)* provides that gas storage wells should be inspected twice annually. In 2017, the Department inspected 1,215 gas storage wells (78%) only once and only 94 or 6% were inspected more than once. Thus, 94% of gas storage wells were not inspected at the suggested frequency.

The workload tool assumes that each storage well inspection takes a total of 2.5 hours to complete. With this assumption, three additional inspectors would be needed to inspect all gas storage wells twice annually. It is anticipated that these positions would require approximately $300,000 annually to fund. Because of the time savings currently being realized through the use

of the mobile digital inspection tool, the Department would only add additional inspection staff if necessary to meet its other inspection goals.

*Compliance*

Currently there are three filled Compliance Specialist positions in DOGO. These staff 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 responsive information for the many requests from the public for records. The workload tool estimates that there should be approximately 14 Compliance Specialists performing these various duties. Although other Bureau staff assist in responding to requests for public records related to the implementation of the 2012 Oil and Gas Act, Compliance Specialists are the lead workers on those tasks as many of the requests are for records related to the Program's enforcement efforts to ensure compliance with the 2012 Oil and Gas Act. This category also quantifies the work done by DOGO staff in response to requests for investigation of potential water supply impacts and general complaints received by the Department. A variety of field and office personnel devote time to complaint response and handling. This is the most important work undertaken by the Bureau as it involves direct interface with the citizens of Pennsylvania residing in areas of active oil and gas development. Adding the additional 11 Compliance Specialists would require approximately $1.1 million annually to fund these positions.

*Policy and Program Development*

As a result of the Department's cost saving measures and in an attempt to address extended permit review time frames, BPPM staff levels were reduced and some positions were converted to permit review staff when they became vacant. Due to a lack of staff, several policy development projects have been postponed, in many cases, indefinitely. These projects include updating guidance documents, public information, development and presentation of both internal and external training, modernizing the well plugging regulations, developing standards to store mine influenced water in well development impoundments and establishing an area of alternative methods for hydraulically fracturing Utica wells in western Pennsylvania. Restoring up to 11 positions, now currently vacant, to BPPM would enable the Oil and Gas Program to commence work on these and other important projects and be prepared to take on future initiatives.

Through this proposed rulemaking, the Department would be able to restore the 36 positions lost due to budget constraints and achieve its mission to ensure the environmentally responsible development of Pennsylvania's oil and gas resources. The Department consulted with the Oil and Gas Technical Advisory Board (TAB) in the development of this 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.

E. *Summary of Regulatory Requirements*

*Current fee structure*

The current well permit application fee structure is outlined in 25 Pa. Code § 78a.19 and 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.

*Proposed fee structure*

The proposed rulemaking amends 25 Pa. Code §§ 78a.1 and 78a.19 to eliminate unnecessary definitions and to increase the well permit application fee on both nonvertical and vertical unconventional wells to $12,500, respectively. Assuming the Oil and Gas Program will continue to receive approximately 2,000 unconventional well permit applications per year in future years, $12,500 per unconventional well permit application is needed to sustain, enhance, and modernize the Oil and Gas Program. These resources will allow the Program to function more efficiently, in a most transparent manner, so that the Program is capable of administering the 2012 Oil and Gas Act. This fee increase is necessary to ensure the Program is not a net loss to the agency's budget and is sustainable long term.

As discussed in Section D of this preamble, the proposed rulemaking does not include any changes to the current well permit application fee structure for applicants for permits to drill conventional oil and gas wells.

F. *Benefits, Costs and Compliance*

*Benefits*

The increased unconventional well permit application fee revenue would be used to adequately fund the Oil and Gas Program to administer the 2012 Oil and Gas Act to ensure the responsible development of this Commonwealth's oil and natural gas resources. In addition, the Program will be able to pursue enhanced electronic data management, streamlined electronic review initiatives and responsibly increase the staffing levels needed to address its obligations to the public and the oil and gas industry.

*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 projects that approximately 2,000 well permit applications will be received annually following the adoption of this proposed rulemaking, which would result in an additional annual incremental permit application cost of $15 million to the regulated community.

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

*Compliance Assistance Plan*

The Department plans to educate and assist the public and regulated community in understanding the 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*

No additional paperwork requirements are associated with this proposed rulemaking. 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 and a draft version of that form is included with the proposed rulemaking.

G. *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.

H. *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 25 Pa.Code §§ 78.19(e) and 78a.19(b), the Department will evaluate these fees and recommend regulatory changes to the Board to address any disparity between the Program income generated by the fees and the Department's cost of administering the Program with the objective of ensuring fees meet all Program costs and the Program is self-sustaining. This report and any proposed regulatory changes will be presented to the Board no later than 3 years after the promulgation of the final-form rulemaking.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 2, 2018, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

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

J. *Public Comments*

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding the proposed rulemaking. Comments, suggestions, support or objections must be received by the Board by August 13, 2018.

Comments may be submitted to the Board online, by e-mail, by mail or express mail as follows. Comments may be submitted to the Board by accessing eComment at http://www.ahs.dep.pa.gov/eComment.

Comments may be submitted to the Board by e-mail at RegComments@pa.gov. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission. If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

PATRICK MCDONNELL,
Chairperson

**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

**§ 78a.1. Definitions.**

* * * * *

**[*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.]**

* * * * *

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

* * * * *

## 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:**

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

**(2) $5,000 for a nonvertical unconventional well.]** **<u>of $12,500.</u>**

* * * * *

pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION

July 2, 2018

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

Re: Proposed Rulemaking: Unconventional Well Permit Application Fees (#7-542)

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, please find enclosed a copy of a proposed regulation for review and comment by the Independent Regulatory Review Commission (Commission). This proposal is scheduled for publication in the *Pennsylvania Bulletin* on July 14, 2018, with a 30-day public comment period. The Environmental Quality Board (Board) adopted this proposal on May 16, 2018.

