

August 13, 2018

Policy Office
Environmental Quality Board
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Submitted via email: RegComments@pa.gov

Subject: Proposed Rulemaking: Unconventional Well Permit Fee Increase

Range Resources Corporation (“Range”) provides the following comments per the Notice published by the Department of Environmental Protection (“PADEP” or “Department”) on July 14, 2017, regarding the proposed unconventional well permit application fee amendments to Title 25, Chapter 78a of the Pennsylvania Code. This correspondence is to serve as a public comment to the Independent Regulatory Review Commission (“Commission”) on proposed rulemaking 7-542 (IRRC Number 3206), “Unconventional Well Permit Application Fees” (“Proposed Rulemaking”).

Range is an independent upstream oil and gas production company operating in the Commonwealth through its wholly owned subsidiary Range Resources-Appalachia, LLC with a leasehold position of over one million acres across western and north central Pennsylvania. Whether Range is constructing a new well site, operating an existing well site, managing water resources, or restoring a field for future landowner use, we’re committed to conducting business safely and in an environmentally responsible manner. Our philosophy is straightforward – be good stewards for the environment and the communities where we live and work. Because of this commitment, Range is interested in, and directly impacted by the proposed rulemaking change regarding unconventional well permit application fees.

As one of the longest tenured Marcellus operators in Pennsylvania with a strong commitment to environmental protection, Range fully supports the sustainability of the PA DEP’s Oil and Gas Program (“Program”) as well as the continued need to enhance and modernize the Program. Furthermore, Range also understands that in order to sustain the success of the Program, periodic reassessments of cost, revenue generation, and resource allocation are required. Industry and citizens benefit from a fully staffed Program with sufficient resources. To that end, we believe, based on our understanding of revenue generated to Pennsylvania through oil and gas activities, that the proposed unconventional well permit fee increase from the current \$5,000 per unconventional well application to \$12,500 per unconventional well application is excessive and should be reevaluated and reduced.

I. General Comments and Recommendations

It is first important to note that this is not the first time the Department has justified proposed increases to unconventional well permit application fees with the need for more staff and enhanced permitting efficiency. Unfortunately, that prior justification never manifested itself.¹ In fact, staff levels have decreased and permit review times have increased since the last permit fee increase was promulgated. With that said, we acknowledge that the Department's inspection workload will inherently continue to increase as the inventory of unconventional wells increases. This workload increase undoubtedly requires resources. However, we also know, permit application volumes will continue to fluctuate based upon market conditions and other factors beyond the Department's control. Therefore, revenue to support the Program will also continue to fluctuate. This creates an inherent problem in sustainably funding the Program.

Significant permit fee increases every few years, such as the 150% increase currently before you, to support the Program will become quickly untenable for the industry (and therefore also the program), if it isn't already. Unfortunately, the Department acknowledges and concedes this point when they write "...it is **entirely foreseeable** that the current fee proposal will not be adequate to fund the Program."²

The Oil and Gas Program should not be reliant solely upon permit application fees. Doing so is inconsistent with the underlying statutory authority, counter to good public policy, and unnecessary. Regardless of the outcome of this Proposed Rulemaking, it is incumbent upon the Department to lean forward, in partnership with industry and others, to correct what is now obviously a broken method of funding the Program.

¹ Sections 7 and 21 of the Regulatory Analysis Form to Rulemaking #7-483, IRRC Number 3022 states the proposed increase will fund more staff. Section 10 of the Regulatory Analysis Form to Rulemaking #7-483, IRRC Number 3022 justifies the proposed increase with enhanced permitting efficiencies (2014).

² Section 10 of Regulatory Analysis Form to Rulemaking #7-542, IRRC Number 3206 (rulemaking currently under consideration) (2018).

