



Oil and Gas Management

Petition for Rulemaking: Conventional Oil and Gas Well Bonding

Environmental Quality Board Meeting
November 16, 2021

Tom Wolf, Governor

Patrick McDonnell, Secretary

Petition Submission

On September 27, 2021, the Sierra Club, Clean Air Council, Earthworks, Mountain Watershed Association, PennFuture, and Protect Penn-Trafford (“Petitioners”) submitted an amended petition for rulemaking to the Environmental Quality Board (EQB) requesting full-cost bonding for both new conventional oil and gas wells and active conventional oil and gas wells drilled after April 17, 1985.

EQB Petition Criteria

- DEP reviewed the petition in accordance with the EQB Petition Policy in 25 Pa. Code Chapter 23 and determined the petition meets the conditions for further review:
 - The petition is complete as required by Section 23.1.
 - The petition requests an action that can be taken by the EQB.
 - The requested action does not conflict with federal law.

History of Current Bonding Requirements

- **Act 223 of 1984** (“1984 Oil and Gas Act”) established base bond amounts for all active and new oil and gas wells and provided for the “fee in lieu of bonding” program.
 - Bond amounts were set at \$2,500 per well.
 - Bonds required for all new and existing wells, and “conditioned that the operator shall faithfully perform all of the drilling, water supply replacement, restoration and plugging requirements of this act.”
 - Rather than file individual bonds for each well, an owner or operator could file a blanket bond covering all its wells in Pennsylvania in the amount of \$25,000.
 - The EQB was granted discretionary authority to amend bond amounts “every two years to reflect the projected costs to the Commonwealth of performing well plugging.”

History of Current Bonding Requirements

- **Act 78 of 1992:** Amended the 1984 Oil and Gas Act to create a “phased deposits of collateral” approach to bonding. This act also was the first mention of “orphan” (as opposed to “abandoned”) wells.
 - Orphan well: Any well abandoned prior to April 18, 1985 that has not been affected or operated by the present owner or operator and from which the present owner, operator or lessee has received no economic benefit, except only as a landowner or recipient of a royalty interest from the well.
 - Created a surcharge on well permit applications to provide funding to plug orphan wells.

History of Current Bonding Requirements

- **Act 57 of 1997:** As part of omnibus amendments to the Administrative Code, the General Assembly released operators of oil and gas wells drilled before April 18, 1985, from all bonding requirements:
 - Section 1934-A. Bonds for Certain Wells.--No bond or bond substitute shall be required for any well drilled prior to April 18, 1985, where such well would have otherwise been subject to the bonding requirements of section 215 or 603.1 of the act of December 19, 1984 (P.L.1140, No.223), known as the "Oil and Gas Act."
- **Act 13 of 2012:** Increased well bond amount requirements based on the length of the wellbore but made no distinction between conventional and unconventional wells.

History of Current Bonding Requirements

- **Act 87 of 2012:** After realizing that Act 13 of 2012 increased the bonds required for conventional oil and gas wells, Fiscal Code amendments to reverse the impact on conventional oil and gas well operators were made.
 - Amendment of the Fiscal Code that made substantive changes to Act 13, and so codified in section 1606-E of the Fiscal Code and not in Title 58.
 - Explicitly retained the 1997 Administrative Code amendments relieving operators of conventional oil and gas wells drilled before April 18, 1985, of their bonding obligations.

Summary of Current Bonding Requirements

- \$2,500 bond required per new conventional oil and gas well or per active conventional oil and gas well drilled after April 18, 1985.
- Conventional oil and gas operators can file a single \$25,000 blanket bond to cover all conventional oil and gas wells located in Pennsylvania.

Separate Regulatory Process

- **Act 126 of 2014:** Amending the Fiscal Code, the General Assembly amended the EQB's rulemaking authority as it relates to conventional oil and gas wells:

Section 1741.1-E. Environmental Quality Board.

(a) Regulations.--From funds appropriated to the Environmental Quality Board, the board shall promulgate proposed regulations and regulations under 58 Pa.C.S. (relating to oil and gas) or other laws of this Commonwealth relating to conventional oil and gas wells separately from proposed regulations and regulations relating to unconventional gas wells. All regulations under 58 Pa.C.S. shall differentiate between conventional oil and gas wells and unconventional gas wells. Regulations promulgated under this section shall apply to regulations promulgated on or after [July 10, 2014].

Separate Regulatory Process

- **Act 52 of 2016:** Section 7(b) of the Pennsylvania Grade Crude Development Act states:

(b) Any rulemaking concerning conventional oil and gas wells that the Environmental Quality Board undertakes after the [June 23, 2016] shall be undertaken separately and independently of unconventional wells or other subjects and shall include a regulatory analysis form submitted to the Independent Regulatory Review Commission that is restricted to the subject of conventional oil and gas wells.

Petition Request

- Amend 25 Pa. Code § 78.302 (relating to requirement to file a bond):
 - Increase bond amounts for conventional oil and gas wells to \$38,000 for each new conventional oil and gas well or active conventional oil and gas well drilled after April 18, 1985.
 - Set blanket bonds to the sum of total per-well bond amounts.
 - Establish an ongoing obligation for DEP to submit a report to the EQB evaluating whether the EQB should adjust bond amounts further.
 - The first report would be due by January 2, 2025, and include a recommendation on whether the EQB should adjust the bond amounts. If the recommendation is to adjust bond amounts, DEP will develop a proposed rulemaking for EQB consideration within six months. Future reports would be due every two years.

Notification

The Department notified the petitioners on October 8, 2021, that the petition met the requirements for acceptability as defined in the EQB's Petition Policy.

Next Steps

- If the EQB accepts the petition for further study, a notice of acceptance would be published in the *Pennsylvania Bulletin* within 30 days.
- DEP would prepare a report evaluating the petition within 60 days.
 - If the report cannot be completed within the 60-day period, at the next EQB meeting the Department would state how much additional time is necessary to complete the report.

Next Steps

- The Department's report would include a recommendation on whether the EQB should approve the action requested in the petition.
 - If the recommendation is to amend a regulation, the report would also specify the anticipated date that the EQB would consider a proposed rulemaking.

Recommendation

The Department recommends that the EQB accept this petition for further study.

**The recommendation does not infer the promulgation of a rulemaking.*



pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Oil and Gas Management

Scott Perry, Deputy Secretary
Office of Oil and Gas Management

scperry@pa.gov

Kurt Klappowski, Director
Bureau of Oil and Gas Planning and Program Management

kklappowsk@pa.gov

Elizabeth Davis, Assistant Director
Bureau of Regulatory Counsel

elidavis@pa.gov