

Notice Of Proposed Rulemaking
Department of Environmental Protection
Environmental Quality Board
25 PA Code Chapter 78
(Oil and Gas Wells)

Preamble

The Environmental Quality Board (Board) proposes to amend 25 PA Code Chapter 78 subchapter B (relating to Oil and Gas Wells) by adding a new section 78.19 relating to permit fees as set forth in Annex A. The Board has the authority to establish fees, by regulation, under Section 201 of the Oil and Gas Act. 58 P.S. § 601.201. Under this provision, the Board has the authority to set fees at an amount that bears a reasonable relationship to the cost of administering the program.

This proposal was adopted by the Board at its meeting of _____.

A. Effective Date

The amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information contact Ronald Gilius, Director, Bureau of Oil and Gas Management, Rachel Carson State Office Building, 5th floor, 400 Market Street, P.O. Box 8765 Harrisburg, PA 17105-8461, 717-772-2199; or Scott Perry, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) Web site: www.depweb.state.pa.us.

C. Statutory Authority

This proposed rulemaking is being made under the authority of Section 201(d) of the Oil and Gas Act (58 P.S. § 601.201(d)) which authorizes the Department to establish, by regulation, well permit fees that bear a reasonable relationship to the cost of administering the Act, section 604 of the Oil and Gas Act (58 P.S. § 601.604) which directs the Board to adopt regulations necessary to implement the Act, and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), authorizing and directing the Board to adopt regulations necessary for the proper performance of the work of the Department.

D. Background of the Amendments

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 allows the Department to increase the fee by regulation. Under this provision, fees, must be set at a level that “bears a reasonable relationship to the cost of administering” the act. The Department has never increased the current \$100 permit fee.

There are three considerations that support the promulgation of a regulation to increase the permit application fees authorized by the Oil and Gas Act. First, the costs of administering the Act have increased significantly since 1984 when the General Assembly establish the \$100 fee that the Department currently charges. This \$100 per permit application fee does not currently bear a reasonable relationship to the cost of administering the Oil and Gas Act.

In addition, the number of permit applications that the Department reviews annually has grown dramatically over the past several years. In 2000, 1354 wells were drilled in Pennsylvania. Last year in 2007 the Department issued 7,241 well permits applications. In 2009, the Department expects to receive over 11,000 permit applications. The Department’s current staffing levels for the Oil and Gas program were established at a time when the Department reviewed considerably fewer permit applications than it reviews today. To properly review the number of applications that the Department currently receives and to inspect the operations of sites that currently possess a permit, the Department needs additional staff that the current \$100 fee can not support.

Finally, there is significant and recent interest in the development and recovery of natural gas resources in the Marcellus Shale formation that underlies much of Pennsylvania. The development of this geologic formation, which also extends beneath portions of West Virginia and New York, has long been considered prohibitively expensive to access. Recent advances in natural gas drilling technology and rising natural gas prices have attracted considerable interest in the previously untapped formation.

The recent technological advances that allow recovery of natural gas found in the Marcellus Shale present new and expanded environmental considerations that the Department must evaluate properly to ensure the gas is recovered in the most environmentally sensitive manner feasible. 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 of the addendum 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.

To properly evaluate the proposals to recover gas from the Marcellus Shale formation, the Department has expended additional staff resources. The current \$100 per permit application fee does not have any "reasonable relationship" to the actual cost to implement this portion of the Oil and Gas Act program covering development of the Marcellus Shale. The Department needs additional resources to properly allow the development of the Marcellus Shale natural gas resources and to protect the environment. This regulatory fee increase is needed to provide the Department with the resources to perform the additional work associated with the review of Marcellus Shale gas well permit applications and with the oversight of any permits that are issued.

E. Summary of Proposed Rulemaking

Section 78.19(a) contains three fee schedules for the following types of wells: Vertical Wells, deviated wells and Marcellus Shale wells. Vertical Wells are those that only have vertical well bores to reach the oil or gas producing formation. Non-vertical wells are those that have non-vertical portions of the well bore, in addition to the vertical portion, that are intentionally drilled to develop the oil and gas producing formations. The non-vertical well category does not include Marcellus shale wells. The final type is the Marcellus shale wells. Marcellus shale wells are those that may have non-vertical portions of the well bore, in addition to the vertical portion, that are intentionally drilled to develop the gas producing Marcellus shale formation. For non-vertical and Marcellus Shale wells, the vertical well bore and the non-vertical well bore are added together to determine the total well bore length for purposes of determining the fee.

In Section 78.19(b) the proposed regulations provide that applicants for vertical well permits that have a total well bore greater than 12,000 feet shall pay an additional fee of \$100 for every 500 feet drilled beyond 12,000 feet. In Section 78.19(c), the proposed regulations provide that applicants for non-vertical and Marcellus Shale well permits that have a total well bore greater

than 12,000 feet shall pay an additional fee of \$100 for every 500 feet drilled beyond 12,000 feet. Section 78.19(d) establishes an additional fee for well bores that are actually drilled beyond the depth requested in the application. Section 78.19(e) provides that fees are non-refundable. Section 78.19(f) of the proposed regulations provide that applicants for a vertical well with a well bore length of 1,500 feet or less for home use an application fee of \$200. Finally, Section 78.19(g) provides that the Department will provide the Board with an evaluation, at least every three years, concerning the adequacy of the fees to cover program implementation costs.

