3-YEAR REGULATORY FEE AND PROGRAM COST ANALYSIS REPORT TO THE ENVIRONMENTAL QUALITY BOARD

BACKGROUND:

The Department of Environmental Protection's (Department) Office of Oil and Gas Management is responsible 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 and the environment. The office develops policy and programs for the regulation of oil and gas development and production pursuant to the 2012 Oil and Gas Act (Act); oversees the oil and gas permitting and inspection programs; develops statewide regulation and standards; conducts training programs for industry; and works with the Interstate Oil & Gas Compact Commission and the Technical Advisory Board. The entire oil and gas program is funded by well permit fees, fines and civil penalties through the Well Plugging Fund, which was established by the Act.

The Act, which was passed in Pennsylvania on December 19, 1984, and recently amended in 2012 by Act 13, initially established a $100 fee for oil and gas well permits. Section 3211 (d) of the Act allows the Department to increase the fee by regulation, provided the fee "bears a reasonable relationship to the cost of administering" the Act. For nearly 25 years, permit fee levels were stagnant and remained at $100, despite escalating program expenses. In April 2009, in response to the dramatic increase in program resources needed to regulate the Marcellus Shale Well gas industry in Pennsylvania, the Department increased permit fees for Marcellus Shale wells through a final-omitted rulemaking. The fee structure implemented at 25 *Pa. Code* § 78.19 increased fees from $100 to a sliding scale based on the length of the well bore drilled.

At the same time the final-omitted rulemaking was initiated, another rulemaking was developed by the Department that included permit fee increases for conventional or vertical wells based on the length of the well bore drilled and permit fee increases for nonvertical and Marcellus Shale wells, which were identical to the fee structure included in the Marcellus Shale Wells fee final-omitted rulemaking. The latter fees were included in the rulemaking in order to allow for public comment and review which was omitted during the final-omitted rulemaking process. In October 2009, the rulemaking was finalized and established fee levels as provided in **Table 1** below. The rulemaking also established a fee of $200 for a permit for a vertical well with a well bore length of 1,500 feet or less for home use. Based upon historical Department data from 2009 to the present, the average permit fee for a Marcellus Shale well in Pennsylvania is currently $3,200.

TABLE 1

Vertical Wells		*Nonvertical Wells*		*Marcellus Shale Wells*	
Total Well Bore Length in Feet	Total Fee	Total Well Bore Length in Feet	Total Fee	Total Well Bore Length in Feet	Total Fee
0 to 2,000	$250	0 to 1,500	$900	0 to 1,500	$900
2,001 to 2,500	$300	1,501 to 2,000	$1,000	1,501 to 2,000	$1,000
2,501 to 3,000	$350	2,001 to 2,500	$1,100	2,001 to 2,500	$1,100
3,001 to 3,500	$400	2,501 to 3,000	$1,200	2,501 to 3,000	$1,200
3,501 to 4,000	$450	3,001 to 3,500	$1,300	3,001 to 3,500	$1,300
4,001 to 4,500	$500	3,501 to 4,000	$1,400	3,501 to 4,000	$1,400

4,501 to 5,000	$550		4,001 to 4,500	$1,500		4,001 to 4,500	$1,500
5,001 to 5,500	$650		4,501 to 5,000	$1,600		4,501 to 5,000	$1,600
5,501 to 6,000	$750		5,001 to 5,500	$1,700		5,001 to 5,500	$1,700
6,001 to 6,500	$850		5,501 to 6,000	$1,800		5,501 to 6,000	$1,800
6,501 to 7,000	$950		6,001 to 6,500	$1,900		6,001 to 6,500	$1,900
7,001 to 7,500	$1,050		6,501 to 7,000	$2,000		6,501 to 7,000	$2,000
7,501 to 8,000	$1,150		7,001 to 7,500	$2,100		7,001 to 7,500	$2,100
8,001 to 8,500	$1,250		7,501 to 8,000	$2,200		7,501 to 8,000	$2,200
8,501 to 9,000	$1,350		8,001 to 8,500	$2,300		8,001 to 8,500	$2,300
9,001 to 9,500	$1,450		8,501 to 9,000	$2,400		8,501 to 9,000	$2,400
9,501 to 10,000	$1,550		9,001 to 9,500	$2,500		9,001 to 9,500	$2,500
10,001 to 10,500	$1,650		9,501 to 10,000	$2,600		9,501 to 10,000	$2,600
10,501 to 11,000	$1,750		10,001 to 10,500	$2,700		10,001 to 10,500	$2,700
11,001 to 11,500	$1,850		10,501 to 11,000	$2,800		10,501 to 11,000	$2,800
11,501 to 12,000	$1,950		11,001 to 11,500	$2,900		11,001 to 11,500	$2,900
			11,501 to 12,000	$3,000		11,501 to 12,000	$3,000

PURPOSE:

The 2009 regulatory amendments include a provision at 25 *Pa. Code* § 78.19 (f) that requires the Department to provide the Environmental Quality Board (EQB) with an evaluation of the adequacy of the fees and a recommendation regarding regulatory changes necessary to address any disparity between program costs and income received. The purpose of the following evaluation is to fulfill the requirements of 25 *Pa. Code* § 78.19 (f) and to ensure that well permit fees are sufficient to meet the current and projected costs of implementing and administering the Commonwealth's Oil and Gas Program.

