

<h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p>
<p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		
<p>(1) Agency: Department of Environmental Protection</p>		
<p>(2) Agency Number: 7 Identification Number: 542</p>		<p>IRRC Number: 3206</p>
<p>(3) PA Code Cite: 25 Pa. Code Chapter 78a</p>		
<p>(4) Short Title: Unconventional Well Permit Application Fees</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address): Primary Contact: Laura Edinger, 717.783.8727, ledinger@pa.gov Secondary Contact: Jessica Shirley, 717.783.8727, jessshirley@pa.gov</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p> <input type="checkbox"/> Proposed Regulation <input checked="" type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation </p>		<p> <input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General </p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The purpose of the final-form rulemaking is to increase the unconventional well permit application fees. This fee increase is necessary to address the current disparity between the income generated by the current well permit application fees and the cost of administering 58 Pa.C.S. Chapter 32 (relating to development) (2012 Oil and Gas Act) by the Department of Environmental Protection's (Department) Office of Oil and Gas Management (collectively, the Oil and Gas Program or Program). This final-form rulemaking increases the 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 sustain the Program at current staff levels and operating costs. This final-form rulemaking does not amend the current fees for conventional well permit applications. This final-form rulemaking also removes definitions for "nonvertical unconventional well" and "vertical unconventional well" related to well permit applications as well permit application fees will now be the same for all unconventional well permit applications.</p>		
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>58 Pa.C.S. § 3211(d). This section provides that "each application for a well permit shall be accompanied by a permit fee, established by the Environmental Quality Board, which bears a reasonable relationship to the cost of administering this chapter."</p>		

58 Pa.C.S. § 3274. This section directs the Environmental Quality Board to adopt regulations necessary to implement the 2012 Oil and Gas Act.

71 P.S. § 510-20 (Administrative Code § 1920-A). This section authorizes the Environmental Quality Board to promulgate regulations of the Department.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

This rulemaking is not mandated by federal law, federal or state court order, or federal regulation.

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

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. This final-form rulemaking is needed because the current revenue generated by the well permit application fees is not adequate to cover the cost of the Program's efforts to administer the 2012 Oil and Gas Act despite recent staff reductions and the implementation of several cost-saving measures.

Given the fee increase in this final-form rulemaking is intended to cover the costs to sustain the existing Program, 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.

The Department is tasked with implementing 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.

Based on this funding mechanism, the Board has established reasonable fees to fund Program costs. Prior fee increases have established a fee structure based on several factors, including annual well permit applications projections, the different types of wells, total well bore length, the costs to develop the different well types and ability to pay.

In accordance with 25 Pa. Code §§ 78.19(e) and 78a.19(b), the Department evaluates these fees and recommends regulatory amendments to the Board every three years to address any disparity between the Program income generated by the fees and the Department's cost of administering the Program with the objective of ensuring fees meet all Program costs and the Program is self-sustaining.

The Oil and Gas Act, originally enacted in 1984, established a \$100 well permit application fee. See 58 P.S. §§ 691.201(d), repealed by the act of February 14, 2012, P.L. 87, No. 13, § 3(2). This fee remained in place for 25 years. In 2009 and 2014, the Board increased well permit application fees to fund the Program's increasing expenses and to establish a fee structure that sets different amounts for the different types of wells, including unconventional, conventional and home use wells. As stated above, the Board has established reasonable fees to fund Program costs for these different types of wells based on several factors, including annual well permit application projections, total well bore length, the costs to develop the different well types and ability to pay.

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 Fiscal Year 2014-2015, the Program received 2,533 unconventional well permit applications. In Fiscal Year (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.

Even as the Program has reduced costs by reducing staff, pursuing efficiency measures like using tablet computers to conduct inspections, and reducing operating costs, the Program's workload has continued to increase. 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 advancing 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.

To thoroughly address prior inaccurate well permit application projections and to comply with 25 Pa. Code §§ 78.19(e) and 78a.19(b) requiring the Department to provide an evaluation of well permit applications fees and recommend regulatory changes every three years, the Department prepared and presented to the Board a *3-Year Regulatory Fee and Program Cost Analysis Report* (Fee Report) at the Board's April 17, 2018, meeting.

