OIL AND GAS WELLS FEES

[25 Pa. Code Chapter 78, Subchapter A]

Comment and Response Document

ID	Name/Address
1.	**Gregory W. Stephenson** **Vice-President** **Stephenson Group Natural Gas Company** **Smicksburg, PA 16256**
2.	**Lisa Graves-Marcucci** **Jefferson Hills, PA 15025**
3.	**Pennsylvania Oil & Gas Association** **(Stephen W. Rhoads, President) and** **Independent Oil & Gas Association of Pennsylvania** **(Louis D'Amico, Executive Director)** **Harrisburg, PA 17108**
4.	**Senator Mary Jo White** **Chairman, Senate Environmental Resources and Energy Committee** **Senate Box 203021** **Room 168, Stae Capitol Building** **Harrisburg, PA 17120-3021**
5.	**Representative Tim Solobay** **PA House of Representatives - Oil and Gas Caucus** **G-14 Irvis Office Building** **P.O. Box 202048** **Harrisburg, PA 17120-2048**
6.	**Representative Brian Ellis** **PA House of Representatives – Oil and Gas Caucus** **145 B East Wing** **P.O. Box 202011** **Harrisburg, PA 17120-2011**
7.	**Independent Regulatory Review Commission** **333 Market Street, 14th Floor** **Harrisburg, PA 17101**

Comment and Response
(#) Commentator Number

1 Comment: The commentator agrees that a permit fee increase is overdue and justified. However, they contend that for conventional shallow oil and gas well permitting, a fee increase that tracks inflation since 1983 would be more appropriate. They propose that the Department amend the final rule to adopt a new permit fee for conventional, non-deviated vertical oil and gas wells that reflect inflation from 1983 through 2008 as calculated in the Consumer Price Index published by the US Department of Labor's Bureau of Labor Statistics. Using the CPI, the proposed fee for such wells would increase from the current $100 as enacted in the Oil and Gas Act to $216. The commentator does not believe that it is appropriate for any fee structure for conventional vertical oil and gas wells to deviate far from the inflation-adjusted permit fee rate of $216 per well permit. **(3)(5)(6)**

Response: The Department agrees in part that the well permit fee needs to be increased but by substantially more than the rate of inflation. The initial $100 permit fee did not cover the program costs in 1984. Program staff and most equipment have primarily been funded through the General Fund. Very few positions, equipment, or emergency well plugging has been funded by permit fees. Indeed, revenue provided by permit fees only covered 15% of the Department's administrative costs in 2008 with the remaining 85% funded through the General Fund.

It is also important to note that the well permit fee is not an annual fee. Therefore, the entire program must be funded through new well permits. In order to provide the funding needed to employ sufficient staff and provide equipment necessary to carry out the Department's statutory duties through the well permit application fee, as envisioned by section 201(d) of the Oil and Gas Act, the permit fees must be increased in the amounts provided in the regulation to "bear a reasonable relationship to the cost of administering this act."

2 Comment: It is my understanding that under this rule, an average Marcellus Shale permit fee will increase from $100 to approximately $2,600. The actual cost of each permit will, in large part, be tied to the total wellbore length of the well. In summary, the farther or deeper a well is drilled, the higher the permit fee will be – increasing about $100 per 500 feet drilled. I question what the relationship is between the length of a proposed well and the administrative costs incurred by DEP in reviewing and processing the application. **(4)(5)(6)**

Response: Section 201(d) of the Oil and Gas Act states that well permit fees must "bear a reasonable relationship to the cost of administering this act." The Department believes the fee structure satisfies this requirement. While there is not a direct relationship between well bore length and review time, deeper wells do tend to have a greater potential for environmental impacts and this in turn requires greater Department evaluation of the potential impacts. The Department also believes the ability to bear the cost of increased fees is better able to be borne by operators drilling deeper wells because these operations are more costly and have the potential to produce more gas that shallower wells. To do otherwise would place an undue burden on smaller operators.

