

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 78a]

Unconventional Well Permit Application Fee Amendments

The Environmental Quality Board (Board) proposes to amend §§ 78a.1 and 78a.19 (relating to definitions; and 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 well permit application fees in Chapters 78 and 78a (relating to oil and gas wells; and unconventional wells) and recommend regulatory amendments to address any disparity between 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 (Program)). This 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 Chapter 78a and not Chapter 78, conventional well operators are not affected by this proposed rulemaking.

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 Klappkowski, Director, Bureau of Oil and Gas Planning and Program Management, Rachel Carson State Office Building, 15th Floor, 400 Market Street, P.O. Box 8765, Harrisburg, PA 17105-8765, (717) 772-2199; or Elizabeth Davis, Assistant 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 Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department's web site at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board (EQB)").

C. Statutory Authority

This proposed rulemaking is authorized under section 3274 of the 2012 Oil and Gas Act (relating to regulations), which directs the Board to adopt regulations necessary to implement the 2012 Oil and Gas Act, section 3211(d) of the Oil and Gas Act (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 2012 Oil and Gas Act. Under section 3202 of the 2012 Oil and Gas Act (relating to declaration of purpose of chapter), the purposes of the 2012 Oil and Gas Act are to:

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

The 2012 Oil and Gas Act contains requirements regarding the exploration, development and recovery of oil and gas resources in this Commonwealth, including permitting, bonding, well location restrictions, protecting water supplies, containment, well control emergencies, restoration, plugging, reporting and enforcement. The Department administers the 2012 Oil and Gas Act through the functions of the 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 Program. In addition to the well permit application fee, the Program is supplemented by: 1) the Impact Fee established by 58 Pa.C.S. §§ 2301—3504 (relating to oil and gas), which provides \$6 million to the Department annually (58 Pa.C.S. § 2314(c.1)(3) (relating to distribution of fee)); and 2) incidental civil penalties collected for violations of the 2012 Oil and Gas Act (section 3271(a) of the 2012 Oil and Gas Act (relating to well plugging funds)).

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

Since 1984, the well permit application fee has been increased in 2009 and in 2014 based upon permit application projections. Those projections and costs to run the Program have proved inaccurate since the 2014 final-form rulemaking. To thoroughly address prior inaccurate projections and to comply with §§ 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 (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 decided not to consider raising the well permit application fee for conventional wells in this proposed rulemaking. 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 \$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 amended, the 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 Program is on track to receive fewer than 1,700 unconventional well permit applications for FY 2017-2018. By comparison, the 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. 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 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 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 this Commonwealth, the Program also manages and regulates 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 the 2012 Oil and Gas Act and its implementing regulations. Equally important is the Program's responsibilities regarding identifying and plugging orphaned and abandoned wells. The Department estimates that more than 200,000 orphaned and abandoned wells remain unaccounted for across this Commonwealth. Finally, the Program must ensure that it responds in a timely and meaningful way to complaints, inquiries and requests for public records regarding 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 the declining Well Plugging Fund balance, the Program reduced staff over time from 226 employees to 190 employees today. The 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 Program would need to reduce its complement by almost 70 additional positions to make up the annual net loss in the Program. This is an untenable approach that would render the Program incapable to meet its statutory obligations under the 2012 Oil and Gas Act and the expectations of the citizens and the industry in this Commonwealth.

As a result of the significant reduction in staff previously referenced, 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 the 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 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 action is not 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 United States 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 previously described, the Department recognizes that it is possible that this proposed fee rulemaking will not be adequate to fund the Program. This reasonable uncertainty, and the additional Program needs described as follows, 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 Program. Rather, under 58 Pa.C.S. § 2314(c.1)(3) the Department is allocated the \$6 million Impact Fee for "the administration of [the 2012 Oil and Gas Act] and the enforcement of acts relating to clean air and clean water." Allocation of these funds depends on the Department's immediate needs. For that reason, the proposed fee increase assumes no annual Impact Fee income 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 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 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; and 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 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.