The Fee Report provided that the Program's projected budget to sustain the Program with 190 staff and operating costs in FY 2018-2019 would be approximately \$25 million. Given this projected budget and the current well permit application fees, the Program would need to receive 5,000 nonvertical unconventional well permit applications per year to sustain the Program. However, based on the average of annual well permit applications the Department received in FY 2015-2016, 2016-2017 and 2017-2018 discussed above, the Department anticipated receiving 2,000 unconventional well permit applications per year. For that reason, the Department recommended that the Board revise the unconventional well permit application fee to \$12,500. This analysis provided the basis for the proposed rulemaking.

Based on the Fee Report's analysis of unconventional well permit application trends for FYs 2014-2015, 2015-2016, and 2016-2017, the Program continues to anticipate that it will receive approximately 2,000 unconventional well permit applications per year. Additionally, the Program continues to project 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
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 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 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 the additional Program needs including restoring the Program to a full staff complement of 226 people, hire necessary additional staff and fund program enhancements.

By increasing the unconventional well permit application fee in order to provide the revenue needed to sustain the Program at existing staff levels and operating costs while creating a funding buffer dedicating other revenue sources for increasing staff and program enhancement, all the citizens of the Commonwealth will benefit through the environmental protection provided by the continued administration and enforcement of the 2012 Oil and Gas Act. Maintaining the Program allows for statewide oil and gas conservation and environmental programs to facilitate the safe exploration, development, and recovery of Pennsylvania's oil and gas reservoirs in a manner that will protect the Commonwealth's natural resources, the environment, and public health, safety and welfare.

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

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

N/A. There are no federal permitting or fee standards applicable to unconventional wells regulated by this rulemaking.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Below is an outline of the fee structure for other unconventional oil and natural gas producing states, including New York, Maryland, West Virginia, Ohio, Arkansas, Colorado, New Mexico, Texas and Oklahoma.

Marcellus and Utica Shale States

West Virginia

West Virginia charges \$10,150 for the first horizontal well on a well site and \$5,150 for subsequent wells on the same pad. West Virginia also charges fees for a variety of other activities. These fees are as follows:

- \$650 for deep well and coalbed methane well permits
- \$400 for shallow well permits
- \$100 for a permit to dispose of well work fluids
- \$550 to convert an existing shallow well to an injection well
- \$800 to convert an existing deep well to an injection well

Ohio

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

Permit to drill, reopen, convert or plug-back:

- \$250 to expedite review
- \$500 for fees for drill, reopen, convert or plug-back

Urban Fees:

- \$500 to develop in an area with a population under 10,000
- \$750 to develop in an area with a population under 15,000
- \$1,000 to develop in an area with a population over 15,000 or incorporated municipal area
- \$5,000 for a mandatory pooling application fee
- \$250 for a revision or reissuance of a permit to drill, reopen, convert or plug-back

Temporary Inactive Status:

\$100 for first year, \$250 for second year, \$500 for third year and beyond.

Permit to Plug and Abandon a Well:

- \$250 for an Application Fee
- \$500 to expedite review

Disposal of Brine:

- \$1,000 for a permit fee
- \$0.05/bbl for an in-state disposal fee
- \$0.20 for an out-of-state disposal fee

Registration Certificate and Identification for Brine Haulers:

\$50 for an application fee

Surface Application of Brine by Local Governments:

\$50 for a plan fee for application of brine

Unitization:

\$10,000 for an application filing fee

Notice of Assignment or Transfer of Interest in Lease:

\$100 for a well transfer fee

\$50 for a revised unit fee

\$250 for a revised location fee

\$50 for a post drilling map fee

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

Other Oil & Gas Producing States

In comments submitted during the public comment period on the proposed rulemaking, several commenters requested that the fees charged by Arkansas, Colorado, New Mexico, Texas and Oklahoma be included in the Department's analysis. The Department has considered the following:

Arkansas

\$500 hearing application fees plus \$2.00 for each person named in the application.

Administrative Issuance of Default Integration Order for Certain Unleased Mineral Interests:

If the applicant specifies which Model Form Operating Agreement approved by the Commission it seeks to use, i) Not to exceed more than \$7,500.00 for a drilling well rate and \$750 dollars for a producing well when

the proposed well is a dry natural gas well; or ii) Not to exceed more than \$4,500 for a drilling well rate and \$450 dollars for a producing well when the proposed well is a liquid hydrocarbon well.

