pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

# COMMENT AND RESPONSE DOCUMENT

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

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

## INTRODUCTION

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

## LIST OF COMMENTERS ON THE PROPOSED RULEMAKING

1. David J. Spigelmyer, President
   Marcellus Shale Coalition
   400 Mosites Way, Suite 101
   Pittsburgh, PA 15205

2. The Honorable Donna Oberlander, Gas and Oil Caucus Chair (and members)
   House of Representatives
   P.O Box 202063
   Harrisburg, PA 17120-2063

3. Stephanie Catarino Wissman, Executive Director
   Associated Petroleum Industries of Pennsylvania
   300 North Second Street
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   Harrisburg, PA 17101

4. Kevin J. Moody, General Counsel
   Pennsylvania Independent Oil and Gas Association
   Northridge Plaza II
   115 VIP Drive, Suite 210
   Wexford, PA 15090

5. Jeremy Matinko, Environmental Compliance Manager
   Range Resources-Appalachia, LLC
   3000 Town Center Boulevard
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6. Scott C. Blauvelt, P.G., Director of Environmental Health & Safety
   JKLM Energy, LLC
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   Sewickley, PA 15143

7. Christopher M. Trejchel, Assistant General Counsel
   Seneca Resources
   5800 Corporate Drive, Suite 300
   Pittsburgh, PA 15237

8. John Walliser, Senior Vice President, Legal and Government Affairs
   Pennsylvania Environmental Council (PEC)
   810 River Avenue, Suite 201
   Pittsburgh, PA 15212

9. Emily Krafjack, private citizen
   1155 Nimble Hill Road
   Mehoopany, PA 18629

10. Robert Cross, President (and board members)
    Responsible Drilling Alliance
    P.O. Box 502
    Williamsport, PA 17703

11. Chad Eisenman, Legislative and Regulatory Advisor
    Chevron Appalachia, LLC
    700 Cherrington Parkway
    Coraopolis, PA 15108

12. Elam M. Herr, Assistant Executive Director
    Pennsylvania State Association of Township Supervisors (PSATS)
    4855 Woodland Drive
    Enola, PA 17025

13. Dave Fogelman, private citizen
    Comments received via email on 07/17/2018

14. David Sumner, Executive Director
    Independent Regulatory Review Commission
    333 Market Street, 14th Floor
    Harrisburg, PA 17101

## SUMMARY OF COMMENTS AND RESPONSES

### Definition of Vertical and Nonvertical Unconventional Well

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

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

### Consider Alternate Sources of Funding

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

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

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

   Until an alternative funding source is secured, the Department is limited to its existing resources and must avail itself to the funding mechanism established by Section 3211(d) of the 2012 Oil and Gas Act. Section 3211(d) of the 2012 Oil and Gas Act provides: "Each application for a well permit shall be accompanied by a permit fee, established by the Environmental Quality Board, which bears a reasonable relationship to the cost of administering [the 2012 Oil and Gas Act]." 58 Pa.C.S. § 3211(d). As prescribed by Section 3211(d) of the 2012 Oil and Gas Act, a well permit application fee is a one-time payment submitted with each well permit application that is deposited into the Well Plugging Fund as a dedicated revenue source for the Program. This fee is set by the Board in regulation and must be reasonably related to the cost of the Program to administer the 2012 Oil and Gas Act.

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

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

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

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

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

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

**Use of General Fund Monies**

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

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

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

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

**<u>Use of Chapter 102 and Chapter 105 Funds</u>**

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

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

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

In the Department's analysis of these fees, it was determined that if the Chapter 102 and Chapter 105 permit application fees were reallocated to the Program, the Program would receive less of the $6 million from the Act 13 Impact Fees, because the Chapter 102 and Chapter 105 programs would then need a portion of those funds to make up for this reallocation. Currently, the Act 13 Impact Fee allocates $6 million annually to DEP for "the administration of [58 Pa.C.S. §§ 2301–3504 (relating to oil and gas) (Act 13)] and the enforcement of acts relating to clean air and clean water." *See* 58 Pa.C.S. § 2314(c.1)(3). Currently, the $6 million appropriated to the Department from the Act 13 Impact Fees is allocated to the Program. Significantly, these fees are not dedicated solely to the Program and may be used to support the Department's air and water programs. Allocation of these funds ultimately depends on the Department's immediate needs. The Department has determined that it is currently appropriate for the Program to receive all $6 million dollars from the Department's Act 13 Impact Fee appropriation due to declining well permit application revenue.

