Regulatory Analysis Form

(Completed by Promulgating Agency)

(All Comments submitted on this regulation will appear on IRRC's website)

INDEPENDENT REGULATORY REVIEW COMMISSION

(1) Agency

Department of Environmental Protection

(2) Agency Number:

Identification Number: #7-483

IRRC Number: **3022**

(3) Pa. Code Cite: 25 Pa.Code § 78.1, *et seq.*

(4) Short Title:

Chapter 78 Oil and Gas Wells

(5) Agency Contacts (List Telephone Number and Email Address):

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(6) Type of Rulemaking (check applicable box):

☐ Proposed Regulation
X Final Regulation
☐ Final Omitted Regulation

☐ Emergency Certification Regulation;
☐ Certification by the Governor
☐ Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The purpose of the final-form regulation 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. This fee increase is necessary to support current Oil and Gas Program activities and to fund additional positions where needed.

(8) State the statutory authority for the regulation. Include specific statutory citation.

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."

58 Pa. C.S. § 3274. This section directs the Environmental Quality Board to adopt regulations necessary to implement 58 Pa. C.S., Chapter 32.

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

However, 25 Pa. Code § 78.19(f) requires the Department to evaluate the well permit 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 oil and gas well permit fee was last modified in October 2009. Therefore, conducting such an evaluation and recommending as needed changes to the fee to the Environmental Quality Board is mandated at this time by Chapter 78.

(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.

This regulation is needed because the revenue generated by the well permit fee is not sufficient to cover current Oil and Gas Program expenses. The regulation is also needed to support the additional staff necessary to continue administration of the additional responsibilities required of the program by Acts 9 and 13 of 2012 as well as to improve program consistency and permitting efficiency.

The Department's Oil and Gas Program is funded primarily through the oil and gas well permit fee. In addition, the Oil and Gas Program receives financial support out of the erosion and sediment control permit fee and the $6 million Act 13 Impact Fee allocation to the Department. Fines and penalties collected for violations of Act 13 are also deposited into the Well Plugging Fund and used to support the Oil and Gas Program activities. The program does not receive any revenue from the General Fund.

As noted above in response to question (9), conducting an evaluation of the well permit fee and recommending changes to the fee to the Environmental Quality Board is mandated at this time by Chapter 78. Since fall of 2011, the Department has been monitoring the declining Well Plugging Fund balance and evaluating the need for additional staff and revenue by means of a regulatory fee package.

With FY 11-12 revenues totaling $13.5M and expenditures exceeding $16.6M, the Oil and Gas program is projected to have increasing expenditures with declining revenues in future fiscal years, which will continue to deplete the existing fund reserves. At the current rate of revenues and expenditures, the balance of the fund will be insufficient to cover program expenses in FY15-16.

The utilization of Act 13 Impact Fee revenue to stabilize the Well Plugging Fund is not a sustainable approach. At current permit fee levels, an annual transfer of $6M in Impact Fee revenue to the Well Plugging Fund would not sustain the program through the three-year period contemplated by 25 Pa.Code § 78.19(f).

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.

(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. Outside of Underground Injection Control permitting, which is handled in Pennsylvania by EPA Region III, there are no federal permitting or fee standards applicable to 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?

The well permit fees charged by neighboring states are: New York - $290 base fee plus $190 for every 500 feet in well bore length ($5,230 for a typical Marcellus well in Pennsylvania). Ohio - $500 to $1,250 depending on rural or urban locations. West Virginia - $10,150 for the first horizontal well and $5,150 for subsequent wells on the same pad.

The cost to drill a typical unconventional well is approximately $6 million. The current average unconventional well permit fee is $3,200. An increase of $1,800 to a flat fee of $5,000 for a nonvertical unconventional well represents .0003% of the overall cost to drill a well and will have no impact on Pennsylvania's competitiveness with other 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 staff presented this proposed revision to the Oil and Gas Technical Advisory Board at the Board's April 23, 2013 meeting. The Department staff also met with the Associated Petroleum Industries of Pennsylvania, the Pennsylvania Independent Oil and Gas Association and the Marcellus Shale Coalition. None of these organizations, whose members likely include "small businesses," oppose the regulation.

The proposed rulemaking was published in the *Pennsylvania Bulletin* on September 15, 2013 (43 *Pa.B.* 5457), with a 30-day public comment period. The EQB received comments from six commentators and the Independent Regulatory Review Commission (IRRC) during the 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.

(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 regulation affects companies that operate natural gas wells in unconventional formations, such as the Marcellus Shale. According to the U.S. Small Business Administration, for NAICS codes 211111 (Crude Petroleum and Natural Gas Extraction) and 213111 (Drilling Oil and Gas Wells), businesses with less than 500 employees are considered by the U.S. Small Business Administration to be small businesses. 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.