The enclosed rulemaking includes amendments to 25 Pa. Code §§ 78a.1 (relating to definitions and 78a.19 (relating to permit application fee schedule). These amendments are necessary to increase fees to support the administration of 58 Pa. C.S. Chapter 32 (related to development) (2012 Oil and Gas Act) by the Department of Environmental Protection's (Department) Office of Oil and Gas Management (collectively, Oil and Gas Program or Program).

This proposed rulemaking follows the process, as specified in sections 78.19(e) (relating to permit application fee schedule) and 78a.19(b), to provide the Environmental Quality Board (Board) 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 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. In order to continue administering the Program, fees must be increased. This proposed rulemaking reflects the necessary fee increase.

The proposed 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 to administer the 2012 Oil and Gas Act. Although unconventional well permit application numbers are down from original estimates upon which current fees were based, Program obligations and operations remain at least static every year, but more typically expand annually due to the additional well inventory, development activity, and the need for guidance and technical tools to stay current. The proposed amendments only apply to Chapter 78a, thus these proposed amendments do not affect conventional well operators.

With recent unconventional well permit application volumes, the Well Plugging Fund balance is being depleted. In Fiscal Year (FY) 2015-16, permit application fee and Impact Fee revenues totaled $13.9 million, but costs to run the Program exceeded $21.6 million. In FY 2016-17 permit application fee and Impact Fee revenues totaled $15.7 million, but costs to run the Program exceeded $22 million. The fee/costs differential has been covered by the Well Plugging Fund reserves. The Oil and Gas Program projects further increasing costs with declining revenues in future fiscal years, making the Well Plugging Fund insolvent by FY 2019-2020.

In response to declining Well Plugging Fund balances, the Oil and Gas Program reduced staff over the past few years from 226 employees to 190 employees today. The Oil and Gas Program also reduced operating costs by 38 percent. Operating expenses only account for 10 percent of total program costs, therefore any future cost savings would primarily come from a reduction in staff. At the current disparity between fee revenues and expenditures, the Oil and Gas Program would need to reduce its complement by almost 70 additional positions to make up the difference.

As a result of the significant reduction in staff to address declining well permit application revenue, the Oil and Gas Program struggles to meet its gas storage field inspection goals, permit review time frames have increased, training opportunities for staff and industry have been curtailed, and program development initiatives (such as policies, best practices, and technical guidance documents) have been put on hold. In short, the Oil and Gas Program is currently challenged to provide an adequate level of service to the public and to the oil and gas industry. Service quality will diminish significantly if no action is taken.

The projected cost to fund the Oil and Gas Program at current staffing levels of 190 people in FY 2019-20 is approximately $25 million. FY 2019-20 is selected as a comparison year because it is anticipated that any rulemaking to raise well permit application fees will not be finalized until this time. FY 2019-20 was also selected because at current permit volumes, fee, and expenditure levels, the Well Plugging Fund will be insolvent in the beginning of this fiscal year. At the current unconventional well permit application fees of $5,000 for nonvertical unconventional wells and $4,200 for vertical unconventional wells, the Oil and Gas Program would need to receive 5,000 nonvertical unconventional well permit applications per year to be fiscally sustainable in FY 2019-20. By comparison, the Oil and Gas Program received less than 2,000 unconventional well permit applications in FY 2016-17. Assuming the Oil and Gas Program will continue to receive approximately 2,000 unconventional well permit applications per year in future years, $12,500 per unconventional well permit application is needed to sustain current Oil and Gas Program operations.

The Department consulted with the Oil and Gas Technical Advisory Board (TAB) in the development of this 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. Further, the topic of this fee increase was an agenda item at the last three sessions of the Department's Oil and Gas Industry Quarterly Meeting, in July and October 2017 and in February 2018. These meetings are attended by designees from trade groups that represent essentially the entire shale gas industry in Pennsylvania including both large and small companies. The Oil and Gas Program's 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. In addition, the plan to introduce this well permit application fee increase was also announced in a televised press conference by Governor Wolf and Secretary McDonnell on January 26, 2018.

The Department will provide the Commission with the assistance required to facilitate a thorough review of this proposal. Section 5(g) of the Regulatory Review Act provides that the Commission may, within 30 days of the close of the comment period, convey to the agency its comments, recommendations and objections to the proposed regulation. The Department will consider any comments, recommendations or suggestions made by the Commission, as well as the Committees and public commentators, prior to final adoption of this rulemaking.

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

Sincerely,

Laura F. Edinger

Laura Edinger
Regulatory Coordinator

Enclosures

0120-FM-PO0011 6/2015

pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
POLICY OFFICE

# TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: 7-542

SUBJECT: Unconventional Well Permit Application fees

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

## TYPE OF REGULATION

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

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## FILING OF REGULATION

| DATE | SIGNATURE | DESIGNATION |
|---|---|---|
| 7-2-18 | Shelly Wagner | Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY<br>Representative John Maher |
| 7-2-18 | Sandy Pletcher | Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY<br>Representative Mike Carroll |
| 7-2-18 | Patti Welsey | Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY<br>Senator Gene Yaw |
| 7/2/18 | [illegible] | Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY<br>Senator John Yudichak |
| 7/2/18 | K. Cooper | INDEPENDENT REGULATORY REVIEW COMMISSION<br>Mr. David Sumner |
| | | ATTORNEY GENERAL (for Final Omitted only) |
| 7/2/18 | Corinne Grant | LEGISLATIVE REFERENCE BUREAU (for Proposed only) |