EXECUTIVE SUMMARY
Unconventional Well Permit Application Fees
25 Pa. Code Chapter 78a

This final-form 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 unconventional well permit application 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) by sustaining current staff level and operating costs despite recent staff reductions and the implementation of cost-saving measures. This final-form rulemaking does not amend the current fees for conventional well permit applications.

Purpose of the Final-Form Rulemaking
This final-form rulemaking follows the process, as specified in sections 78.19(e) (relating to permit application fee schedule) and 78a.19(b)(relating to permit application fee schedule), to provide the Environmental Quality Board (Board) with an evaluation of well permit application fees and recommend regulatory changes to address any disparity between the 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 sustain the Program at current staff levels and operating costs, fees must be increased. This final-form rulemaking reflects a reasonable fee increase.

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

As a result of declining unconventional well permit application fee revenues, 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 approximately 10 % 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 over 100 additional positions to continue administering the Program.

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

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

Expense	Cost (in dollars)
Staff (190 positions at $106,000 per staff person)	20,140,000
Operating Expenses (FY2018-19)	4,519,000
IT Expenses	Rolled into Operating/Fixed Assets Line item
TOTAL Cost	**24,659,000**

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

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

Program will need these other revenue sources to sustain the Program. If not, these funds will be allocated for program enhancements and staffing needs.

Advisory Committee and Public Outreach

The Department consulted with the Oil and Gas Technical Advisory Board (TAB) in the development of the proposed rulemaking. The Department presented its Three-Year Fee Report and discussed its proposal to raise the unconventional well permit application fee to $12,500 at TAB's February 14, 2018 meeting.

The proposed rulemaking was adopted by the Board at its meeting on May 16, 2018, and published in the *Pennsylvania Bulletin* on July 14, 2018, with a 30-day comment period (48 Pa. B.4100). No public hearings were held. The public comment period closed on August 13, 2018. The Board received 51 comments from 14 commentators. One commentator was neutral on the rulemaking. Two commentators offered comments in support of the rulemaking while 10 commentators opposed the rulemaking. The Independent Regulatory Review Commission (IRRC) also submitted comments on September 12, 2018.

The Department then discussed the final-form rulemaking with TAB at its September 19, 2019 meeting.

Recommendation

The Department is recommending the adoption of this final-form rulemaking.