The proposed rulemaking makes one other minor conforming change to the permitting regulations. Section 78.15(b), which covers application requirements and completeness requirements, includes a cross-reference to the new regulatory fee schedule in Section 78.19.

F. Relationship to Final–Omit Rulemaking to Increase Fees

This proposed rulemaking was approved at the same meeting that the Board approved a final-omit rulemaking that is intended to quickly increase permit application fees for permits that are issued for the Marcellus Shale formation for the “good cause” reasons set forth in that rulemaking. This proposed rulemaking also includes the new Marcellus Shale permit application fees included in the final-omitted rulemaking to allow interested persons to provide comments on the new Marcellus Shale permit application fees as part of this proposed rulemaking. When this proposed rulemaking is adopted as final, the Board will make appropriate changes to the Marcellus Shale permit application fees as part of this rulemaking in response to public comments. The final-omit fees for Marcellus shale permit applications will only be in effect until these proposed regulations are adopted as final.

G. Benefits and Costs

Benefits

The residents of this Commonwealth and the regulated community will benefit from this regulation because the Department will be able to continue to uphold the purposes of the Oil and Gas Act. The purposes of the act are:

- (1) Permit the optimal development of the oil and gas resources of Pennsylvania consistent with the protection of the health, safety, environment and property of the citizens of the Commonwealth.
- (2) Protect the safety of personnel and facilities employed in the exploration, development, storage and production of natural gas or oil or the mining of coal.
- (3) Protect the safety and property rights of persons residing in areas where such exploration, development, storage or production occurs.
- (4) Protect the natural resources, environmental rights and values secured by the Pennsylvania Constitution. (58 P.S. §601.102)

The public will benefit in two general ways. The public will benefit from a fiscal perspective when the costs of the regulatory program are imposed on the regulated community, as the Oil and Gas Act provides. For Marcellus Shale gas well development, the need for timely and special reviews has significantly increased the Department's cost of implementation of the program and it is in the public interest to impose these costs on the regulated community. The public also benefits from an environmental perspective since the review of the Marcellus Shale permit applications require new and extensive reviews to ensure that the development of this natural gas resource occurs in an environmentally protective manner which Pennsylvania state law requires. The higher fees will support the Department's newly developed and extensive efforts to review Marcellus Shale permit applications.

The regulated community will also benefit because the regulated community wants timely reviews of permit applications, which state law also requires. Having the staff to evaluate these Marcellus Shale permit applications in a timely and environmentally protective manner will benefit the regulated community and the public.

Costs

This rulemaking will not impose any additional costs on the Department. This proposal will help the Department offset the greater implementation costs to support new and extensive reviews of oil and gas permit applications.

The base fee would include a vertical well base fee of \$250 with an additional \$50 per 500 feet of well bore drilled from 2,000 feet to 5,000 feet and an additional \$100 per 500 feet for the well bore drilled past 5,001 feet. Non-vertical wells, which are also called horizontal wells, would have a base fee of \$900 with an additional \$100 per 500 feet of well bore drilled past 1,500 feet. An applicant for a vertical well with a well bore length of 1,500 feet or less for home use shall pay a permit application fee of \$200.

Compliance Assistance Plan

A compliance assistance plan is not necessary because the new fee structure does not create a situation where a well operator will be out of compliance with the regulation. Well permits that do not contain the appropriate fee will be deemed incomplete. The Department will return the application to the applicant and tell the applicant what the appropriate fee is. In order to minimize this circumstance from occurring, the Department will publicize the new permit fee requirements on its website and inform potential applicants of the new fee structure at upcoming industry trainings.

Paperwork requirements

No additional paperwork will be required as a result of this rulemaking. However, the Department will need amend its well permit application form and instructions to incorporate and explain the new permit fee structure.

H. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. Regulatory Review

In accordance with Section 5(a) and (f) of the Regulatory Review Act (71 P.S. §§ 745.1—745.15), the Department submitted a copy of the proposed amendments, on _____, to the Legislative Reference Bureau for publication of notice of proposed rulemaking in the *Pennsylvania Bulletin*, and to the Independent Regulatory Review Commission (Commission). In accordance with Section 5(f) of the Act (71 P. S. § 745.5(f)), the Department will submit the proposed regulations and the required material to the Chairpersons of the House Environmental Resources and Energy Committee and the Senate Environmental Resources and Energy Committee (Committees) no later than the second Monday after the date by which both Committees designations have been published in the *Pennsylvania Bulletin*. In addition to submitting the proposed amendments, the Department has provided the Commission and will provide the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.)

Under Section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. Public Comments

Written Comments – Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by _____ (blank) _____. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by _____ (blank) _____ (within ____ days following publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments – Comments may be submitted electronically to the board at RegComments@state.pa.us and must also be received by the Board by date . A subject heading of the proposal and a return name and address must be included in each transmission.

BY:

JOHN HANGER
Acting Chairperson
Environmental Quality Board