

Application for Permit to Drill (APD) Processing Fee Questions and Answers

1. What is this new fee?

The Fiscal Year 2008 Consolidated Appropriations Act (Act) requires a \$4,000 fee for each new APD. This requirement became effective on December 26, 2007, the day the Act was signed by the President. Because the requirement came as part of the Fiscal Year 2008 (FY 08) appropriations, it will expire on September 30, 2008, unless it is extended by Congress. The Act reads in part: "...\$4,000 per new application for permit to drill that the Bureau shall collect upon submission of each new application...."

2. Is this a cost recovery fee?

No, this is not a cost recovery fee. It is a fee set by Congress that offsets its appropriation of funds specifically for the processing of APDs.

3. Is this a permanent fee?

The fee was established as part of the FY08 appropriations. This requirement will expire at the end of FY 08 unless Congress takes some new action to continue the fee, such as a Continuing Resolution.

4. Where do the collected funds go? Does the processing office get to use the funds?

According to the Act, the collected funds are credited to the Management of Lands and Resources appropriation. The fees are not additional monies to be spent by the BLM.

5. Will the collected fees result in more staffing for offices processing APDs?

We will not receive additional funding or positions as a result of this fee.

6. Can operators expect faster processing when they pay this fee?

The submission of the fee will not, in and of itself, result in any faster processing. The BLM offices will not receive any increase in funding or staffing from the collection of this fee.

Additionally, the submission of the fee does not move an APD to the 'head of the line.' Pending APDs, including those filed before the fee became effective, will be processed in the same order as before, as established by national or local policies; the payment of the fee does not result in any priority for a particular APD.

7. What triggers the requirement for collecting the fee?

The Act requires that the fee be collected for new APDs filed on or after December 26, 2007. This means that any Form 3160-3, Application for Permit to Drill, for a new well that is filed on or after December 26, 2007, must be accompanied by the fee with the exceptions discussed below.

The fee is not required for a Sundry Notice and for any action that is handled by Sundry Notice. The fee is also not required for a Notice of Staking (NOS).

The fee is required for an APD that represents a *new* well, which includes such actions as the reentry of an old well to drill to a new horizon and application for an expired APD.

8. Who collects the fee? What if the well is on Forest Service (FS) or Indian lands?

The fee is collected by the BLM office that receives the APD, regardless of the surface managing agency. The fee also applies to APDs filed on Indian Oil and Gas leases.

9. What is an acceptable form of payment?

Payment should be made and processed in accordance with the BLM Collection Reference Guide – April, 1998. January 2003.

10. Do we annotate the Automated Fluid Minerals Support System (AFMSS)?

APDs that are submitted without the fee are not to be logged in to AFMSS. An APD submitted without the fee is to be considered as not received until the fee is paid. The APD is to be considered filed and the processing clock starts when the operator submits the fee. Only APDs with the fee are to be logged into AFMSS.

11. How do we collect the fee for APDs submitted electronically?

We do not expect to create a method to collect an electronic payment for an electronically submitted APD, unless the fee is established on a permanent basis. For now, we suggest you contact operators who submit APDs electronically and give them an opportunity to submit the fee. You could do this by phone or by mail, but the request to the operator should be documented, and we suggest that you put some time limit on the payment of the fee—10 business days should be sufficient. You should not do any processing of the APD, including logging it into AFMSS and posting, until the fee is submitted. (Tell the operator that you will not post or process their APD until the fee is received.)

12. How should we handle APDs that are submitted without the fee?

Any APD that arrives in your office without the required fee, whether submitted in hard copy or electronically, is not to be processed or posted until the fee is paid. This includes APDs filed subsequent to a NOS. An APD that arrives without the fee is not acceptable for filing until the fee is paid. APDs submitted without the fee should not be logged into AFMSS as a pending APD, but should be held in abeyance until the fee is paid. (NOTE: this guidance applies even to APDs that are filed subsequent to a Notice of Staking.)

It is suggested that you send the operator a letter advising them of the fee requirement and giving them 10 business days to submit the fee. You might consider creating a form letter for this purpose. The following is suggested wording to include in such a letter:

The Fiscal Year 2008 Consolidated Appropriations Act requires a new \$4,000 processing fee for each Application for Permit to Drill (APD). This requirement became effective on December 26, 2007, when the Act was signed by the President. On (date), you submitted XXX APDs which did not include this processing fee. We are holding your APDs in abeyance to provide you an opportunity to submit the fee. We will not post or process your APD until we receive the fee. If we do not receive the processing fee, in the amount of \$4,000 for each APD, within 10 business days from the date of this letter, your APDs will be returned.

