

**CHAPTER 23. ENVIRONMENTAL QUALITY BOARD
POLICY FOR PROCESSING PETITIONS—
STATEMENT OF POLICY**

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§ 23.1. Petitions.

- (a) Petitions shall be submitted **[on forms supplied by the Department]** to the Secretary of the Department of Environmental Protection, **either by email to RA-EPEQB@pa.gov or by mail to Rachel Carson State Office Building, Post Office Box 2063, Harrisburg, Pennsylvania 17105-2063, on forms supplied by the Department,** and shall contain the following information:
 - (1) The petitioner's name, address, **email address** and telephone number.
 - (2) A description of the action requested in the petition and one of the following:
 - (i) Suggested regulatory language if the petition requests that the EQB adopt or amend regulations.
 - (ii) A specific citation to the regulations to be repealed if the petition requests that the EQB repeal existing regulations.
 - (3) The reason the petitioner is requesting this action from the EQB, including factual and legal contentions, **citation to the statutory provision or other authority for the requested action,** as well as supporting documentation which **[establish] establishes** the petitioner's justification for the requested action by the EQB.
 - (4) The types of persons, businesses and organizations likely to be impacted by this proposal **and a discussion of how each would be impacted, including the potential economic impact. If applicable to this petition, petitioners shall also include a discussion of the impacts to the following:**

- (i) **State government, such as executive branch agencies and independent commissions.**
 - (ii) **Local government, such as municipal and county governments, municipal authorities, school districts, and county conservation districts.**
 - (iii) **Small businesses, as categorized by the United States Small Business Administration in 13 CFR Part 121, Subpart A (relating to size eligibility provisions and standards).**
- (5) For petitions for redesignation of streams under Chapter 93 (relating to water quality standards) and the Clean Streams Law (35 P.S. §§ 691.1—691.1001), the petition shall include the following information to satisfy paragraph (3):
- (i) A clear delineation of the watershed or stream segment to be redesignated, both in narrative form and on a map.
 - (ii) The current designated use(s) of the watershed or segment.
 - (iii) The requested designated use(s) of the watershed or segment.
 - (iv) Available technical data on instream conditions for the following: water chemistry, the aquatic community (benthic macroinvertebrates and/or fishes), or instream habitat. If such data are not included, provide a description of the data sources investigated.
 - (v) A description of existing and proposed point and nonpoint source discharges and their impact on water quality or the aquatic community, or both. The names, locations, and permit numbers of point source discharges and a description of the types and locations of nonpoint source discharges should be listed.
 - (vi) Information regarding any of the qualifiers for designation as High Quality Waters (HQ) or Exceptional Value Waters (EV) in § 93.4b (relating to qualifying as high quality or exceptional value waters) used as a basis for the requested designation.
 - (vii) A general description of land use and development patterns in the watershed. Examples include the amount or percentage of public lands (including ownership) and the amount or percentage of various land use types (such as residential, commercial, industrial, agricultural, and the like).

- (viii) The names of all municipalities through which the watershed or segment flows, including an official contact name and address.
 - (ix) Locational information relevant to subparagraphs (iv)-(viii) (except for contact names and addresses) displayed on maps, if possible.
- (b) The general procedures in this chapter apply to petitions unless the EQB adopts specific procedures for a particular type of petition. Special procedures have been adopted for petitions requesting that the EQB designate an area as unsuitable for mining activity. These petitions are reviewed under Chapter 86 (relating to surface and underground coal mining: general).

§ 23.2. Departmental review.

- (a) The Department will examine the petition to determine if it meets the following conditions:
 - (1) The petition is complete as required by § 23.1 (relating to petitions).
 - (2) The petition requests an action that can be taken by the EQB.
 - (3) The requested action does not conflict with Federal law.
- (b) **The Department will estimate the staff resources required to evaluate the petition and how long it will take to complete the evaluation, as well as identify if contracting with external parties is necessary to evaluate the petition. If additional funds would be needed to evaluate the petition, for items such as external contracts or to collect sampling data, the Department will estimate the cost for those additional evaluation needs.**

§ 23.3. Notification.

- (a) The Department will notify the EQB and petitioner of its determination within 30 days of receipt of the petition.
- (b) If the Department determines that the petition is not appropriate for submittal to the EQB because it does not meet each of the conditions in **[§ 23.2] § 23.2(a)** (relating to Departmental review), the Department's notification shall state the reasons for its determination and give the petitioner 30 days to complete **or modify** the petition **[or modify the request]**. **If the petitioner does not submit a complete or modified petition within 30 days, the petition is deemed to be withdrawn.**

§ 23.4. [Oral presentation] Presentation to Board.