3 Comment: Alternatively, the commentator suggests a possible two-tiered flat fee structure for vertical wells, with one fee for shallow vertical wells drilled no deeper than 2,500 feet and another fee for such wells drilled deeper than 2,500 feet. **(3)**

Response: The Department disagrees with a two tier flat fee structure. However, it should be noted that the proposed regulation does include a tiered structure. There is one fee for any well 0 to 2,000 feet for a vertical well and 0 to 1,500 feet for a non-vertical or Marcellus Shale well. Any well proposed to be drilled beyond those depths would be assessed the fee associated with the well bore length.

Any set permit fee will necessarily require one group of well drillers to pay more than others if the Department's total costs to administer the program are to be covered by the permit fee as envisioned by the law. The Department believes the ability to bear the cost of increased fees is better able to be borne by operators drilling deeper wells because these operations are more costly and have the potential to produce more gas that shallower wells. To do otherwise would place an undue burden on smaller operators. The fee for wells with a well bore length of 2,500 feet is $300. This is $84 more than the inflation adjusted fee advocated by the commentators.

4 Comment: The commentator appreciates the complexity of the well permitting and completion practices of the new Marcellus Shale wells. The commentator suggests that the Marcellus Shale well drilling does not relate to conventional shallow vertical wells. The commentator suggests that the Department's experience over the last 24 years in permitting conventional shallow oil and gas wells has made the permitting process less complicated and that has allowed the Department to conduct business with little change in its regional staff complement over the last two decades in spite of the recent upsurge in well permit applications. The commentator suggests that Department permitting staff only started feeling workload pressures with the development and implementation of the regulatory changes associated with Marcellus Shale wells. **(3)**

Response: The Department agrees that we have made progress in our attempts to streamline the permitting process. However, permitting has increased by 398% in just the last ten years with only recent increases in permitting staff and minimal increases in inspection staff. Indeed The permitting increase results in not just additional workload for permit staff, but the resultant increases in drilling also requires more inspection and compliance staff. For these reasons, the Department believes the fee increases are warranted to ensure the industry is not unduly delayed by the permit application process and that the environmental resources and citizens of the Commonwealth are protected.

5 Comment: The Department should explain this disparity between the fee increase proposed by Governor Rendell as part of his 2007-2008 FY budget ($1,475) and the Department's proposed fee schedule. **(4)**

Response: The fee increase proposed by Governor Rendell was based on static staffing levels and well drilling activity in 2006. Since that time well drilling has increased, wells are being drilled in new parts of the Commonwealth, and the Department is expending more staff time to

respond to those activities – including inspections, complaint response and environmental reviews. This requires additional staff and equipment not contemplated in 2006.

6 Comment: The commentator suggests deletion of §78(d) that penalizes the operator if the drilled well bore length exceeds the length specified in the permit application. The proposed penalty amounts to the value of the difference in the permit fee applied for to the longer well bore plus a 10% penalty bonus to the Department. The penalty provision is little more than a fundraising gimmick that could be abused by the discretion granted to the Department in interpreting its application. A deviation of one or two vertical feet could allow the Department to charge the operator with a violation of the subsection. Proposed §78.19(d) is unnecessary and punitive, and it should be deleted from the rulemaking **(3)(4)(5)(6)**

Response: The Department has deleted this provision from section §78.19(d). An applicant will still be responsible for any increase in permit fee that would result from drilling past the proposed well bore length.

7 Comment: Commenter noted that the final-omitted regulation states "Fees are non-refundable" (§78.19(e)). I do not know if that was the intent of DEP, but believe this provision should be clarified in the final rulemaking. (4)(5)(6)

Response: This subsection has been deleted. The Department did not intend to withhold permit fee refunds where the Department failed to comply with its money-back guarantee policy. However, the Department will not refund permit fees for wells that are permitted but not drilled or for wells that are drilled that have a shorter well bore length than the length permitted.