II. Specific Comments

a. General Fund Allocations

It is understood that the PA DEP Oil and Gas Program once received a large portion of its revenue and funding from the Commonwealth's discretionary General Fund. However, as of today, the Program receives no General Fund support and relies solely on permit fees, the Impact Fee, and civil fines and penalties. Like many others in our industry, Range believes the Program should receive some level of support from the General Fund which is estimated to total nearly \$140 million. More specifically, the General Fund is largely comprised of taxpayer dollars of which Range pays its fair portion into. If the oil and gas industry is contributing to the General Fund just as any other industry, the PA DEP Oil and Gas Program, which supports our industry, should not be excluded from the General Funds benefits.

Through its publication in the PA Bulletin, the Department acknowledges that original estimates and projections regarding permit applications made in 2014 have proven to be inaccurate and have led to insufficient funding.³ Additionally, the Department also notes that the first few years of Marcellus Shale gas development constituted an initial boom and was unrepresentative of drilling patterns in a more mature shale production market.⁴ If this is true, and original estimates are now proving to be inaccurate, thus creating a need to reevaluate fees, then it is also reasonable to conclude that excluding the PA DEP Oil and Gas Program from General Fund appropriations should also be reevaluated. Just as the initial boom incorrectly reflected the number of permit applications each year, the initial boom also incorrectly assumed the PA DEP Oil and Gas Program would be self-sustaining and not in need of General Fund appropriations. Revenue generated via the General Fund would serve as a predictable amount each year alleviating the need to rely on volatile permit fee application and penalty estimates. It is with reason that the Department should look to find additional funding through the Commonwealth's General Fund prior to pushing an excessive 150% increase in well permit fees.

b. Well Permit Delays

In recent years, most notably 2017, the Department has failed to meet its statutory obligation to issue unconventional well permits within 45-calendar days. This delay has not only affected how operators such as Range plan for the development of resources but has also indirectly impacted the amount of revenue generated via the well permit application process.

³ See 48 Pa.B. 4100(D) (explaining 2014 permit application projections and costs inaccurate).

⁴ *Id.*

In accordance with the Pennsylvania Oil and Gas Act, the Department is required to issue an unconventional well permit within 45-calendar days, unless the permit fails to satisfy one or more specific provisions of the Act.⁵ This statutory obligation is extremely important to operators as it provides reassurance and stability for long term resource development and planning. Although not required until the passage of Act 13 in 2012, the Department historically had little difficulty issuing permits within 45-calendar days (2010 – 2014). Unfortunately, however, the average issuance time has increased each year and the Department has failed to issue a permit within 45-calendar days since 2014. More importantly, Range, as well as other operators in Pennsylvania, saw a massive increase in delayed permit issuance in 2017 when the average review time became approximately 111 days, or approximately 2.5x longer than the mandated deadline.

The Department makes note that “[r]evenues are declining because fewer well permit applications are being submitted by the industry than in prior years, which can be attributed to various market and industry changes.”⁶ The industry changes discussed by the Department include the price of natural gas, unrepresentative drilling patterns due to the industries initial boom, and improvements in technology. While Range recognizes these generally uncontrollable factors play a role in the amount of drilling activity across Pennsylvania, controllable factors do exist such as permit issuance time that also affect the amount of permit applications. Range, as an example, has specifically adjusted its planning schedule to accommodate permit delays and as a result has filed fewer permit applications within a year timeframe. Not only has the massive delay in permit review pushed permit issuances into future years that would have otherwise been accounted for much earlier, but the uncertainty and delay has inadvertently caused Range to file fewer permits. The delays in permit review and issuance has indirectly resulted in less applications and ultimately less revenue for the Department.

The Department also certifies that increased revenue and staff will alleviate the backlog of permit applications and ensure the 45-calendar day review obligation is met. Although increased staff may help in this regard, historically this has not been the case. Our industry has experienced several permit fee increases over the last several years, including most recently in 2014. In 2014, the fee increased to the current \$5,000 horizontal / \$4,200 vertical fee structure, however, this had little to no effect on application review and turn around. In fact, after the 2014 application fee increase, the average number of days to review and/or issue a permit increased from 44 days to 47 and has only increased each year since. This, coupled with the fact less applications are being filed with the Department, indicates that no correlation exists between increases in permit fees, staffing, and shorter turn around review periods. Our concern is that the extended review periods may not necessarily be the result of insufficient funding and a massive permit fee increase may not help cure the backlog. Regardless of the outcome of this rulemaking, we ask for assurance that the mandated 45-calendar day or less review period be enforced. As an alternative measure, should the 150% fee increase be approved and the

⁵ See 58 Pa.C.S. § 3211(e).