The application to appeal a Director's decision shall be accompanied by a \$250 filing fee.

\$500 application for a drilling permit for a well proposed to be drilled, is being drilled, or has been drilled, but prior to commencement of production, at a location within an established drilling unit, which fails to conform to the drilling unit setback distance requirements as measured from the approximate center of the wellbore to unit boundary lines under applicable field rules or Commission general rules:

\$500 application fee for a permit to perform field seismic operations.

\$500 for certain unitization requests.

\$100 per Transportation Tank for an Exploration and Production Fluid Transportation System

Application to drill, deepen, re-enter, recomplete or operate a Class II Disposal or Class II Commercial Disposal Well:

Permit fee in the amount of \$300 if the Class II Disposal or Class II Commercial Disposal Well is drilled, deepened, or re-entered;

Non-refundable fee of \$100.00 for a Class II Disposal Well or \$500 for a Class II Commercial Disposal Well to recomplete or operate the Class II Disposal or Class II Commercial Disposal Well

Transfer of ownership fees:

\$500 per well for wells less than 3000 feet in depth; and

\$1000 per well for wells equal to or greater than 3000 feet in depth; and pay a salvage value for the tanks, pumping units, and other related equipment, as determined by submission of 2 independent salvage value estimates from commercial salvage oil and gas production equipment dealers and approved by the Director or his or her designee and;

Pay the fair market value per barrel, to be determined at the time of the transfer approval, for all oil fluids (hydrocarbons) stored on the lease or unit.

Arkansas also charges an annual fee to all permit holders of liquid hydrocarbon and associated Class II wells as follows:

1–5 Permits or Wells \$100/Well

6–15 Permits or Wells \$750/Operator

16-50 Permits or Wells \$1,250/Operator

51-150 Permits or Wells \$2,000/Operator

151-300 Permits or Wells \$3,000/Operator

301 or more Permits or Wells \$4,000/Operator

Colorado

Colorado does not charge fees for permits or authorizations. Instead, the Colorado Oil and Gas Conservation Commission is funded by "levy revenue", fines, an annual allocation from the Severance Tax Operational Fund, and a small federal grant. Levy revenue is determined by: Volume of oil and gas production; Oil and gas commodity prices; and Levy rate. The Colorado Oil and Gas Act allows the levy to be set as high as 1.7 mills.

New Mexico

\$500 application for a non-federal and non-Native American permit to drill, deepen, plug back or reenter a well.

\$150 for administrative approval of a non-standard location, downhole commingle, surface commingle, off-lease measurement, release notification and corrective action, change of operator, application for modification to surface waste management facility, request for the creation of a new pool, proposed alternative method permit or closure plan application or authorization to move produced water.

\$500 for a fluid injection well permit application.

\$10,000 application for a permit for a commercial surface waste management facility, landfill or landfarm.

\$500 application for an administrative hearing, re-hearing or de novo hearing before the division or commission.

\$150 application for a continuance of an administrative hearing, re-hearing or de novo hearing before the division or commission.

Texas

Texas charges fees for 30 different actions by the Railroad Commission. These fees range from in price \$125 - \$2,500 and can be viewed at the following link:

<https://www.rrc.state.tx.us/oil-gas/applications-and-permits/fees-surcharges/>

Oklahoma

Oklahoma charges fees for 40 different actions by the Corporation Commission. These fees ranging in price from \$50 - \$2,500 and can be viewed at the following link:

https://www.occeweb.com/og/ogfield_files/OIL%20AND%20GAS%20Form%20Fees%2010-1-2018.pdf

These fees are proposed to be increased.

Comparison of Pennsylvania to Other States

This final-form rulemaking seeks to increase only the fees for unconventional well permit applications. This fee is one part of the Program's fee structure which is based solely on well permit applications fees. Currently, in accordance with 25 Pa. Code § 78a.19(a), well permit applicants for vertical unconventional wells pay \$4,200 and well permit applicants for nonvertical unconventional wells pay \$5,000. This final-form rulemaking increases this fee to a flat fee of \$12,500 for an unconventional well permit application.

In comparing the fee increase in this final-form rulemaking with similar fees in other states, 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.

Further, it is significant that these other states have very different fee structures and assess fees for a variety of different actions, not just permit applications. These other states also have a variety of other funding mechanisms not available in Pennsylvania, such as severance taxes. In developing this final-form rulemaking, the Department considered 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.

