

EXECUTIVE SUMMARY

Marcellus Shale Well Permit Fees (Amendments to Chapter 78)

The Oil and Gas Act was passed on December 19, 1984, and established a \$100 fee for oil and gas well permits. Section 201 (d) of the Act provides the Department with the authority to increase the fee by regulation so that it may bear “a reasonable relationship to the cost of administering” the Act. The Department has never increased the permit fee in nearly 25 years despite escalating program costs. Through this final-omitted rulemaking, the Department is proposing a regulatory fee increase specific to Marcellus Shale gas wells so that the permit fee may cover program costs, including the additional costs needed for the Departmental to review and issue a Marcellus Shale gas well permit.

A Marcellus Shale gas well permit application includes an addendum that the operator must submit to the Department with their application. The addendum requires the permit applicant to submit a water management plan to the Department because of the volume of water that is used in the hydraulic fracturing of the Marcellus Shale. The review of the water management plan requires additional Department staff time, beyond the review of a typical gas well permit application, because it requires staff to evaluate water intake information associated with the hydraulic fracturing of the shale, including review of the management, treatment and discharge of the wastewater. The current \$100 per permit application fee does not cover the actual cost to the Department to review and issue a Marcellus Shale gas well permit. The Department needs additional resources to properly allow the development of the Marcellus Shale natural gas resources and to protect the environment.

Chapter 78 – Oil and Gas Wells Permit Fees

The Department is proposing a specific regulatory fee increase to support the costs of permitting and inspecting Marcellus Shale well permits. The final regulation adds Section 78.19 that includes a Marcellus Shale base fee of \$900 with an additional \$100 per 500 feet of well bore drilled past 1,500 feet. This rulemaking increases the current \$100 permit fee in order to assure adequate funding to cover program expenses for the review and inspections for permit applications within the Marcellus Shale formation.

The recent technological advances that allow development of natural gas found in the Marcellus Shale present new and expanded environmental considerations that the Department must evaluate in order to assure that the natural gas is recovered in the most environmentally sound manner. Many of the new or expanded environmental considerations are directly related to the use of water to recover natural gas from the Marcellus Shale formation. Extracting natural gas from the Marcellus Shale formation requires horizontal drilling within the formation after vertical drilling reaches the formation. The horizontal drilling and a process known as “hydraulic fracturing” are used to allow the natural gas to flow freely from the Marcellus Shale formation. Hydraulically fracturing the Marcellus Shale uses far greater amounts of water than traditional natural gas exploration. Large volumes of water are pumped into the formation, along with sand and other materials under high pressure, to fracture the rock surrounding the horizontal well bore. A single well can use millions of gallons of water to hydraulically fracture the rock. After the hydraulic fracturing process is completed, the wastewater must be properly managed.

The significantly greater use of water at Marcellus Shale wells creates a series of environmental issues during the drilling and development of a Marcellus Shale well. First, there are a number of considerations associated with withdrawal of water, including the need to monitor and restrict the amount of withdrawal to avoid dewatering streams and causing pollution. Under state water law, a person who withdraws water in the amounts generally associated with Marcellus Shale well development must register the withdrawal with the Department. Second, there are a number of considerations associated with the use and storage of the water used for hydraulic fracturing at the well site or at other locations. Third, there are a number of considerations associated with the proper management, treatment, and discharge of the wastewater.

To address these additional environmental considerations associated with development of Marcellus Shale, the Department prepared a permit application Addendum specifically for Marcellus Shale Gas Well Development. The Department expends considerable staff resources to review the additional information in the Marcellus Shale Addendum because the Department's review includes several water quality and quantity issues not normally associated with gas well permit application reviews. The Department needs to coordinate its Marcellus Shale permit application review among several water resource related program areas. Within the Susquehanna and Delaware River Basins, the Department also needs to coordinate its review with the Susquehanna and Delaware River Basin Commissions which have regulatory authority over water withdrawals within their respective river basins.

Use of the omission of the notice of proposed rulemaking procedures is appropriate to increase the permit application fee for Marcellus Shale well permit applications under section 204 of the Commonwealth Documents Law 45 P.S. § 1204, for the reasons set forth above. Under Section 204 (3), an agency is authorized to use the "final-omitted" rulemaking process if the agency finds for good cause that the notice of proposed rulemaking is unnecessary, impractical, or contrary to the public interest. It is in the public interest to have applicants for Marcellus Shale well permits pay the greater application review and permit implementation costs associated with these applications and permits.

A draft of this regulation was presented to the Oil and Gas Technical Advisory Board (TAB) on October 30, 2008. The TAB includes representatives from the natural resources consulting firms, energy corporations and academia.

The rulemaking will become effective upon publication in the *Pennsylvania Bulletin*, which is anticipated to occur in spring 2009. Immediate compliance is expected.