At the next EQB meeting occurring at least **[15] 30** days after the Department's determination that a petition is appropriate for consideration by the EQB, the Chairperson of the EQB shall inform the EQB of the petition for rulemaking, the nature of the request and the petitioner. The Chairperson shall give the petitioner or the petitioner's representative the opportunity to make a 5-minute oral presentation on why the EQB should accept the petition. The Department will also make a recommendation on whether the EQB should accept the petition **and will provide an estimate of the time and cost, if any, it will take to prepare the report evaluating the petition.**

§ 23.5. Board determination.

The EQB may refuse to accept a petition if it determines that one or more of the following conditions exist:

- (1) The EQB has within the previous 2 years considered the issue addressed by the petition for rulemaking as part of an earlier decision concerning the adoption, amendment or deletion of a regulation.
- (2) The action requested by the petitioner concerns a matter currently in litigation.
- (3) The requested action is not appropriate for rulemaking by the EQB due to policy or regulatory considerations.
- (4) The petition involves an issue previously considered by the EQB, and it does not contain information that is new or sufficiently different to warrant reconsideration of that decision. If a petition does present new or sufficiently different information, this information must have been either unavailable at the time of the EQB's previous decision or not contained in the record of the proceeding in which the previous decision was made.

§ 23.6. Notice of acceptance and Department report.

- (a) If the EQB accepts the petition, a notice of acceptance will be published in the *Pennsylvania Bulletin* within 30 days.

[In addition, a report will be prepared] (b) The Department will prepare a report in accordance with one of the following procedures:

- (1) *Petitions other than stream redesignation petitions.* The Department will prepare a report evaluating the petition within **[60 days] the estimated time frame provided during the Department's presentation as required by § 23.4 (relating to presentation to Board).** If the report cannot be completed within **[the 60-day period] the estimated time frame**, at the next

EQB meeting the Department will state how much additional time is necessary to complete the report. The Department's report will include a recommendation on whether the EQB should approve the action requested in the petition. If the recommendation is to change a regulation, the report will also specify the anticipated date that the EQB will consider a proposed rulemaking.

- (2) *Stream redesignation petitions.* The Department will publish notice of its intent to assess the waters subject to evaluation. The notice will include a request for submittal of technical data that interested persons have. Following the assessment and review of all technical data, the Department will prepare a draft evaluation report.

§ 23.7. Response to report.

Upon completing the report, the Department will send a copy of the report to the petitioner. Within 30 days of the mailing of the report, the petitioner may submit to the Department a written response to the report.

§ 23.8. Board consideration.

The Department will prepare a recommendation to the EQB based on the report and comments received from the petitioner.

- (1) If regulatory amendments are recommended, the Department will develop a proposed rulemaking for EQB consideration within **[6] 12** months after the Department **[mailed its report to the petitioner] presented its report to the EQB.**
- (2) If regulatory amendments are not recommended, the Department will present its recommendation and basis to the EQB at the first meeting occurring at least **[45] 90** days after the Department mailed its report to the petitioner.

§ 23.9. [Reserved].

§ 23.10. Withdrawal and resubmission of petitions.

- (a) **Petitioner withdrawal, modification and resubmission.**
 - (1) **A petitioner may withdraw a petition at any time during the petition process by notifying the Department in writing by email or mail.**
 - (2) **To modify a petition, a petitioner shall withdraw the petition and resubmit the full petition, as modified.**

- (3) If a petition is resubmitted, the petition will restart the petition process, beginning with the Department's review under § 23.2 (relating to Departmental review).

(b) ***Deemed withdrawal.***

- (1) A petition is deemed to be withdrawn if it no longer meets the review criteria in § 23.2(a)(2)—(3) due to change in law and therefore is not eligible for EQB consideration.
- (2) If a petition is deemed to be withdrawn under paragraph (1), the Department will inform the EQB at the next EQB meeting occurring at least 15 days after the Department becomes aware of the change in law. The Department will notify the petitioner of the deemed withdrawal after the EQB meeting.

(c) ***Notice of withdrawal.*** If a petition is withdrawn by the petitioner or deemed to be withdrawn, the Department will publish a notice of the withdrawal in the *Pennsylvania Bulletin* within 30 days of informing the EQB.