In comparing Pennsylvania to other northwest shale plays -- the Marcellus and Utica shale plays in New York, Ohio, West Virginia and Maryland -- it is important to note that both New York and Maryland have elected to ban the activity and both West Virginia and Ohio significantly trail Pennsylvania in activity. For example, in 2018, DEP issued 1,868 unconventional well drilling permits while West Virginia issued 433 such permits and Ohio issued 258 permits. Overall, 3,866 unconventional wells have been drilled in West Virginia, 3,717 unconventional wells have been drilled in Ohio and 12,232 unconventional wells have been drilled (and remain active) in Pennsylvania. In addition, each year total gas production in Pennsylvania has grown with over 6 trillion cubic feet produced in 2018.

The Department acknowledges that the well permit application fee in this final-form rulemaking is higher than in other states, but this fee is reasonable and appropriate compared to other states because of Pennsylvania's limited fee structure and other funding mechanisms. Further, this fee increase will not negatively impact Pennsylvania's competitiveness as discussed below.

Pennsylvania's Competitiveness

As noted above, 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 decoupled, therefore, operators will continue to drill wells where gas prices are high or where they can recover a high volume of production. The Marcellus and Utica Shales are the premier shale plays in the United States with Pennsylvania being the premier state in which to drill these wells.

The cost of drill an unconventional well is approximately \$ 8 million dollars. This increased fee accounts for .16% of the cost to drill an unconventional well. Due to the relatively small percentage that the well permit application fee will cost unconventional operators in the scheme of developing a well and the fee structure that Pennsylvania has compared to other states, the new unconventional well permit application fee will not negatively impact Pennsylvania's ability to be competitive with other gas producing states.

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

This regulation will not affect any other regulations or agencies.

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

The Department consulted with the Oil and Gas Technical Advisory Board (TAB) in the development of 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 Department also included the proposed unconventional well permit application fee increase as an agenda item during several Oil and Gas Industry Quarterly Meetings. Attendees included representatives from all the major trade groups in the unconventional industry. Program managers have also given advance notice of this fee increase through informal discussions with the regulated community and received feedback and suggestions for alternatives that were considered by Program staff. The plan to introduce this fee increase was also announced in a press conference by Governor Wolf and Secretary McDonnell on January 26, 2018.

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 Department received 51 comments from 14 commenters. One commenter was neutral on the rulemaking. Three commenters offered comments in support of the rulemaking, while nine commenters opposed the rulemaking. The Independent Regulatory Review Commission (IRRC) also submitted comments on September 12, 2018.

The Department discussed the final rulemaking at the TAB meeting on September 19, 2019.

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

This final-form rulemaking affects companies that seek to drill and operate natural gas wells in unconventional formations, such as the Marcellus Shale.

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. As such, the Department assumes that the 80 operators of unconventional well sites in Pennsylvania that are currently documented in according to the Department's permitting records qualify as small businesses and will be impacted by this rulemaking.

As a result of this final-form rulemaking, companies that seek to obtain unconventional well permits in Pennsylvania will have to pay a fee of \$12,500 per unconventional well permit applications rather than the prior fee of \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells.

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

Companies that seek to drill and operate natural gas wells in unconventional formations, such as the Marcellus Shale, will be required to comply with this regulation. According to the Department's permitting records, there are currently 80 operators of unconventional well sites in Pennsylvania, and that number is not expected to change significantly in the near term.

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

As a result of this final-form rulemaking, companies that seek to obtain an unconventional well permit in Pennsylvania, most of which qualify as small businesses according to the U.S. Small Business Administration, will have to pay a fee of \$12,500 for all unconventional well permit applications rather than the prior fee of \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells.

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. 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.

As stated in the response to Question 10, by increasing the unconventional well permit application fee in order to provide the revenue needed for the Oil and Gas Program, all the citizens of the Commonwealth will benefit through the environmental protection provided by the continued administration and enforcement of the 2012 Oil and Gas Act. Maintaining the Oil and Gas Program allows for statewide oil and gas conservation and environmental programs to facilitate the safe exploration, development, and recovery of Pennsylvania's oil and gas reservoirs in a manner that will protect the Commonwealth's natural resources, the environment, and public health, safety and welfare.