The Marcellus Shale Coalition, an industry association that represents the majority of exploration, production, midstream, and supply chain partners of unconventional natural gas drilling in Pennsylvania, has estimated that less than half of the operators affected may be classified as a small business. The final-form rulemaking requires payment of an increased fee to the Department for a permit to drill and operate an unconventional well. As noted above in response to questions (7) and (12), this increased permit fee represents a small portion of the total cost to develop an unconventional well.

(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.

This regulation affects companies that operate natural gas wells in unconventional formations, such as the Marcellus Shale. According to the U.S. Small Business Administration, for NAICS codes 211111 (Crude Petroleum and Natural Gas Extraction) and 213111 (Drilling Oil and Gas Wells), businesses with less than 500 employees are considered by the U.S. Small Business Administration to be small businesses. 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.

The Marcellus Shale Coalition, an industry association that represents the majority of exploration, production, midstream, and supply chain partners of unconventional natural gas drilling in Pennsylvania, has estimated that less than half of the operators affected may be classified as a small business.

(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.

Increasing the well permit fee by approximately $1,800 for a nonvertical unconventional gas well that costs approximately $6 million to drill should have no impact on well drilling activity in Pennsylvania. Failure to increase the well permit 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 reducing its permitting and inspection staff unless other funding sources are used, such as the General Fund. This could result in increased permitting timeframes and associated slowdown of economic activity. Fewer inspectors would erode public confidence in the Department and could result in more well sites going uninspected each year.

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

The revenues generated from the fee increase will enable the Department to continue funding of the direct and indirect costs of administering Pennsylvania's Oil and Gas Program. Direct and indirect costs include personnel costs for carrying out program activities including processing of permits and conducting site inspections, operating expenses and the purchase of fixed assets such as sampling supplies, monitoring equipment and vehicles.

The benefits of the regulation include the ability of the Department to provide timely permit reviews and perform robust inspections at an increasing number of well sites in Pennsylvania to help prevent environmental harms to the Commonwealth's lands, waterways and air resources as well as minimize impacts to human health, safety and welfare.

(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 rulemaking adjusts the fee structure from a sliding scale fee to a fixed fee amount for vertical and nonvertical unconventional wells.

Currently, section 78.19 includes a prescribed fee schedule that applies to vertical wells, nonvertical wells, and Marcellus Shale wells. The current fee structure includes a variable fee cost depending on the total length of the well that is drilled.

The proposed fee structure would utilize a flat fee for vertical unconventional wells and nonvertical unconventional wells; however the current sliding scale fee for vertical (conventional) wells will continue to apply to all conventional wells.

An applicant for a vertical well with a well bore length of 1,500 feet or less for home use will continue to pay $200. This permit fee remains unchanged from the current fee for such wells.

Nonvertical Unconventional Wells:

The average permit fee paid for a nonvertical unconventional well or Marcellus Shale well during 2012 was approximately $3,200 per well. The final-form rulemaking establishes a fixed $5,000 fee for each nonvertical unconventional well which is an increase of $1,800 per well. The Department projects that approximately 2,600 well permit applications will be received annually following this adoption of these amendments. This would result in an additional annual incremental permit cost of $4,680,000 to the regulated community.

Vertical Unconventional Wells:

The final-form rulemaking regulation establishes a fixed $4,200 fee for each vertical unconventional well. The Department projects that approximately 80 well permit applications for vertical unconventional wells will be received annually following this adoption of these amendments. This would result in an additional annual incremental permit cost of $104,000 to the regulated community.

Conventional Vertical and Nonvertical Wells:

Permit applicants for conventional wells will see no impact from the final-form rulemaking because the rulemaking retains the current “vertical well” fee structure as the new “conventional well” fee structure. Typically, “conventional wells” as defined in the final-form rulemaking would currently pay the “vertical well” fee.

(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 proposed 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.

The fees that are collected by the Department are utilized solely to offset the direct and indirect costs of administering Pennsylvania's Oil and Gas Program. The fees collected will enable the Department to continue operating an effective Oil and Gas Program while enabling additional positions that will assist the Department in administering newly enacted statutory requirements.

(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 final-form rulemaking does not add to or change the existing reporting, recordkeeping or other paperwork requirements for the regulated community, local governments, or state government. If anything, the final-form rulemaking reduces the burden on the regulated community and the Department because it replaces the sliding scale permit fees, requiring proper calculation and review, with flat fees that are easy to understand and implement.

