

EXECUTIVE SUMMARY
Unconventional Well Permit Application Fees
25 Pa. Code Chapter 78a

This proposed rulemaking includes amendments to 25 Pa. Code §§ 78a.1 (relating to definitions and 78a.19 (relating to permit application fee schedule). These amendments are necessary to increase fees to support the administration of 58 Pa.C.S. Chapter 32 (related to development) (2012 Oil and Gas Act) by the Department of Environmental Protection's (Department) Office of Oil and Gas Management (collectively, Oil and Gas Program or Program).

Purpose of the Proposed Rulemaking

This proposed rulemaking follows the process, as specified in sections 78.19(e) (relating to permit application fee schedule) and 78a.19(b), to provide the Environmental Quality Board (Board) with an evaluation of the Chapters 78 and 78a well permit application fees and recommend regulatory changes to address any disparity between Oil and Gas Program income generated by the fees and the Department's cost of administering the Program to ensure compliance with the 2012 Oil and Gas Act. The Department has determined that a significant disparity exists between fee income and costs to run the Program. In order to continue administering the Program, fees must be increased. This proposed rulemaking reflects the necessary fee increase.

Summary of Proposed Revisions

The proposed rulemaking increases the current well permit application fees from \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells, to \$12,500 for all unconventional well permit applications to administer the 2012 Oil and Gas Act. Although unconventional well permit application numbers are down from original estimates upon which current fees were based, Program obligations and operations remain at least static every year, but more typically expand annually due to the additional well inventory, development activity, and the need for guidance and technical tools to stay current. The proposed amendments only apply to Chapter 78a, thus these proposed amendments do not affect conventional well operators.

With recent unconventional well permit application volumes, the Well Plugging Fund balance is being depleted. In Fiscal Year (FY) 2015-16, permit application fee and Impact Fee revenues totaled \$13.9 million, but costs to run the Program exceeded \$21.6 million. In FY 2016-17 permit application fee and Impact Fee revenues totaled \$15.7 million, but costs to run the Program exceeded \$22 million. The fee/costs differential has been covered by the Well Plugging Fund reserves. The Oil and Gas Program projects further increasing costs with declining revenues in future fiscal years, making the Well Plugging Fund insolvent by FY 2019-2020.

In response to declining Well Plugging Fund balances, the Oil and Gas Program reduced staff over the past few years from 226 employees to 190 employees today. The Oil and Gas Program also reduced operating costs by 38 percent. Operating expenses only account for 10 percent of total program costs, therefore any future cost savings would primarily come from a reduction in staff. At the current disparity between fee revenues and expenditures, the Oil and Gas Program would need to reduce its complement by almost 70 additional positions to make up the difference.

As a result of the significant reduction in staff to address declining well permit application revenue, the Oil and Gas Program struggles to meet its gas storage field inspection goals, permit review time frames have increased, training opportunities for staff and industry have been drastically curtailed, and program development initiatives (such as policies, best practices, and technical guidance documents) have been put on hold. In short, the Oil and Gas Program is currently challenged to provide an adequate level of service to the public and to the oil and gas industry. Service quality will diminish significantly if no action is taken.

The projected cost to fund the Oil and Gas Program at current staffing levels of 190 people in FY 2019-20 is approximately \$25 million. FY 2019-20 is selected as a comparison year because it is anticipated that any rulemaking to raise well permit application fees will not be finalized until this time. FY 2019-20 was also selected because at current permit volumes, fee, and expenditure levels, the Well Plugging Fund will be insolvent in the beginning of this fiscal year. At the current unconventional well permit application fees of \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells, the Oil and Gas Program would need to receive 5,000 nonvertical unconventional well permit applications per year to be fiscally sustainable in FY 2019-20. By comparison, the Oil and Gas Program received less than 2,000 unconventional well permit applications in FY 2016-17. Assuming the Oil and Gas Program will continue to receive approximately 2,000 unconventional well permit applications per year in future years, \$12,500 per unconventional well permit application is needed to sustain current Oil and Gas Program operations.

Advisory Committee and Public Outreach

The Department consulted with the Oil and Gas Technical Advisory Board (TAB) in the development of this proposed rulemaking. The Department presented its Three-Year Fee Report and discussed its proposal to raise the unconventional well permit application fee to \$12,500 at TAB's February 14, 2018 meeting.

The topic of this fee increase was an agenda item at the last three sessions of the Department's Oil and Gas Industry Quarterly Meeting, in July and October 2017 and in February 2018. These meetings are attended by designees from trade groups that represent essentially the entire shale gas industry in Pennsylvania including both large and small companies. The Oil and Gas Program's managers have also given advance notice of this fee increase through informal discussions with the regulated community, and received feedback and suggestions for alternatives that were considered by Program staff.

One obvious alternative to the way in which the Department has historically funded this Program is to shift from a well permit application income-based approach to an appropriation and fee-based approach, with well permit application fees no longer serving as the sole source of funding. This proposal reflects consistency with historic funding policies and practices.

The plan to introduce this well permit application fee increase was also announced in a televised press conference by Governor Wolf and Secretary McDonnell on January 26, 2018.

Public Comment

The Department recommends that this proposed rulemaking be adopted by the Board and published in the *Pennsylvania Bulletin* with a 30-day public comment period.