ANALYSIS:

The Oil and Gas Program has invested additional resources to enhance program operations in response to demands associated with the Marcellus Shale Gas industry. **Table 2** below identifies the number of unconventional well permit applications received by the Department since 2008 and is illustrative of the increased workload by the Department as oil and gas permitting activities have increased nearly six-fold since 2008. In 2004, the program employed 64 employees. With the permit fee increases promulgated in 2009, the Department received revenue to expand staffing in the program to the current complement of 202 employees, or over three-times the complement in 2004. Approximately 80% of the staff is assigned to engineering, scientific or permit/inspection-related work, as Oil and Gas Inspectors or Oil and Gas Inspector Supervisors, and the remaining 20% are assigned to clerical, administrative, or legal work to support the Oil and Gas Program.

TABLE 2

DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF OIL AND GAS MANAGEMENT
ANNUAL UNCONVENTIONAL PERMIT APPLICATIONS RECEIVED

2008	2009	2010	2011	2012
589	2050	3,418	3,672	2,678

Despite the increase in complement since 2009, the Oil and Gas Program has been faced with additional responsibilities associated with the support of the Oil and Gas industry in Pennsylvania. These additional responsibilities coupled with regulatory oversight obligations to existing and future operations are increasing operational expenditures of the Oil and Gas Well Plugging Fund. For example, Act 13 of 2012 comprehensively amended the 1984 Oil and Gas Act and imposed a number of new responsibilities on the oil and gas industry as well as the Department. Pursuant to Act 13, the Department must inspect well sites before drilling can commence and well drillers must now notify the Department prior to cementing all strings of casing and before hydraulic fracturing operations commence. These new requirements add to the responsibilities of the Oil and Gas Program furthering the need for additional inspectors to fulfill the increased inspection requirements of the law.

In addition to Act 13, the Department is also responsible for implementing Chapters 102 and 105 regulated activities. Chapter 105 relates to stream and wetland encroachments and Chapter 102 addresses earth moving activities including erosion and sediment control and post construction storm water management. It is the Department's responsibility to have a water quality specialist inspect these sites which may include well pads, gas gathering lines, access roadways, equipment storage areas, staging areas, compressor stations and pipelines. The water quality specialist is also responsible to respond to citizen complaints related to these activities as well as to do routine compliance inspections, including newly mandated inspections per Act 13 of 2012 Section 3258(a.1), which requires a site inspection prior to commencement of drilling activities. The installation of gathering lines and pipelines alone have dramatically increased the Department's workload, as they are long linear projects that can occupy miles within one permit application and are very time consuming in terms of permit and compliance inspections.

In addition to responding to new legislative requirements, the demand for Department resources is expanding due to the substantial natural gas infrastructure being developed throughout the Commonwealth, which requires staff resources to review the necessary Clean Streams Law and Dam Safety and Encroachments Act permits for these projects on a timely basis. Failure to review permit applications within a reasonable time period can result in substantial cost increases for these projects and ultimately prevents natural gas from reaching consumers, thus increasing commodity costs.

Finally, as a result of the Department's recent reorganization, the Office of Oil and Gas Management was created to unify the planning and program management staff with the permitting, inspection and enforcement staff under a common deputate. As a result of this reorganization and the growing demands of the overall program, additional resources are needed to support the Office's new Bureau of Planning and Program Management. Resources are needed to enable the office to develop new regulations, policies and technical guidance documents pertaining to well construction and surface activities on a timely basis. Failure to address the needs provided by the new office may lead to uncertainty and inconsistent application of legal requirements. Additional bureau staff will better serve the public as well as the industry by making more transparent how the Department interprets and implements the law.

CONCLUSION:

The Department has conducted a thorough analysis of the program's current resources and expenditures and those resources needed in the future to address the expanding responsibilities and workload of the Oil and Gas Program. The Department has concluded that anticipated revenue to support the program based upon current permit fees is not adequate to meet future program operations, including permitting, inspection, enforcement and information technology needs. (**Please see Attachment 1**). Since 2010, the Department has experienced a 22% year-over-year decrease in the number of unconventional well permit applications received. Since that time, however, the cumulative universe of Marcellus Shale wells drilled and overseen by the Oil and Gas Program has increased by 23.5%. 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. Without additional revenue to cover future program expenses, including additional staff and technology, the Department's ability to provide high quality compliance assistance, ensure timely permitting, provide adequate inspection and enforcement operations, and leverage existing technology to streamline inspection and permitting activities will be compromised.

RECOMMENDATION:

To ensure the solvency of the Oil and Gas Well Plugging Account and the resources necessary for the continued proper management of the Department's Oil and Gas Program, the Department recommends that the EQB revise the permit fees for all unconventional wells and charge a flat fee of $5,000 for nonvertical unconventional wells and $4,200 vertical unconventional wells. The Department also recommends that the fees for conventional wells, which are typically vertical wells, remain unchanged. If these recommendations are accepted, assuming an annual average permitting workload of 2,600 unconventional permit applications per year, **Attachment 2** shows that the Oil and Gas Well Plugging Account will remain solvent for at least three years, when the next regulatory review is required by 25 *Pa. Code* § 78.19 (f).