(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 12/13	**FY +1 Year 13/14**	**FY +2 Year 14/15**	**FY +3 Year 15/16**	**FY +4 Year 16/17**	**FY +5 Year 17/18**
SAVINGS:	**$**	**$**	**$**	**$**	**$**	**$**
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Total Savings	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
COSTS:	**$**	**$**	**$**	**$**	**$**	**$**
Regulated Community	$4,784,000	$4,784,000	$4,784,000	$4,784,000	$4,784,000	$4,784,000
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
Total Costs	$4,784,000	$4,784,000	$4,784,000	$4,784,000	$4,784,000	$4,784,000
REVENUE LOSSES:	**$**	**$**	**$**	**$**	**$**	**$**
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00

Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
Total Revenue Losses	0.00	0.00	0.00	0.00	0.00	0.00

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

Program	FY -10/11	FY -11/12	FY -12/13	Current FY (through 11/30/13)
Well Plugging Restricted Revenue Account (Fund 001- SAP Fund 60083) (*)	$16,220,000	$16,634,000	$16,371,000	$8,116,000

(*) – 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 operate natural gas wells in unconventional formations, such as the Marcellus Shale. According to the U.S. Small Business Administration, for NAICS codes 211111 (Crude Petroleum and Natural Gas Extraction) and 213111 (Drilling Oil and Gas Wells), businesses with less than 500 employees are considered by the U.S. Small Business Administration to be small businesses. 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.

The Marcellus Shale Coalition, an industry association that represents the majority of exploration, production, midstream, and supply chain partners of unconventional natural gas drilling in Pennsylvania, has estimated that less than half of the operators affected may be classified as a small business.

(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.

It is not anticipated that this rulemaking will adversely impact small businesses. The universe of oil and gas operators that are small businesses tend to be restricted to the drilling of conventional oil and gas wells. The final-form rulemaking does not alter the current fee structure for conventional oil and gas well permits.

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

There is no less intrusive alternative to this regulation.

(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, small businesses or farmers; therefore, this rulemaking does not include special provisions that address such needs.

(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 regulatory options to amend the existing permit fee structure for unconventional gas well permits. The options included assessing increased permit fees, annual gas well registration fees, and transfer fees. It was determined that the most viable option would be to replace the current sliding scale permit fee for unconventional vertical and nonvertical wells with a flat fee per well with no additional fees assessed. This approach is the most viable as it does not significantly change how or when the fees are currently collected; only the amount collected is changed. Also, the increase is minimal (.0003%) compared to the overall cost to drill an unconventional well and will have no impact on Pennsylvania’s competitiveness with other states (see response to question (12)). The existing sliding scale fee for conventional wells will not be adjusted so will remain unchanged. This approach results in the least burdensome alternative to the regulated community while providing sufficient funds to enable to 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;

While some oil and gas operators may be considered a small business as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, no changes to reporting, recordkeeping, or other administrative procedures are proposed as part of this rulemaking. The oil and gas operators are familiar with the existing requirements for reporting and recordkeeping for their entity and have the professional and technical skills needed for continued compliance with these requirements.

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

While some oil and gas operators may be considered a small business as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, no changes to reporting, recordkeeping, or other administrative procedures are included as part of this rulemaking.

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

While some oil and gas operators may be considered a small business as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, 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 final-form 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.

While certain oil and gas operators may meet the definition of small business under the Regulatory Review Act, Act 76 of 2012, those operators are already subject to the permit fee imposed by § 78.19.

Further, the Department considered the universe of small businesses that might be affected by this rulemaking and developed the final-form rulemaking to provide flexibility for small businesses.

The universe of oil and gas operators that are small businesses tend to be restricted to the drilling of conventional oil and gas wells. The final-form rulemaking does not alter the current fee structure for conventional oil and gas well permits.

The Marcellus Shale Coalition estimated that less than half of the operators affected may be classified as a small business. For those unconventional operators the proposed fee increase is minimal (.0003%) compared to the overall cost to drill an unconventional well (see response to question (12)).

(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.

Declining revenue from the collection of oil and gas well permit fees from FY 2010-11 levels is the basis for revising the current fee structure that has been in place since October 2009. Pursuant to section 78.19 (f), "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(f).

This final-form rulemaking, along with the 3-Year Report, is intended to meet this regulatory requirement and includes a recommendation to increase the current fee structure to ensure all program costs are met and such that the Oil and Gas Program is sustained until the next 3-year fee review.

The Department relied on standard comparative financial statements to assist in determining the solvency and 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 at Attachment 1 (see the 3-Year Report) identifies the insufficient account balance that would be expected given the current revenue collections and expenditures. The comparative financial statement at Attachment 2 (see the 3-Year Report) 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.

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

A. The date by which the agency must receive public comments: 30 days after publication

B. The date or dates on which public meetings or hearings will be held: N/A

C. The expected date of promulgation of the proposed regulation as a final-form regulation: 1Q 2014

D. The expected effective date of the final-form regulation: Upon publication

E. The date by which compliance with the final-form regulation will be required: Upon publication

F. The date by which required permits, licenses or other approvals must be obtained: N/A

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

Section 78.19(f) requires the Department to evaluate the well permit 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 section 78.19(f).