13. Should we consider a missing fee as an APD deficiency, per Onshore Order No. 1?

Failure to submit the APD fee is not an Onshore Order #1 deficiency. You should consider an APD submitted without the fee as not being acceptable for filing. If the missing fee is not paid, the APD shall be returned to the operator. Operators whose APDs are returned because they did not submit the fee cannot seek State Director Review and have no right of appeal to the Interior Board of Land Appeals. Failure to submit the fee is a statutory violation, not a violation of Department regulations.

14. What about APDs filed on or after December 26, 2007, but before the issuance of guidance to Field Offices?

You should stop processing any such APDs and send a letter to the operators, giving them 10 business days to submit the required fee. Given the short lead time of this new requirement and the time lag in getting implementation procedures in place, it is possible that some operators may wish to withdraw some of these APDs and re-craft their submission using a different mix of options. (See discussion below on Master Plans of Development and Notices of Staking). It is reasonable to work with operators and honor any requests to withdraw APDs.

15. Is the fee shared with the FS or with any other agency?

No, the monies collected for these fees do not go to any agency, neither the BLM nor any other surface managing agency. The fee is collected by the BLM and the monies are returned to the U. S. Treasury.

16. Is there any adjustment to fee amounts (discounts) for multiple wells on a single pad, or multiple APDs filed in a Master Plan of Development, etc.?

No, the amount of the fee is set by the Act, with no provision for discounts. Every new APD requires the \$4,000 fee even if the wells are on the same drill pad or in a Master Plan of Development. However, multiple completions in the same well bore, which would be authorized by a Sundry Notice, will not require an additional processing fee.

17. Is there any way for operators to manage the impact of paying multiple fees for the planned development of multiple wells?

There are a variety of ways that you can work with operators to plan and approve development and manage the impact of this fee. The choice will be up to the operator and will depend on the nature and timing of their plans. The fee is required for every Form 3160-3 that is submitted for a new well. Onshore Order No. 1 provides several options that give the operator an opportunity to manage their planned development and expenditures for this fee.

You should encourage operators to continue to advise the BLM when they are planning multiple wells. This is a benefit to both the BLM and the operator. Filing Master Plans of Development (often called PODs) allows the BLM to analyze and mitigate the impacts of current and future development as one action, and speeds the processing of future APDs when they are filed in accordance with the submitted, analyzed and approved Master Plan of Development. An approved Master Plan of Development gives the operator greater certainty in processing future APDs submitted in accordance with the approved plan, which can translate to a savings in both time and money (for the BLM and the operator).

Operators may elect to include a limited number of actual APDs with their Master Plan of Development, along with information for additional planned future wells. The fee would only be required for the Form 3160-3's submitted with the Master Plan of Development. The operator would pay the fee for subsequent APDs when those are submitted. (NOTE: Onshore Order No. 1 refers to a "master APD" as part of the Master Plan of Development. This master APD may be called other names in different offices or by different operators. Regardless of the term used, if the operator uses a Form 3160-3 for this master APD, it does not require a fee because it is not an application for a specific well. Only those APDs filed for specific wells to be drilled require the fee.)

The operator may also elect to use the NOS option, and you might consider encouraging operators to do so, as this benefits all concerned. This could be used for a single well, or for multiple wells. The NOS would be posted and processed, per Onshore Order No. 1, with an APD filed within 60 days. Because the filing of the NOS does not require the fee—the fee is required when the subsequent APD is submitted—operators are encouraged to work with the BLM and the surface managing agency through the NOS option as much as possible to ensure their final APD submission is acceptable as to surface location, etc. (NOTE: if the required fee does not accompany the APD submission that follows the NOS, processing must stop and the guidance on how to handle APDs that are filed without the fee applies.)

18. Do we charge a processing fee for APDs for replacement wells?

Replacement wells typically are used when an operator encounters downhole problems and must redrill the well by skidding the rig a few feet on the same well pad. In these cases, a new 3160-3 is used for administrative purposes, often following a verbal approval and involves only minor administrative processing. Most of the work in approving the APD including consultation and environmental work has been done. Such a new 3160-3 does not represent a new well application. Accordingly, an additional processing fee would not be required.

19. Do we charge an additional processing fee if the operator moves a well location after they filed their APD?

It depends on why the well was moved. If the BLM requested that the well be moved to accomplish our agency or resource protection goals or to accommodate a surface owner request and that move resulted in a new APD, no additional processing fee would be required. An example would be moving a well to reduce a cut and fill or loss of habitat. However, if the operator requested the move and the move resulted in a new APD, an additional processing fee would be required.

20. Would an additional processing fee be required if the operator submitted a corrected Form 3160-3 for the sole purpose of correcting a clerical error or making minor adjustments?

No, an additional processing fee would not be required if the operator submitted a second 3160-3 for the purpose of correcting a clerical error or to adjust a drilling location that was changed at the on-site inspection.

21. Are there situations where the fee would be refunded?

The fee is non-refundable. It is a fee for processing the APD, to be collected “upon submission of each new application.” The fee is required whether or not the APD is approved.