8 Comment: The commentator questions the scope of § 78.19(g), which provides for possible well permit fee increases every three years based on the objective of ensuring that well permit fees meet all program costs to ensure that the program is self-sustaining. We do not believe that the underlying statutory authority granted by the Oil and Gas Act to the Department to increase well permit fees was intended to create an opportunity for the Department to adjust well permit fees to a level sufficient to generate revenues that would cover the full cost of operating the oil and gas regulatory program. The act merely states that the well permit fees must bear "a reasonable relationship to the cost of administering [the] act." If the General Assembly intended that the permit fees be adjusted by the Department to cover all program costs, it would not have created a $50 permit fee surcharge and a Well Plugging Restricted Revenue Account in the original act to underwrite the plugging of abandoned wells. Similarly, the legislature would not have subsequently amended the act in 1992 to create additional surcharges to underwrite the Department's costs for plugging orphan wells. Such surcharges would be unnecessary. We suggest that §78.19(g) be modified in the final rule either by eliminating the provisions or by amending it to reflect the statutory direction given to the Department to adjust well permit fees so that they have a "reasonable relationship" to the Department's administrative costs, not to its full program costs. **(3)**

Response: The Department respectively disagrees with the commentator. Section §78.19(g) requires the Department to evaluate the fee structure to ensure that the well permit application fees bears a responsible relationship to the cost of administering the Oil and Gas Act. The

Orphan Well Plugging Account and the Abandoned Well Plugging Account are used for only those activities associated with plugging orphaned or abandoned wells. Neither account is used to cover the cost of permitting or inspection activities. Also, the fee increases every three years are not automatic. The rule requires the Department to provide the Environmental Quality Board with an evaluation of the fees and how they relate to the Department's cost of administering the program with the objective of ensuring fees meet all program costs and programs are self-sustaining.

9 Comment: The commentator objects to the proposed rulemaking and the Board should reject the same until more stakeholders are consulted and more intensive consideration is given to general and specific variables not adequately addressed in the current form of the regulations. It is the opinion of this commentator that the current proposed fee schedule is arbitrary, capricious and unreasonable given the current national economic posture and the sharp downturn in the oil and gas industry activity at the time of this writing. These regulations only serve as an impediment to the development of the oil and natural gas resources of Pennsylvania and are in sharp contrast to the national consensus of the need to develop more domestic energy resources. **(1)**

Response: The Department respectively disagrees with the commentator. The Department has considered comments through the rulemaking process and believes the fee increases are warranted to ensure the industry is not unduly delayed in the permit application process. In addition, the Department believes that sufficient resources are necessary to ensure that development of the Commonwealth's oil and gas resources does not come at the expense of the Commonwealth's equally important environmental resources. Finally, the Department believes that recovering the costs of administering the Act through the well permit fee is sound fiscal policy.

10 Comment: The commentator suggest any new permit fees based on well depth should instead be based on the Mean Sea Level (MSL) depth of the well. Otherwise operators drilling wells located on higher ground surface elevations will pay a higher fee than operators drilling adjacently on lower ground surface elevations with both operators targeting the same formation(s) occupying the same vertical Mean Sea Level interval. In essence the operator drilling on the hill pays a higher bill for no logical reason. This disparity could be eliminated. The same is true for operators targeting the same geologic formation which occurs at widely varying depths across the Commonwealth. In this sense a depth charge is patently unfair. **(1)**

Response: The Department believes the fee structure is reasonably related to the cost of administering the act. While there is not a direct relationship between well bore length and review time, deeper wells do tend to have a greater potential for environmental impacts and this in turn requires greater Department evaluation of the potential impacts. The Department also believes the ability to bear the cost of increased fees is better able to be borne by operators drilling deeper wells because these operations are more costly and have the potential to produce more gas that shallower wells. To do otherwise would place an undue burden on smaller operators.

11 Comment: The commentator believes the Department's statement that more staff time is necessary to review a permit application based on the depth of proposed wells which is erroneous. They believe the exact same forms, notices, well location plats (maps) and other forms required by the Department comprising an application for vertical non-Marcellus shale wells are exactly the same regardless of the proposed well depth. Additional staff time consumed would be a function of application volume as opposed to the depth of wells. During periods when the Department experiences increased volumes of applications the Department receives the additional fees satisfying needed funds for additional staff. If the fee increases are considered such increases should be dedicated solely for additional staff during substantial increased application activity with the additional staff being dismissed during downturns in permitting activity. Costly permanent staff would not be required during such downturns. This would satisfy the Department's contention that one of the benefits for the regulated community of the regulations would be timely review of applications. **(1)**

Response: The Department believes the fee structure is reasonably related to the cost of administering the act. While there is not a direct relationship between well bore length and review time, deeper wells do tend to have a greater potential for environmental impacts and this in turn requires greater Department evaluation of the potential impacts. The Department also believes the ability to bear the cost of increased fees is better able to be borne by operators drilling deeper wells because these operations are more costly and have the potential to produce more gas that shallower wells. To do otherwise would place an undue burden on smaller operators.