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

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

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

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

**Use of $6 Million Impact Fee**

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

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

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

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

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

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

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

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

**Clarify Benefits of Well Permit Fee Increase**

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

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

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

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

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

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

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

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

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

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

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

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

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

One commenter expressed opposition to increasing the Department's staffing levels. (11)
**Response:** The Department has provided an updated and clarified estimate of staffing needs in the Preamble. These estimates differ from estimates provided in the Fee Report and proposed rulemaking. Notably, the staffing numbers have been updated to reflect that the Program recently reorganized the Office of Oil and Gas Management to create three new management positions to oversee statewide subsurface and surface permitting. Additionally, the current estimated cost of an employee based on standard benefits and average salary is $106,000 and prior estimates were based on a prior estimated cost of $100,000 per employee.

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

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

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

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

To develop the current workload analysis, annual permitting, inspection and compliance-related data from 2017 was entered into the workload tool. This workload tool provides a high-level assessment of current staffing needs within the Program based on current data and the Program's existing 190 employees. However, the workload tool is limited and does not capture all of the various job duties performed by the Program. For example, it does not analyze staffing levels within the Bureau of Oil and Gas Planning and Program Management (BPPM) because of the significant variability of the work performed by those staff. The output of the model is confined to the Bureau of District Oil and Gas Operations (DOGO) staff only.

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

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

DOGO includes the following:

<u>Permitting</u>

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

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

<u>Inspections</u>

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

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

Compliance

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

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

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

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

BPPM includes the following:

Division of Well Development and Surface Activities

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

Division of Well Plugging and Subsurface Activities

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

<u>The Division of Compliance and Data Management</u>

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

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

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

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

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

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

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

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

**Support Well Permit Fee Increase**

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

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

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

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

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

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

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

**Oppose Well Permit Fee Increase**

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

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

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

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

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

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

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

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

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

    **Response:** Section 78a.19(b) requires the Department to provide the EQB with an evaluation of the well permit fee at least every three years and recommend regulatory changes to the EQB to address any disparity between the program income generated by the fees and the Department's cost of administering the program with the objective of ensuring fees meet all program costs and programs are self-sustaining. *See* 25 Pa. Code § 78a.19(b). Therefore, within the next three years, the Department will evaluate the fees established by the final-form rulemaking based on the costs of the program and the number of well permit applications. Depending on that fee analysis, the Department may recommend that the well permit application fee increase, decrease, or stay the same.

**Neutral on Permit Fee Increase**

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

    **Response:** DEP acknowledges this comment.

**Permit Review Timeframes**

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

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

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

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

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

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

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

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

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

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

**Reasonableness Relationship**

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

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

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

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

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

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

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

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

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

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

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

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

**Impacts on Small Businesses**

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

**Response:** This final rulemaking affects companies that operate natural gas wells in unconventional formations, such as the Marcellus Shale. Based on the Department's permitting records, there are currently 80 operators of unconventional well sites in Pennsylvania, and the number of operators is not expected to change significantly in the near term.

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

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

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

## Competitiveness

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

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

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

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

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

## Provide/Improve DEP Training Opportunities

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

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

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

**Department Operations**

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

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

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

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

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

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

As part of the Oil and Gas Program's cost savings measures, new vehicle and new computer purchases were curtailed. In addition, travel and training programs were significantly reduced. The Oil and Gas Program intends to maintain functioning vehicles and computer systems and to begin offering training opportunities to staff and industry with the other revenue sources available to the Program, like the conventional well permit fee and the $6 million Impact Fee, as the new revenue provided by the unconventional well permit fee will be able to sustain the Program's current staffing and operating costs. By addressing these items, the money spent on operating costs will increase.

**Miscellaneous**

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

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

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

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

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

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

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

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