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

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

Please see the response to Question 17 for more information on the benefits of this regulation.

In developing this regulation, the Department thoroughly considered the impacts of raising fees on companies engaged in unconventional natural gas extraction. 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 .16% of the cost to drill an unconventional well rather than .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 .15% and .3% of the cost to drill a conventional well.

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 potentially to the public, as the Department would be forced to further reduce its permitting and inspection staff. This would result in increased permitting timeframes and an 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.

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

The proposed rulemaking increases the unconventional well permit application fee from \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells to \$12,500 for any

unconventional well permit application. This raises the cost for unconventional well permit applications by \$7,500 or \$8,300 per application.

Based on the analysis completed for the *3-Year Regulatory Fee and Program Cost Analysis Report to the Environmental Quality Board*, the Department projects that approximately 2,000 well permit applications will be received annually following the adoption of these amendments. Based on the existing \$5000 fee for nonvertical unconventional well permit applications, the fee increase in this final-form rulemaking will result in an additional annual incremental permit cost of \$15 million to the regulated community.

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

There are no anticipated additional costs or savings for local governments to comply with these final-form regulations.

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

There are no anticipated additional costs or savings to state government associated with the implementation of the regulation, because the Department already collects an unconventional well permit application fee. The revenue from the increased unconventional well permit application fee will be utilized solely to offset the direct and indirect costs of administering the Oil and Gas Program.

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

The proposed rulemaking does not add to or change the existing reporting, recordkeeping or other paperwork requirements for the regulated community, local governments, or state government.

(22a) Are forms required for implementation of the regulation?

Minor changes to the unconventional well permit application form, *Permit Application to Drill and Operate an Unconventional Well (Document #, 8000-PM-OOGM0001bU)*, will be necessary to implement this rulemaking.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

A draft version of the unconventional well permit application form, *Permit Application to Drill and Operate an Unconventional Well (Document #, 8000-PM-OOGM0001bU)* is attached.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:						
Regulated Community	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000
REVENUE LOSSES:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

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

Program	FY 2016/17	FY 2017/18	FY 2018/19	Current FY through 9/25/19
Well Plugging Restricted Revenue Account (Fund 001- SAP Fund 60083)*	\$23,266,000	\$20,559,000	\$22,795,000	\$23,016,000
* Expenditures and commitments				

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

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

This regulation affects companies that seek to drill and operate natural gas wells in unconventional formations. 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. As such, the Department assumes that the 80 operators of unconventional well sites in Pennsylvania that are currently documented in the Department's permitting records qualify as small businesses and will be impacted by this rulemaking.

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

This rulemaking will not impose a reporting or recordkeeping requirement.

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

This rulemaking increases the well permit application fee to \$12,500 for unconventional gas wells that cost approximately \$8 million to drill. As noted above in the response to Question 18, this fee increase means that the average unconventional well permit will now account for .16% of the cost to drill an unconventional well. This increased fee is minimal when considered as part of the overall cost of an average unconventional project. As such, it is not anticipated that this rulemaking will adversely impact companies that operate natural gas wells in unconventional formations that qualify as small businesses.

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

There are no less intrusive or costly alternatives to this regulation available to the Department at this time given the Department's legal authority and projected number of well permit applications.

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

This rulemaking does not affect groups or persons including minorities, the elderly or farmers any differently than other members of the general public. Therefore, this rulemaking does not include special provisions that address such needs. As noted in the responses to Questions 18 and 24, the impact on unconventional well operators that qualify as small businesses is believed to be minimal and therefore no special provisions have been developed as part of the proposed rulemaking.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The Department considered various alternative regulatory provisions to address the disparity between the Oil and Gas Program's income generated by the well permit application fees and the Department's cost of administering the 2012 Oil and Gas Act with the objective of ensuring the well permit application fees meet all Program costs and the Program is self-sustaining. The options considered included increasing unconventional well permit application fees, increasing conventional well permit application fees, enacting annual gas well registration fees, and considering fees for other authorizations required of the Department, similar to the fees charged by states such as Ohio, Texas, Arkansas and Oklahoma.

While enacting annual gas well registration fees or considering fees for other authorizations the Department requires were considered, these options would significantly change how or when fees are currently collected. This would result in process changes for both the oil and gas industry as well as the Department. Furthermore, charging fees for other approval requests submitted to the Oil and Gas Program would be just as unpredictable as well permit applications and would create even more uncertainty in program funding. As such, the Department determined that these were not viable funding options at this time.

