



**Oil and Gas Well Permit Fee
25 Pa. Code Chapter 78**

Environmental Quality Board Regulation #7-483
Independent Regulatory Review Commission #3022

Comment and Response Document

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

INTRODUCTION

In assembling this document, the Environmental Quality Board (“Board”) has addressed all pertinent and relevant comments associated with this package. For the purposes of this document, comments of similar subject material have been grouped together and responded to accordingly. During the public comment period, the Board received 16 comments from seven individuals, organizations and the Independent Regulatory Review Commission. The following table lists these individuals and organizations. The Commentator ID number is found in parenthesis following the comments in the comment/response document.

Table of Commentators

Commentator ID #	Name	Address	Requested Final Rule	Submitted One-Page Summary
1.	Douglas and Linda Hay	P.O. Box 481 Mill Rift, PA 19340		
2.	Emily E. Krafjack, President Connection for Oil, Gas & Environment in the Northern Tier, Inc. (C.O.G.E.N.T.).	1155 Nimble Hill Road Mehoopany, PA 18629		X
3.	Kevin J. Moody, Esq. Vice President Pennsylvania Independent Oil and Gas Association (PIOGA)	212 Locust Street Harrisburg, PA 17101-1510	X	
4.	Bryan J. McConnell, P.G.	141 Farm Street Fombell, PA 16123		
5.	Teresa Irvin McCurdy President and CEO TD Connections, Inc.	1646 Lowell Lane New Cumberland, PA 17070		
6.	Carrie Crumpton Manager - Regulatory Assistance CONSOL Energy, Inc.			
7.	David Sumner Executive Director Independent Regulatory Review Commission	333 Market Street 14 th Floor Harrisburg, PA 17101		

1) Comment: The increased permit cost should double again to provide for even more inspectors and higher standards. (1)

Response: The Board acknowledges the commentators' support for the concept of increasing well permit fees. As described in the Preamble and other supporting documents, the proposed increased well permit fees were designed to support the current operations of the Office of Oil and Gas Management, as well as allow for additional increased expenditures where necessary (primarily staffing increases and Information Technology project development). Increasing the well permit fees beyond the proposed levels is not necessary to keep the Office of Oil and Gas Management solvent and meet those additional needs. Further, at least every three years the Department is required to provide the Board with an evaluation of the permit fees established and recommend regulatory changes to the Board 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. Therefore, the proposed well permit fee increases are retained in the final-form rulemaking.

2) Comment: We want to see an efficient, modernized, robust program with adequate staffing levels to ensure that the areas we love most and live within, are adequately protected for public health and safety, the environment and our communities at large. It is therefore the reason that we write to support the Department's Office of Oil and Gas Management proposed rulemaking to increase unconventional oil and gas permit fees. (2)

Response: The Board acknowledges the commentators' support for the proposal to increase well permit fees.

3) Comment: The Department's proposed rulemaking establishes flat permit fees of \$5,000 and \$4,200 regardless of the total length of the [unconventional] well. This is a good idea. It provides industry with the predictability and consistency they desire, the fee becomes a fixed cost. It also provides the Department with the ability to adequately forecast budgetary needs to meet program obligations. (2)

Response: The Board acknowledges the commentators' support for the specific proposed increase in well permit fees, as well as the concept of fixed flat unconventional well permit fees.

4) Comment: In many areas, the Department has lagged behind with utilization of electronic technology. The industry will certainly benefit with more electronic reporting options. The Department and the public will benefit as well. While the Department has made headway with the interactive reporting of spud wells, violations, production and other reports, there are still reports and information that are needed for transparency and easy access. Streamlining electronic review allows field staff to be more productive. Field staff will be in the field where we need and most want them to be. Making the permit applications available online, will solve yet another issue and reduce the need for the Department's clerical staff to spend so much time pulling files for file reviews. The more information available online, the more time the File Room Staff will have to do more clerical duties and less public interaction. (2)

Response: The Board acknowledges the commentators' support for Information Technology project development by the Department made possible by the proposed well permit fee increase.

5) Comment: This increase in fees will provide in the future for our field staff to be ready and following their daily eco-beat or when the situation requires, respond to an emergency event. (2)

Response: The Board acknowledges the commentators' support for increased field staff levels made possible by the proposed well permit fee increase.

