EXECUTIVE SUMMARY
25 Pa. Code Chapter 78, Oil and Gas Wells

This final-form rulemaking includes amendments to 25 Pa. Code §§ 78.1 (definitions) and 78.19 (permit application fee schedule) in order to implement fees to support the Department of Environmental Protection’s (Department) Oil and Gas Management Program.

The purpose of these amendments is to change the unconventional natural gas well permit fee structure from a sliding fee schedule based on well bore length to a fixed fee of $5,000 for nonvertical unconventional wells and $4,200 for vertical unconventional wells. As a result of this change in structure, the permit fee for an average unconventional well will increase by approximately $1,800 per well for nonvertical unconventional wells and by $1,300 per well for vertical unconventional wells.

These amendments increase the well permit fee to provide adequate revenue to support the ongoing operations of the program as well as to meet future program needs, including permitting, inspection, enforcement and information technology needs. Compounding the problem of declining funds due to increasing expenditures is the decrease of well permit applications. Since 2010, the Department has experienced a year-over-year decrease in the number of unconventional well permit applications received. Because the program is funded almost exclusively from well permit application fees, the decline in permit applications is met with declining revenues but with the passage of Acts 9 and 13 of 2012, the overall responsibility of the Oil and Gas Program has increased. It is imperative that the Department have the resources and technology necessary to ensure industry compliance and environmental protection as Office of Oil and Gas Management responsibilities in this area continue to expand.

This increase in workload coupled with declining permit revenues creates a situation where the incoming permit revenue is insufficient to cover the current operational costs of the program, not allowing any room for flexibility in terms of future staff and resource needs. As the oil and gas industry continues to expand in Pennsylvania, additional Department staff and technology will be critical to ensure the Department’s proper oversight of the industry.

No companion federal regulations relating to permitting of oil and gas wells exist.

This regulation affects companies that operate natural gas wells in unconventional formations, such as the Marcellus Shale. According to the Department’s permitting records, there are currently 73 operators of unconventional well sites in Pennsylvania, and that number is not expected to change significantly in the near term. Conventional well operators will continue to pay the current vertical well fee and will not be impacted by these amendments.

The Department consulted with the Oil and Gas Technical Advisory Board (TAB) in the development of this proposed rulemaking. The Department presented the draft proposed rulemaking to TAB at its April 23, 2013 meeting. Because the rulemaking does not address technical issues relating to oil and gas, TAB did not take a formal action relative to the proposed or final rulemakings.

The EQB received comments from six commentators and the Independent Regulatory Review Commission (IRRC) during the 30-day public comment period. Four commentators, including the Pennsylvania Independent Oil and Gas Association and IRRC, suggested adding more detail to the proposed definition of "conventional well." This suggestion was accepted and the final-form rulemaking contains the additional detail in section 78.1.

Two commentators explicitly supported the concept of fee increases, with one requesting that the fee be doubled above what was proposed. One commentator was opposed to fee increases to support staffing increases until such time as the Department's electronic permitting initiative is in place and the efficiencies gained from that development can be assessed. This comment fails to acknowledge the additional responsibilities placed on the Department by Acts 9 and 13 of 2012 as well as the expanding universe of regulated oil and gas wells (more wells are permitted and drilled each year than are plugged so the regulated universe continues to expand), as well as the infrastructure development oversight carried out by the Office of Oil and Gas Management. As noted above, the Department has conducted a thorough analysis of the program's current resources and expenditures, and believes that the fee and staff increases are adequate given the program's needs.