

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

Order

The Environmental Quality Board (Board) by this order amends 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.

Notice of proposed rulemaking is omitted under section 204(3) of the act of July 31, 1968, P.L. 769, No. 240, (45 P.S. §1204(3)). Subsection (3) provides that an agency may omit the notice of proposed rulemaking if the agency finds for good cause that notice of proposed rulemaking is impracticable, unnecessary or contrary to the public interest. In this case using the Notice of Proposed Rulemaking procedure is contrary to the public interest for the reasons set forth below.

This order 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 final-form 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 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. Recent advances in natural gas drilling technology and rising natural gas prices have attracted considerable interest in this 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 size of the well drilling site and the use of water to recover natural gas from the Marcellus Shale formation. Extracting natural gas from the Marcellus Shale formation is enhanced by horizontal drilling within the formation after vertical drilling reaches the formation. 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 permit 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 permit applications 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.

Use of the omission of the notice of proposed rulemaking procedures is appropriate to increase the permit application fee for Marcellus Shale Well permit applications under section 204 of the Commonwealth Documents Law (45 P.S. § 1204), for the reasons set forth below. Under Section 204 (3) an agency can avoid the use of the notice of proposed rulemaking if the agency finds for good cause that the use of this procedure is unnecessary, impractical, or contrary to the public interest.

The drilling for and recovery of the Marcellus Shale natural gas resources is a recent development in Pennsylvania. Recent technologic improvements and higher energy prices have triggered a rush to develop this energy resource. The use of these technological improvements (hydraulic fracturing and horizontal drilling) present new environmental considerations that require prompt and thorough Department review to ensure the development of gas in this specific area occurs in an environmentally protective manner that state law requires. It is in the public interest to quickly establish and collect permit application fees from the regulated community for the review of a Marcellus Shale permit application. These higher permit application fees are necessary to support the Department’s recently developed program initiative to regulate the permitting and development of Marcellus Shale natural gas wells. The public interest is served when the applicants for Marcellus Shale well permits pay application fees that cover the Department’s additional program implementation costs for the review of these permit applications.

E. Summary of Final Rulemaking

This final rulemaking establishes oil and gas well permit fees in new section 78.19. Section 78.19(a) includes a \$100 permit application fee all applications except for Marcellus Shale permit applications. The \$100 amount is the statutory amount established by Section 201 of the Oil and Gas Act.

Under Section 78.19(b) Marcellus Shale well permit applicants will pay a base fee of \$900 with an additional \$100 for every 500 feet the well bore extends beyond 1,500 feet. The fees are rounded to the nearest foot interval. If the applicant drills a well longer than what was applied

for, they must remit the difference along with a processing fee equivalent to 10% of the correct fee amount.

Sections 78.15 is amended to include cross references to new section 78.19.

F. Relationship to Proposed Rulemaking to Increase Fees

This final-omit rulemaking is intended to quickly increase permits application fees for permits that are issued for the Marcellus Shale formation. For the reasons stated above, the Department needs these higher fees quickly. At the same meeting that the Board approved this rulemaking the Board also approved a proposed rulemaking to increase permit application fees for other non-Marcellus Shale permits. The Board also included the new Marcellus Shale permit application fees in this proposed rulemaking to allow interested persons the opportunity to provide comments on the new Marcellus Shale fees as part of that proposed rulemaking. When that proposed rulemaking is adopted as final, the board will make appropriate changes to the Marcellus Shale fees in that rulemaking in response to comments. The final-omit fees will therefore only be in effect until that proposed rulemaking is 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 new Marcellus Shale permit fee will impose a base permit fee of \$ 900 with an additional \$100 for every 500 feet the well bore extends beyond 1,500 feet.

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 to 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

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), on _____, the Department submitted a copy of this final rulemaking with notice of proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. On the same date, the Department also submitted this rulemaking to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101-732-506). In addition to

the final rulemaking, IRRC and the Committees were provided with a copy of a detailed regulatory analysis form prepared by the Department.

J. Findings of the Board

The Board finds that:

(1) Use of the omission of notice of proposed rulemaking procedure is appropriate because the notice of proposed rulemaking procedure specified in sections 201 and 202 of the Commonwealth Documents Law (45 P.S. §§1201 and 1202) is, under the circumstances, contrary to the public interest. The current permit fee of \$100 is inadequate. Absent additional permit fees, the Department will not be able to uphold the purposes of the Oil and Gas Act by permitting the optimal development of the Commonwealth's oil and gas resources while protecting the health and safety of the Commonwealth's citizens and environment.

(2) Use of the notice of proposed rulemaking procedures is not in the public interest because higher permit application fees are necessary to support the Department's recently developed program initiative to regulate the permitting and development of Marcellus Shale natural gas wells. The public interest is served when the applicants for Marcellus Shale well permits pay applications fees that cover the Department's additional program implementation cost for these permits requiring special and timely reviews.

(3) These amendments are necessary and appropriate for administration of the authorizing acts identified in section C of this preamble and in the public interest.

K. Order of the Board

The Environmental Quality Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department of Environmental Protection, *25 Pa. Code* Chapter 78 are amended by adding section 78.19 and amending sections 78.15 to include cross references to new section 78.19.

(b) The Chairperson shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form as required by law.

(c) The Chairperson shall submit this Order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

BY:

JOHN HANGER
Acting Chairperson
Environmental Quality Board