

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

**EVALUATION REPORT
ON THE**

SIERRA CLUB *et al.* PETITION FOR RULEMAKING

**TO RAISE BOND AMOUNTS FOR CONVENTIONAL OIL AND GAS
WELLS**

APRIL 21, 2023

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A. DESCRIPTION OF THE PETITION FOR RULEMAKING PROCEDURE

Any person may petition the Environmental Quality Board (EQB) to initiate a rulemaking proceeding for the issuance, amendment, or repeal of a regulation administered and enforced by the Pennsylvania Department of Environmental Protection (Department). 71 P.S. § 510-20(h). The EQB has developed a policy for processing petitions for rulemaking. See [25 Pa. Code Chapter 23](#) (relating to Policy for Processing Petitions – Statement of Policy). Among other things, a petition for rulemaking must contain the following information: (1) the petitioner’s name, address, and telephone number; (2) a description of the action requested including suggested regulatory language if the petition requests the EQB to adopt or amend regulations; (3) the reason the petitioner is requesting the action from the EQB; and (4) the types of persons, businesses, and organizations likely to be impacted by the proposal. 25 Pa. Code § 23.1 (relating to Petitions).

When a petition for rulemaking is submitted, the Department examines the petition before it is submitted to the EQB to determine if it meets the following conditions: (1) the petition is complete as required by § 23.1; (2) the petition requests an action that can be taken by the EQB; and (3) the requested action does not conflict with Federal law. 25 Pa. Code § 23.2 (relating to Departmental review).

The Department then notifies the EQB and the petitioner of its determination within 30 days of receipt of the petition. 25 Pa. Code § 23.3. If the Department determines that the petition is not appropriate, the Department will state the reasons for its determination in the notification and give the petitioner 30 days to modify the request. 25 Pa. Code § 23.3 (relating to Notification).

Where the Department determines 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 the opportunity to make

a five-minute presentation to the EQB and the Department will also make a recommendation as to whether the EQB should accept the petition. 25 Pa. Code § 23.4 (relating to Oral presentation).

The EQB may refuse to accept a petition if it determines that one or more of the following exist: (1) the EQB has within the past two years considered the issue addressed in the petition 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 under litigation; (3) the requested action is inappropriate for rulemaking by the EQB due to policy or regulatory considerations; or (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 issue. 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. 25 Pa. Code § 23.5 (relating to Board determination).

If the EQB accepts the petition, a notice of acceptance is published in the *Pennsylvania Bulletin* within 30 days and a report is prepared. 25 Pa. Code § 23.6 (relating to Notice of acceptance and Department report).

Once the report is completed, the Department sends a copy of it to the petitioner who may then submit to the Department a written response to the report within 30 days of the mailing of the report. 25 Pa. Code § 23.7 (relating to Response to report).

The Department prepares a recommendation to the EQB based on the report and comments received from the petitioner. If regulatory amendments are recommended, the Department develops a proposed rulemaking for EQB consideration within 6 months after the Department mailed its report to the petitioner. If regulatory amendments are not recommended, the Department

presents its recommendation and basis to the EQB at the first meeting occurring at least 45 days after the Department mailed its report to the petitioner. 25 Pa. Code § 23.8 (relating to Board consideration).

B. DESCRIPTION OF THE SIERRA CLUB *et al.* PETITION

1. Procedural Description

On September 14, 2021, the EQB received a petition to amend the Department's regulations to require updated full-cost bond amounts for both new conventional oil and gas wells and existing conventional oil and gas wells drilled after April 17, 1985.

The petition was submitted by Ankit Jain (Mr. Jain), counsel for the Sierra Club, 50 F Street NW, Eighth Floor, Washington, DC 20001, on behalf of the Sierra Club, Clean Air Council, Earthworks, Mountain Watershed Association, PennFuture, and Protect Penn-Trafford (Petitioners).

On October 8, 2021, the Department sent a letter to Mr. Jain notifying Petitioners that the petition met the established criteria in § 23.2 of the EQB's petition policy. The letter also set November 16, 2021, as the date the EQB would consider the petition.

At the November 16, 2021 EQB meeting, Mr. Jain, on behalf of the Petitioners, made a brief presentation as to why the EQB should accept the petition for further study. The Department recommended that the EQB accept the petition for further study. The EQB voted 16-3 to accept the petition for further study.

On December 4, 2021, the EQB published a notice of acceptance of the petition in the *Pennsylvania Bulletin*. See [51 Pa.B. 7471](#) (December 4, 2021).

2. Petition Description

The petition asserts the EQB should amend the Department's regulations at 25 Pa. Code § 78.302 to require full-cost bonding for conventional oil and gas wells by increasing bond amounts to \$38,000 for each new or existing unplugged conventional oil and gas well drilled after April 18, 1985, setting blanket bonds to the sum of total per-well bond amounts, and establishing

an ongoing obligation for the Department to submit a report to the EQB evaluating whether the EQB should adjust bond amounts further. The specific suggested regulatory language is included in the appendix of this Evaluation Report.