Additional permanent staff are needed to properly administer the Act. Permitting has increased by 398% in just the last ten years with only recent increases in permitting staff and minimal increases in inspection staff. In addition to the increase in applications, non-vertical and Marcellus shale wells require additional plotting of the top and bottom hole, review of deviated survey data, and filing and data entry than for non vertical wells. The permitting increase results in not just additional workload for permit staff, but also require more inspection and compliance staff as drilling activity increases in the field.

12 Comment: The commentator believes the Department's contention that the increased fees are necessary for compliance monitoring and inspection costs related to increased drilling activity is erroneous. Application fees currently collected are non-refundable. If a permit is denied or issued but well drilling is never undertaken pursuant to an issued permit there is little or no follow up required by the Department. These fees are a windfall for the Department. In fact, §78.903 to §78.906 is basically an exemption whereby the Department is not required to perform any inspections whatsoever except for certain conditions enumerated therein. The Department's inspections are solely discretionary and not mandated by statute or regulation. Lacking such mandates the Department lacks authority to request increased application fees for its inspection and compliance costs. The Departments inspection and compliance costs are not related at all to the type or depth of a well. The imposition of fees based on well depth or type for this purpose is unreasonable. During periods when the Department experiences increased drilling activity the Department has previously received additional fees satisfying funding for additional staff. If fee increases are considered such increases should be dedicated solely for temporary staff during substantial increased drilling activity with the additional staff being dismissed during

downturns in drilling activity. Costly permanent staff would not he necessary during such downturns. **(1)**

Response: The Department disagrees with the commentator. The Department is required to assess a fee that would reflect the cost to the Department to carry out the duties as outlined in the Oil and Gas Act. The fee has been developed in a manner that reflects the cost to run the program - which includes permitting wells that are not drilled. The Department also believes that inspection and compliance efforts are critical to protecting the environment and ensuring that the health and welfare of the citizens of the Commonwealth is protected. The Department is committed to diligent inspection of well drilling activity and will use the increased fees to uphold its statutory duties.

13 Comment: The only justification for any increased application fees may be found with respect to wells targeting the Marcellus shale (Note: Nomenclature with respect to a geologic occurrence can vary. Likewise this writer uses the term "Marcellus shale loosely.) This justification would be limited only to the additional staff time required with respect to the water withdrawals for the drilling and completion of wells targeting the Marcellus shale. It should be noted that the Department's obligation is limited in this matter as various river basin commissions are involved in this issue. The regulations make no allowance or explanation of whether these proposed fee increases will cover any costs these commissions may purport or assert a claim to. The permitting and subsequent inspection and compliance monitoring performed by the Department for Marcellus shale wells is little or no more than any other wells. **(1)**

Response: The Department respectively disagrees with the commentator. The initial $100 permit fee did not cover the program costs in 1984. Program staff and most equipment have primarily been funded through the General Fund. Very few positions, equipment, or emergency well plugging has been funded by permit fees. Indeed, revenue provided by permit fees only covered 15% of the Department's administrative costs in 2008 with the remaining 85% funded through the General Fund.

It is also important to note that the well permit fee is not an annual fee. Therefore, the entire program must be funded through new well permits. In order to provide the funding needed to employ sufficient staff and provide equipment necessary to carry out the Department's statutory duties through the well permit application fee, as envisioned by section 201(d) of the Oil and Gas Act, the permit fees must be increased in the amounts provided in the regulation to "bear a reasonable relationship to the cost of administering this act."