6) Comment: Staffing needs in the Bureau of Oil & Gas Planning and Program Management must also be met. These are our regulators who take care to develop better regulations, policies and technical guidance documents pertaining to well construction and surface activities. (4, 6)

Response: The Board acknowledges the commentators' support for increased Central Office staff levels made possible by the proposed well permit fee increase.

7) Comment: The proposed rulemaking creates two classes of wells – “conventional wells” and “unconventional wells” – based upon the general structure of 58 Pa. C.S. Chapter 32 that establishes the “conventional vs. unconventional” well distinction for a number of other regulatory areas. The proposed rulemaking makes clear that no changes are proposed to the current permit fee structure for permit applications to drill “conventional” oil and gas wells. We agree with this approach and assert that it is both reasonable and appropriate, as the additional regulatory costs of the Department’s Oil and Gas Program are driven by unconventional well development and operations. (3, 4, 5)

Response: The Board acknowledges the commentators' support for maintaining conventional well permit fees at their current levels.

8) Comment: The proposed definitions of “conventional formation” and “conventional well” reflect that an oil or gas well is either a “conventional well” or an “unconventional well” under the 2012 Oil and Gas Act. Any well related to oil and natural gas development and operations that does not come within the terms of the “unconventional gas well” definition is a “conventional well.” We agree that this is the appropriate approach to defining the universe of oil and gas wells in Pennsylvania (3, 4, 5)

Response: The Board acknowledges the commentators' support for defining the universe of regulated wells in Pennsylvania as consisting of conventional wells and unconventional wells.

9) Comment: Providing examples of what constitutes a “conventional well” in the regulatory definition will provide more clarity, definiteness and guidance than the simple contrary definition in the proposed regulatory definition. This definition should be clear and

unambiguous. For that reason, we request that the proposed definition of “conventional well” in section 78.1 be retained, but modified to read as follows (additional text bolded and italicized):

Conventional well—A bore hole drilled or being drilled for the purpose of or to be used for the production of oil or gas from a conventional formation. *Conventional wells are, irrespective of technology or design: (1) wells drilled to produce oil; (2) wells drilled to produce natural gas from formations other than shale formations; (3) wells drilled to produce natural gas from shale formations located above the base of the Elk Group or its stratigraphic equivalent; (4) wells drilled to produce natural gas from shale formations located below the base of the Elk Group where natural gas can be produced at economic flow rates or in economic volumes without the use of vertical or nonvertical well bores stimulated by hydraulic fracture treatments or multilateral well bores or other techniques to expose more of the formation to the well bore; and (5) irrespective of formation, wells drilled for collateral purposes, such as monitoring, geologic logging, secondary and tertiary recovery or disposal injection.*

(3, 4, 5, 7)

Response: The Board acknowledges the concerns raised by the commentators to adequately and precisely define the universe of wells regulated under 58 Pa.C.S. §§ 3201 – 3274 (2012 Oil and Gas Act). As the commentators point out, there are certain classes of wells regulated by the 2012 Oil and Gas Act that are not captured in the proposed definition of “conventional formation” and “conventional well.” For that reason, the Board has deleted the proposed definition of “conventional formation” and amended the proposed definition of “conventional well” to read as follows:

Conventional well – A bore hole drilled or being drilled for the purpose of or to be used for the production of oil or gas from a conventional formation **CONSTRUCTION OF A WELL REGULATED BY 58 PA.C.S. §§ 3201 – 3274 THAT IS NOT AN UNCONVENTIONAL WELL, IRRESPECTIVE OF TECHNOLOGY OR DESIGN. THE TERM INCLUDES BUT IS NOT LIMITED TO:**

(I) WELLS DRILLED TO PRODUCE OIL.

(II) WELLS DRILLED TO PRODUCE NATURAL GAS FROM FORMATIONS OTHER THAN SHALE FORMATIONS.

(III) WELLS DRILLED TO PRODUCE NATURAL GAS FROM SHALE FORMATIONS LOCATED ABOVE THE BASE OF THE ELK GROUP OR ITS STRATIGRAPHIC EQUIVALENT.

(IV) WELLS DRILLED TO PRODUCE NATURAL GAS FROM SHALE FORMATIONS LOCATED BELOW THE BASE OF THE ELK GROUP WHERE NATURAL GAS CAN BE PRODUCED AT ECONOMIC FLOW RATES OR IN ECONOMIC VOLUMES WITHOUT THE USE OF VERTICAL OR NONVERTICAL WELL BORES STIMULATED BY HYDRAULIC FRACTURE TREATMENTS OR MULTILATERAL WELL

BORES OR OTHER TECHNIQUES TO EXPOSE MORE OF THE FORMATION TO THE WELL BORE.