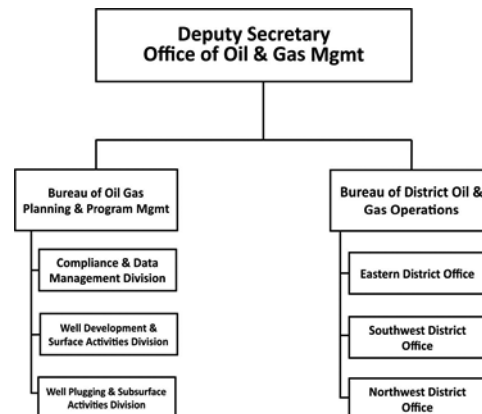
Finally, the Department intends to develop additional databases to house information it collects to enable better analysis of Program effectiveness. Two of these databases include water sample results and spills. The Program receives thousands of ground and surface water sample results; these records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

The enhanced electronic data management needs previously described are not new concepts. They are simply needs that are not met because the Department lacks the resources to pay for the information technology services required to meet these needs and create these tools. The Program currently pays the Bureau of Information Technology (BIT) \$700,000 each year. However, BIT services to the Program actually cost \$2 million annually. BIT can no longer subsidize the Program. Raising the well permit application fee is necessary to adequately fund the Program's information technology support needs.

Staffing needs

The Program is charged with administering the 2012 Oil and Gas Act under section 3202 of the 2012 Oil and Gas Act. In December 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 Program consists of two bureaus:



The Bureau of Oil and Gas Planning and Program Management (BPPM) is in the Department's Central Office (Harrisburg) and is responsible for administrative, policy and regulatory development functions. The Bureau of District Oil and Gas Operations (DOGO) consists of three district oil and gas offices in the oil and gas producing regions of this Commonwealth and is responsible for permitting, inspection, compliance and enforcement functions.

BPPM includes the following three divisions:

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

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

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

DOGO includes the following:

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

In 2016 the 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 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 (for example, private water supply investigations and notice of termination inspections).

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 8 hours to review a new unconventional well permit application, 3 hours to process a renewal and 1 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 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 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 Program has struggled to meet permitting time frame requirements for erosion and sediment control general permits (ESCGP). 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 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 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 five additional positions, the Program would be better equipped to meet the permit review time frames 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, 4 environmental protec-

tion specialists and 8 field geologists. These staff perform the majority of the Program's field inspection and investigatory work. These inspectors are also responsible to respond to citizen complaints regarding oil and gas activities throughout this Commonwealth. When the actual number of inspections completed by DOGO 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 this Commonwealth, 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 this Commonwealth.

One area of critical need involves the inspection of gas storage wells. There are 1,554 active gas storage wells in this Commonwealth. 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%) once and 94 gas storage wells (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 1/2 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 of 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 DOGO staff assist in responding to requests for public records regarding 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 regarding 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 DOGO as it involves direct interface with the citizens of this Commonwealth 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 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 Program to begin 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 oil and gas resources in this Commonwealth. The Department consulted with the Oil and Gas Technical Advisory Board in the development of this proposed rulemaking. The Department presented its Report and discussed its proposal to raise the unconventional well permit application fee to \$12,500 at the Oil and Gas Technical Advisory Board's February 14, 2018, meeting.

E. Summary of Regulatory Requirements

Current fee structure

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

Proposed fee structure

This proposed rulemaking amends §§ 78a.1 and 78a.19 to delete unnecessary definitions and increase the well permit application fee on all unconventional wells to \$12,500, respectively. Assuming the 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 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, this proposed rulemaking does not include amendments 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 Program to administer the 2012 Oil and Gas Act to ensure the responsible development of oil and natural gas resources in this Commonwealth. 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 uncon-

ventional 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.

This proposed rulemaking does not require new legal, accounting or consulting procedures.

Compliance assistance plan

The Department plans to educate and assist the public and regulated community in understanding the proposed requirements and how to comply with them. This outreach initiative will be accomplished through the Department’s ongoing compliance assistance program. Permit application forms and instructions would be amended to reflect the new fee structure.

Paperwork requirements

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

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 §§ 78.19(e) and 78a.19(b), the Department will evaluate these fees and recommend regulatory amendments to the Board to address any disparity between the Program income generated by the fees and the Department’s cost of administering the Program with the objective of ensuring fees meet all Program costs and the Program is self-sustaining. This report and any proposed regulatory amendments will be presented to the Board no later than 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 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 this 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 this 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 this 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

Fiscal Note: 7-542. No fiscal impact; (8) recommends adoption.

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.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise, or as otherwise provided in this chapter:

* * * * *

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

[*Nonvertical unconventional well*—

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

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

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

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

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

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

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Subchapter B. PERMITS, TRANSFERS AND OBJECTIONS

PERMITS AND TRANSFERS

§ 78a.19. Permit application fee schedule.

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

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

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

(b) At least every 3 years, the Department will provide the EQB with an evaluation of the fees in this chapter and recommend regulatory changes to the EQB to address any disparity between the program income generated by the fees and the Department's cost of administering the program with the objective of ensuring fees meet all program costs and programs are self-sustaining.

[Pa.B. Doc. No. 18-1070. Filed for public inspection July 13, 2018, 9:00 a.m.]