14 Comment: The cost to the Department for processing well permit applications and the following inspection and compliance monitoring varies little based on the depth or type of well, Statutory and regulatory compliance by the permittee remains constant without regard for the type or depth of well with the Department not required to perform any specific duties incurring extra costs with respect to the type or depth of a well or whether a well is vertical or horizontal. The well operator is responsible for all costs for all types of wells, including all mapping, reporting data, environmental compliance and all other such costs with respect to all types of wells. The Department's contention that the regulations will not impose additional costs on the

Department is erroneous as additional staff will certainly be required for calculating and verifying that the proper application fee has been paid and collected. The proposed fee schedule of the regulations is simply a de facto excise tax on oil and gas drilling in Pennsylvania. **(1)**

Response: The Department believes the proposed fee schedule "bear a reasonable relationship to the cost of administering this act. While there is not a direct relationship between well bore length and review time, deeper wells do tend to have a greater potential for environmental impacts and this in turn requires greater Department evaluation of the potential impacts. In addition, non-vertical and Marcellus shale wells require additional plotting of the top and bottom hole, review of deviated survey data, and filing and data entry than for non vertical wells. While this review will require additional staff time, verifying that the appropriate fee has been paid will not require additional staff.

15 Comment: Full disclosure to the public and local government officials of all fracking chemicals, lubricants, surfactants – including total amounts – used by each gas well drilling company, at each specific operation should be required. **(2)**

Response: The comment is outside the scope of this proposed regulation dealing with fees.

16 Comment: Full disclosure to the public and local government officials of the size of waste water pits, ponds – and a list of all fracking chemicals, lubricants, surfactants – including totals – that will be held on site, and for what length of time should be required. **(2)**

Response: The comment is outside the scope of this proposed regulation dealing with fees.

17 Comment: Full disclosure to the public and local government officials of which water sources will be used by the drilling company operations, at each specific site should be required. **(2)**

Response: The comment is outside the scope of this proposed regulation dealing with fees.

18 Comment: Full disclosure to the public and local government officials of where waste water will be taken – and written proof that it is an approved facility for handling, and treating drilling waste water should be required. **(2)**

Response: The comment is outside the scope of this proposed regulation dealing with fees.

19 Comment: The Department should require storm water management control plans and safeguards for all drilling sites, regardless of the acreage. Landowners and local governments should not be responsible for any problems that may arise as a result of well drilling and create storm water management problems. Storm water management and control should be the full responsibility of the drilling company. **(2)**

Response: The comment is outside the scope of this proposed regulation dealing with fees.

20 Comment: A mandatory 8-hour hold period for all cement casings to completely set before drilling operations begin and/or proceed. Require a PA DEP site inspection to ensure this holding period is fulfilled. **(2)**

Response: The comment is outside the scope of this proposed regulation dealing with fees.

21 Comment: Require increased air permitting requirements at all drilling sites – including emissions from drilling equipment, tanks, ponds and fracking chemicals. **(2)**

Response: The comment is outside the scope of this proposed regulation dealing with fees.

22 Comment: The bond associated with the well sites should be increased. **(2)**

Response: The comment is outside the scope of this proposed regulation dealing with fees.

24 Comment: Subsection (a) shows a fee schedule for three types of wells: "Vertical Wells," "Nonvertical Wells" and "Marcellus Shale Wells." The text of the proposed regulation does not specify what is a "Vertical Well," "Nonvertical Well" and "Marcellus Shale Well," or how to distinguish between them. Consequently, it is not clear how to apply the fee schedule to a well application. The regulation should define these terms. **(7)**

Response: The Department has added definitions for "Vertical Well," "Nonvertical Well" and "Marcellus Shale Well" to §78.1.

25 Comment: The fee schedules for "Nonvertical Wells" and "Marcellus Shale Wells" are identical in Subsections (a) and (c). Please explain the need for two identical fee schedules. (7)

Response: The Marcellus Shale well fee schedule applies only to wells that will extract gas or oil from the geological Marcellus formation. These wells can be vertical or nonvertical wells. The nonvertical well fee would apply to any oil or gas well that includes an intentional wellbore that deviates from a vertical shaft. An example is coal bed methane wells. The Department believes that the separate categories eliminate any confusion as to which fee should be paid. In addition, if the fees for Marcellus and non-vertical wells are adjusted at different levels in future rulemakings, the current structure would be easier to amend.

26 Comment: Nearest foot interval Subsections (b) and (c) state that for wells exceeding 12,000 feet, "fees shall be rounded to the foot interval." We suggest more specific language stating that fees shall be rounded to the "nearest 500 foot interval." (7)

Response: The Department agrees with the commenter and has amended the final rulemaking.