⁶ See 48 Pa.B. 4100(D) (PA Bulletin Proposed Rulemaking – Background and Purpose).

Department expand personnel, the Program should guarantee the 45-calendar day permit decision or otherwise reimburse the \$12,500 fee to those operators that do not have their permit reviewed within the mandated timeframe.

c. Inconsistency with Underlying Statutory Authority

Range asserts that the newly structured permit application fee would be inconsistent with the underlying statutory authority.

The statutory authority for well permit fees exists in Section 3274 of the 2012 Oil and Gas Act:

Permit fee. – 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.⁷

Clearly, the General Assembly intended for the permit fees to bear some portion of the cost of administering the chapter. It is also clear that the General Assembly did not intend for the permit fees to bear the entire cost of administering the chapter, to wit, it does *not* say that the fee shall “...bear the cost of administering this chapter” – which is how the General Assembly would have written the statute should they have conceived of this permit fee funding the entire Program. Nonetheless, the Proposed Rulemaking structures the permit fee in a way in which it would bear the entire cost of administering this chapter.

This is occurring in two different ways. First, the Department clearly states their intention to no longer use \$6 million in annual impact fee revenue to support the Program⁸. Second, at some point since the last permit application fee increase occurred (2014), the Department ceased to use funds from erosion and sediment control permit fees from the oil and gas industry in support of the Program.⁹

Given these two developments, one which has already occurred and one which is proposed, all that would remain to “administer the chapter” is the revenue from Unconventional Well Permit Fees. As proposed, these fees would bear the entire cost of administration of the Program. The practical effect of the Proposed Rulemaking is to fund the Program in a manner that is inconsistent with the plain reading of the underlying statutory authority.

⁷ See 58 Pa.C.S. § 3274.

⁸ Section 10 of the Regulatory Analysis Form to Rulemaking #7-542, IRRC Number 3206 (rulemaking currently under consideration) (2018)

⁹ In Section 10 of the Regulatory Analysis Form to Rulemaking #7-483, IRRC Number 3022, the Department states that “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.” (2014)

d. Other Source Funding

As explained in the PA Bulletin, the PA DEP Oil and Gas Program is primarily funded via 1) permit fees, 2) the Act 13 Impact Fee, and 3) incidental civil penalties collected for violations.¹⁰ By current estimates, the projected cost to fund the Program in Fiscal Year (FY) 2019-2020 will be approximately \$25 million. With these estimates, the Department makes note that at current well permit fee levels (\$5,000 nonvertical), the Program would need to receive 5,000 non vertical unconventional well permit applications per year to be fiscally sustainable in FY 2019-2020. Although this is technically correct, these estimates are being justified as a Program funded 100% through well permit fees (5,000 permits * \$5,000 = \$25 million).

Impact Fee Consideration

In addition to permit fees, the Program also receives \$6 million per year as a result of Act 13's Impact Fee. However, the Department specifically excludes this amount from the well permit fee analysis due to "reasonable uncertainty." Range believes this amount should be calculated into the well permit fee analysis as it represents nearly 25% of the funding necessary for the FY 2019-2020 Program needs. In fact, unlike well permit applications and civil penalties, the Impact Fee amount of \$6 million is the most stable and guaranteed amount of revenue generated each year for the Program. It is important to note that for more than six years, this revenue stream has been the only predictable source of funding for the program. Removal of this funding stream exacerbates the very revenue unpredictability which the Department is using to justify the fee increase in the first place. For these reasons, Range believes the Impact Fee's \$6 million annual award must be considered in the well permit fee analysis.