In terms of deciding whether to increase unconventional or conventional well permit application fees, the Department considered the following information related to Program costs and permit application volumes. 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 represent 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.

Furthermore, the Department considered that the conventional industry may account for approximately 40% of the costs to administer the Program. In doing so, the Department considered proportional costs related to fee amounts. Based on the Program's projected budget of \$25 million to sustain current staff and operating costs, the conventional industry's proportional costs 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.

Based on the information above, the one-time nature of the well permit and Program costs, the Department determined not to increase the conventional well permit application fees. Instead, it was determined that the most viable option would be to simply increase the current unconventional well permit application fee. This approach results in the least burdensome alternative to the regulated community while providing sufficient funds to enable the Department to continue to operate an effective oil and gas regulatory program.

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

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

No changes to reporting, recordkeeping, or other administrative procedures are included in this rulemaking. As noted in the responses to Questions 18 and 24, the impact on unconventional well operators, who qualify as small businesses, is believed to be minimal and therefore no less stringent compliance or reporting requirements to further minimize that impact were considered.

- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

No changes to reporting, recordkeeping, or other administrative procedures are included as part of this rulemaking as the impact to unconventional well operators that qualify as small businesses is believed to be minimal.

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

No changes to reporting, recordkeeping, or other administrative procedures are included as part of this rulemaking.

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

The rulemaking does not include design or operational standards.

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

All unconventional operators are already subject to the well permit application fee imposed by 25 Pa. Code § 78a.19. As noted above, the impact on all unconventional well operators, who qualify as small businesses, is believed to be minimal and therefore no exemptions were considered.

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

Pursuant to sections 78.19(e) and 78a.19(b), “At least every 3 years, the Department will provide the EQB with an evaluation of the fees in this chapter and recommend regulatory changes to the EQB to address any disparity between the program income generated by the fees and the Department’s cost of administering the program with the objective of ensuring fees meet all program costs and programs are self-sustaining.” 25 Pa. Code §§ 78.19(e) and 78a.19(b). In turn, the Department prepared the *3-Year Regulatory Fee and Program Cost Analysis Report* (Fee Report) to form the basis of this regulation.

This final-form rulemaking, along with the Fee Report, is intended to meet this regulatory requirement and includes a recommendation to increase the current fee structure to sustain the Program at existing staff levels and operating costs while providing a funding buffer or the ability to add needed staff and program enhancements.

The Department relied on standard comparative financial statements to assist in determining the solvency of the Well Plugging Restricted Revenue Account and to conduct an analysis of the future viability of the account balance based on anticipated revenue and expenditures. The comparative financial statement included in the Fee Report identifies the insufficient account balance that would be expected given the current revenue collections and expenditures. The comparative financial statement also estimates the sufficient account balance that would be anticipated based on the adjusted fee structure as a result of the passage and implementation of this rulemaking.

In addition to the Fee Report, an attachment (Attachment A) has been included to show the Program’s expenses compared with projected revenues with and without the fee increase included in this rulemaking. It also shows the expenses needed add necessary staff and program enhancements.

The Department projects the number of unconventional well permit applications based on the Fee Report’s analysis of unconventional well permit application trends for Fiscal Years 2014-2015, 2015-2016, and 2016-2017.

Based on the above, the Department projects the costs to Program at its reduced complement of 190 employees and operating costs at 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

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 F Y 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. 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 the additional Program needs described below.

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

- | | |
|---|------------------------|
| A. The length of the public comment period: | <u>30 days</u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of delivery of the final-form regulation: | <u>Quarter 1, 2020</u> |
| D. The expected effective date of the final-form regulation: | <u>Quarter 2, 2020</u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>Quarter 2, 2020</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

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

Sections 78.19(e) and 78a.19(b) require the Department to evaluate the well permit application fee every three years and recommend any changes to the fee necessary to address any disparity between program income generated by the fees and the Department's cost of administering the program with the objective of ensuring fees meet all program costs and programs are self-sustaining.

The Department intends to continue to monitor fee revenue collections and program expenditures and will conduct a re-evaluation of the fee structure within three years of the effective date of this final rulemaking as required by §§ 78.19(e) and 78a.19(b).