(V) IRRESPECTIVE OF FORMATION, WELLS DRILLED FOR COLLATERAL PURPOSES, SUCH AS MONITORING, GEOLOGIC LOGGING, SECONDARY AND TERTIARY RECOVERY OR DISPOSAL INJECTION.

This definition captures all regulated wells that are not “unconventional wells,” as that term is defined in the 2012 Oil and Gas Act.

10) Comment: Increasing costs and more stringent regulatory oversight is a contributing factor to the decrease in the number of unconventional well permit applications since 2010. The increasing costs associated with permit fees and complying with regulation will continue to force operators out of the Commonwealth and into surrounding states whose policies and permitting requirements are more favorable during weak economic conditions. We encourage the Department to adequately evaluate the economic burden on industry as Chapter 78 revisions are considered. (6)

Response: See Response to Comment 1, above. The Board believes that the supporting documents for the proposed rulemaking increasing well permit fees adequately justify the need for these additional permit fees in order to support the ongoing work of the Office of Oil and Gas Management. The work of the Office of Oil and Gas Management administering the 2012 Oil and Gas Act is almost exclusively funded by the well permit fees in Chapter 78. While acknowledging the additional burdens placed on the oil and gas industry by raising these fees, the Board believes that the proposed well permit fee increases are structured in such a way as to limit that increased burden to the minimum amount necessary for continued operations and improvements.

Further, the structure of the proposed well permit fee increases places that limited increased burden on the shoulders of unconventional well permit applicants. As unconventional wells represent that portion of the industry generating the additional administrative burdens on the Department, it is appropriate to have that portion of the industry pay the increased well permit fees.

It is also instructive to consider the well permit fees for similar wells in our neighboring states. The well permit fees charged by neighboring states are:

New York - \$290 base fee plus \$190 for every 500 feet in well bore length (\$5,230 for a typical Marcellus well in Pennsylvania).

Ohio - \$500 to \$1,250 depending on rural or urban locations.

West Virginia - \$10,150 for the first horizontal well and \$5,150 for subsequent wells on the same pad.

The proposed well permit fees are thus directly in line with those assessed by Pennsylvania's neighboring states.

Finally, the Board notes that the cost to drill a typical unconventional well is approximately \$6 million. The current average unconventional well permit fee is \$3,200. An increase of \$1,800 to a flat fee of \$5,000 for a nonvertical unconventional well represents .0003% of the overall cost to drill a well and therefore the Board believes that the proposed well permit fee increase will have no impact on Pennsylvania's competitiveness with other states. For these reasons, the proposed well permit fee increases are retained in the final-form rulemaking.

11) Comment: We are encouraged by the Information Technology project for the Oil and Gas program. However, until the full capital investment is realized and the efficiency of the Information Technology project is fully evaluated, there is no way to determine true staffing needs and this overestimate has been included in the assessment for increased permit fees. (6)

Response: The Board acknowledges that there will likely be administrative efficiencies realized through the implementation of several Information Technology projects. As described in the Responses to Comment 10, above and to Comment 12, below, the proposed well permit fee increases support the entire work of the Office of Oil and Gas Management, not simply the staff that reviews applications for permits to drill and operate wells. Most of the initial efficiency gains from these projects will be realized in that portion of the Office's workload, while the other needs still remain to be addressed. Finally, the increased efficiencies should allow the Office's permitting staff to review and process permits more quickly, which should result in compliance with the Department's Permit Decision Guarantee and decisions on permits more swiftly than the 2012 Oil and Gas Act's base 45-day permit decision deadline (58 Pa.C.S. § 3211(e)). Faster permit processing directly benefits the entities that will be required to pay the increased well permit fee. For these reasons, the proposed well permit fee increases are retained in the final-form rulemaking.