Range supports the Department's conclusion to not rely on fine and civil penalty amounts when determining revenue and funding needs, however, we do believe it is against public policy for the Program to rely solely on permit application fees to generate necessary revenue. Consideration should be given to other documented revenue streams such as the yearly guaranteed \$6 million Impact Fee when analyzing well permit fees. If the Oil and Gas Program would also advocate for General Fund appropriations in addition to the Impact Fee annual totals, the Program would in turn have two consistently guaranteed sources of revenue to offset the need to rely solely on volatile permit fee revenue generation. Range encourages the Department to reevaluate the proposed permit fee increase and in doing so, consider the guaranteed \$6 million annual Impact Fee totals along with other reoccurring revenue streams.

¹⁰ See 48 Pa.B. 4000(D) (explaining the various sources of Program supplementation).

Reimbursement of Chapter 102 and 105 Funds

As with many other operators within our industry, Range continuously submits and works with the PA DEP Oil and Gas Program on permits related to erosion and sediment control and dam safety and encroachment. It is understood that although these activities fall under the guidance of Chapter 102 (Clean Water) and Chapter 105 (Dam and Encroachment) programs, each of these permits are reviewed, administered, and inspected by the Oil and Gas Program. Estimates show that these programs tied to the unconventional natural gas industry generate approximately \$2 - 4 million per year in revenue, yet none of this revenue is shared with the Program. Although the costs to administer these permits falls on the Program, the revenue generated stays within the Clean Water Fund and the Dam and Encroachment Fund. Range believes these fees, to a degree, should be credited to the Oil and Gas Program. Doing so would help alleviate some of the projected futures Program costs as well as eliminate the necessity to excessively increase permit fees by 150%.

e. Diminishing Competitive Advantage

Range has had the pleasure and opportunity to work as an oil and gas operator across multiple states. As a result, we are familiar with the various regulatory frameworks and permit fee structures that vary from state to state. In our experience, raising the well permit application fee to \$12,500 would in turn make Pennsylvania the highest oil and gas permit fee in the United States. As an industry, we are already at a disadvantage in Pennsylvania regarding the turnaround review time of permits which averaged 111 days in 2017 compared to other states such as Ohio and Texas that typically issue permits within 10 days. Additionally, recent air permitting requirements such as GP-5A have also added new permitting costs to the industry. Pennsylvania is also disadvantaged by weak price differentials compared to other gas basins in the United States. Adding excessively higher permitting fees will only exacerbate these cost challenges (estimated to be \$15 million per year to industry) and isolate Pennsylvania as one of the most cost prohibitive states for local operators. Adding a 150% unconventional well permit fee increase would only set Pennsylvania back further compared to other states.

It is our understanding that in accordance with the Independent Regulatory Review Act, the Independent Regulatory Review Commission is required to consider the adverse effects of a rulemaking on competition.¹¹ Raising the unconventional well permit application fee 150% to \$12,500 would most certainly have an adverse effect on the competitive nature of this state.

¹¹ 1982 Act 181 § 5.2(b)(1)(ii) (requirement to consider adverse effects on competition).

III. Concluding Remarks

Range fully supports the PA DEP's Oil and Gas Programs commitment to success and sustainability within our Commonwealth as well as understands the current fiscal constraints experienced by the Program. However, we join other members of our industry, including the Marcellus Shale Coalition, in belief that the 150% increase to \$12,500 on the unconventional well permit fee is excessive and unnecessary at present day. We believe it is counter to good public policy for the Program to rely solely on one-time permit application fees to sustain. As expressed throughout our comments, there are numerous other sources of untapped or unconsidered funding that would better serve the Program as a more guaranteed source of funding year-in and year-out. We urge your consideration of these comments as you review and provide feedback to the Department and the Environmental Quality Board on this proposed rulemaking.

Thank you for your consideration.

Sincerely,



Jeremy Matinko
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