Petition Policy and Process Overview

Environmental Quality Board Meeting
May 20, 2015

Kimberly Childe
EQB Counsel
Director, Bureau of Regulatory Counsel

Tom Wolf, Governor  John Quigley, Acting Secretary
• Power and duty to **formulate, adopt and promulgate** such **rules and regulations** as may be determined by the board for the proper performance of the work of the department

• Such rules and regulations when made by the board shall become the rules and regulations of the department

• **Receive and review reports** from the department and **advise** the department and its Secretary **on matters of policy**

Administrative Code of 1929, § 1920-A(b)
(71 P.S. § 510-20(b)
Any person may petition the Environmental Quality Board to initiate a rule making proceeding for the issuance, amendment or repeal of a regulation administered and enforced by the department.

Administrative Code of 1929, § 1920-A(h)(71 P.S. § 510-20(h))

Submission of Petition

• Petitions must be submitted on forms supplied by DEP and include:
  – Petitioner’s name, address and telephone number
  – Description of action requested
    • New or amended regulation - suggested regulatory language
    • Repeal of regulation - specific citation to regulation
    • Factual and legal contentions and supporting documentation for the requested action
    • Types of persons, businesses and organizations likely to be impacted

25 Pa. Code § 23.1(a)
• Each stream has “designated” uses under the **Chapter 93** regulations (25 Pa. Code § 93.9).

• A petition to redesignate a stream use must include:
  – Delineation of watershed/stream segment
  – Current and requested designated uses
  – Available technical data
  – Existing and proposed discharges
  – Information on HQ/EV qualifiers, if applicable
  – General land use and development
  – Municipalities in watershed or segment
• **Review:** DEP reviews the adequacy of the petition
  – Required information included
  – EQB has authority to take requested action
  – Action requested does not conflict with Federal law

• **Notice:** Within 30 days of receipt, DEP notifies the EQB and Petitioner of the adequacy of the petition.

• **Revision:** If the petition is deficient, DEP’s notice will state the reasons and provide the Petitioner with 30 days to complete or modify the petition.

• **EQB Agenda**: Petition that meet the threshold requirements are scheduled for initial consideration by the EQB.

• **Presentation**: Petitioner is given an opportunity to make a 5-minute presentation to the EQB.

• **EQB Action**: The EQB decides whether to accept the petition for further evaluation.

• **Notice**: Petitions accepted by the EQB are published in the *Pennsylvania Bulletin* within 30 days.

25 Pa. Code §§ 23.4-23.6
EQB may refuse to accept a petition if one or more of the following conditions exist:

- Previously considered the issue less than 2 years ago
- Concerns matter currently in litigation
- Not appropriate due to policy or regulatory considerations
- Issue previously considered and no new or sufficiently different information is presented that was unavailable at time of the prior consideration

DEP Action on Accepted Petitions

- **Stream Redesignation Petition**: DEP publishes notice of a petition accepted by the EQB for further study requesting technical data for use in DEP’s assessment and preparation of a draft stream evaluation report.

- **Other Petitions**: DEP prepares report evaluating a petition accepted by the EQB within 60 days, unless it advises the EQB that more time is needed.

- **Completed DEP Report**: DEP will send its completed report to the Petitioner, who may then submit a written response within 30 days.

  25 Pa. Code § 23.6
• **DEP Recommendation**: Based on its report and Petitioner’s comments, DEP makes a recommendation on the petition to the EQB.

• **Proposed Rulemaking**: If DEP recommends regulatory amendments, DEP develops a proposed rulemaking for EQB consideration.

• **Regular Rulemaking Process**: The rulemaking initiated by the petition then proceeds in the same manner as a rulemaking initiated by the department.

25 Pa. Code § 23.8
Kimberly Childe
EQB Counsel
Director, Bureau of Regulatory Counsel
kchilde@pa.gov
717.787.7060