12) Comment: Based on the statement that there has been a 22% decrease in unconventional well permit applications since 2010, it is difficult to justify that "additional staff is needed to timely review the increase in permits received by the Department due to natural gas infrastructure development throughout this Commonwealth." (6)

Response: The commentator misapprehends the workload of the Office of Oil and Gas Management. As part of its responsibilities to administer the provisions of the 2012 Oil and Gas Act, the Office of Oil and Gas Management is also responsible for regulating activities implementing Chapter 102 and 105 regulated activities. Chapter 105 relates to stream and wetland encroachments and Chapter 102 addresses earth moving activities including erosion and sediment control and post construction storm water management. Under Section 3258(a.1) of the 2012 Oil and Gas Act (58 Pa.C.S. § 3258(a.1)), it is the Department's responsibility to have a water quality specialist inspect these sites which may include well pads, gas gathering lines, access roadways, equipment storage areas, staging areas, compressor stations and pipelines. The water quality specialist is also responsible to respond to citizen complaints related to these activities as well as to do routine compliance inspections, including these newly mandated

inspections. That section requires a well site inspection prior to commencement of drilling activities.

Finally the “natural gas infrastructure development” cited in the Preamble focuses on ancillary development that often only occurs after wells are drilled. These include the installation of gathering lines and pipelines, which typically follow well drilling in time. Staff resources are required to review the necessary permits for these projects on a timely basis. Failure to review permit applications within a reasonable time period can result in substantial cost increases for these projects and ultimately prevents natural gas from reaching consumers, thus increasing commodity cost. Of course, permitting is only one part of the Department’s workload relating to these projects. Once the permit is issued and development commences the Office of Oil and Gas Management is responsible for inspecting those activities and responding to any incidents at these sites.

The fact that these projects trail well drilling temporally means that such work is actually increasing even with steady or declining well permit applications. These projects alone have dramatically increased the Department’s workload, as they are long linear projects that can occupy miles within one permit application and are very time consuming in terms of permit reviews and subsequent compliance inspections. For these reasons, the proposed well permit fee increases are retained in the final-form rulemaking.

13) Comment: The flat fee structure of \$5,000 and \$4,200 for “non-vertical unconventional wells” and “vertical unconventional wells,” respectively, is not justified by the benefit/cost analysis. This increase is based on staffing requirements that cannot be fully realized due to unknowns of Information Technology project efficiencies and permit activity assumptions. (6)

Response: See Responses to Comments 1, 7, 10, 11 and 12, above. For the reasons outlined in those Responses, the Board believes that the proposed well permit fee increases are justified and therefore are retained in the final-form rulemaking.

14) Comment: Language should be added to the regulation to clarify that in the event a permit modification is required the full permitting fee is not required again. (6)

Response: The 2012 Oil and Gas Act does not provide for permit modifications. Given the nature of setbacks and notices required by the 2012 Oil and Gas Act, modification of the drilling plan necessitates submission of a new well permit application, including a plat describing the vertical and horizontal location of the proposed well bore. Given the required review of the new information, it is appropriate for the Department to charge a new well permit application fee when the operator changes drilling plans after the initial permit application is approved. Therefore, the Board declines to adopt the commentator’s suggested regulatory change.

15) Comment: The Board is proposing to delete current section 78.1(a) from the regulation. Subsection (a) states that certain words and terms used in Chapter 78 are defined by other statutes. This deletion was not explained in the Preamble and the Board should explain the need for removing this subsection. (7)

Response: Deletion of Section 78.1(a) was purely an administrative amendment designed to clean up unnecessary cross-reference. Where a term or phrase is used in Chapter 78, the appropriate definition is either currently included in section 78.1, or will be proposed to be added as necessary as part of future rulemakings.

16) Comment: Permit fees must bear a “reasonable relationship” to the costs of administering the Oil and Gas Program. Given the significant increases proposed for unconventional well permit fees, the Board should explain how it arrived at the anticipated Program costs to support the reasonableness of the increases. (7)

Response: See Responses to Comments 1, 7, 10, 11 and 12, above. As outlined in the document titled *3-Year Regulatory Fee and Program Cost Analysis Report to the Environmental Quality Board* (3-Year Report) that accompanied the proposed rulemaking, the Department is faced with a greatly increased workload and permit fee revenues that have been declining since the time of the previous well permit fee increase (October 2009). As the Comparative Financial Statements attached to the 3-Year Report indicate, the Department is facing a situation where the costs being borne by the Office of Oil and Gas Management are increasing and will lead to a negative Fund balance without responsible action on the part of the Board to adjust the well permit fee amounts. Further, these fees are directly related to the costs of administering the Oil and Gas Program as it is almost exclusively funded by the well permit fees in Chapter 78 and currently additional regulatory costs to the Oil and Gas Program are derived predominantly by the unconventional well development. For the reasons outlined in those Responses and the 3-Year Report, the Board believes that the proposed well permit fee increases are justified and therefore are retained in the final-form rulemaking.