In support of this petition, Mr. Jain included an expert report the Sierra Club commissioned from Dr. Jeremy Weber (Dr. Weber), a professor at the University of Pittsburgh and an established expert in the economics of oil and gas production. Dr. Weber's report used historical plugging data within Pennsylvania to estimate the cost of plugging the average conventional well in 2021. As summarized in Mr. Jain's petition, the report found that under the "assumption that the average well will be plugged in a fourteen-well plugging contract, as has been the case over the past decade, the cost of plugging the average conventional well will be \$38,000." *See* Petition, p. i. Mr. Jain's petition requested that the EQB amend the conventional oil and gas wells bond amounts to full-cost bonding because the current bond amount of \$2,500 per conventional well, with the option to post a \$25,000 blanket bond, "does not come close to full-cost bonding."

C. DEPARTMENT RESPONSE TO THE PETITION

1. History of Bonding Requirements for Conventional Oil and Gas Wells

Pennsylvania first established base bond amounts for all active and new oil and gas wells and provided for the “fee in lieu of bonding” program with the act of December 19, 1984 (P.L. 1140, No. 223) (1984 Oil and Gas Act). Section 215 of the 1984 Oil and Gas Act required bonds for all new and existing wells and conditioned those bonds on the operator faithfully performing “all of the drilling, water supply replacement, restoration and plugging requirements of this act.” The statute set bond amounts at \$2,500 per well and allowed an owner or operator to file a blanket bond covering all its wells in Pennsylvania in the amount of \$25,000 rather than file individual bonds for each well. Section 215(a) of the 1984 Oil and Gas Act also granted the EQB discretionary authority to amend bond amounts “every two years to reflect the projected costs to the Commonwealth of performing well plugging.”

In 1992, Pennsylvania created a distinction between abandoned and orphan wells through the act of July 2, 1992 (P.L. 365, No. 78) (Act 78). Act 78 amended section 103 of the 1984 Oil and Gas Act by defining an “orphan” well as “[a]ny 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.”

In 1997, Pennsylvania exempted some wells from bond requirements. As part of omnibus amendments to the Commonwealth’s Administrative Code, the act of November 26, 1997 (P.L. 530, No. 57) (Act 57), released operators of oil and gas wells drilled before April 18, 1985 from all bonding requirements. Act 57 added section 1934-A to the Administrative Code of 1929, stating that “[n]o 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 1984 Oil and Gas Act.

In 2012, Pennsylvania repealed the 1984 Oil and Gas Act in its entirety and replaced it with the act of February 14, 2012 (P.L. 87, No. 13) (Act 13 or Oil and Gas Act). Among the comprehensive changes to the provisions in the 1984 Oil and Gas Act, Act 13 increased well bond amount requirements based on the length of the wellbore but made no distinction between conventional and unconventional wells. 58 Pa.C.S. § 3225(a)(1) (amended 2022). Act 13 retained the EQB’s discretionary authority to amend bond amounts “every two years to reflect the projected costs to the Commonwealth of performing well plugging.” 58 Pa.C.S. § 3225(a)(1).

Subsequently, Pennsylvania made substantive changes to Act 13 with the act of July 2, 2012 (P.L. 823, No. 87) (Act 87), to reverse the impact of the Act 13 bonding changes on conventional oil and gas well operators. Act 87 codified these amendments in section 1606-E of the Commonwealth’s Fiscal Code and not in Title 58 of the Pennsylvania Consolidated Statutes, which is where Act 13 is codified. 72 Pa.C.S. § 1606-E. Act 87 explicitly retained the 1997 Administrative Code amendments in Act 57 relieving operators of conventional oil and gas wells drilled before April 18, 1985 of their bonding obligations. 72 Pa.C.S. § 1606-E(a). Section 1606-E also reinstated the requirement of a \$2,500 bond per new conventional oil and gas well or per active conventional oil and gas well drilled after April 18, 1985, as well as allowing conventional oil and gas operators to file a single \$25,000 blanket bond to cover all conventional oil and gas wells located in Pennsylvania. *Id.*

2. Change in Statutory Authority to Set Conventional Well Bonding Requirements

After the EQB’s acceptance of this petition on November 16, 2021, the Pennsylvania General Assembly passed the act of July 19, 2022 (P.L. 1622, No. 96) (Act 96), which amended

the Oil and Gas Act's provisions on well bonding. Act 96 lapsed into law without the Governor's signature on July 19, 2022. *See* [52 Pa.B. 4229](#) (July 30, 2022). Section 2 of Act 96 amended the Oil and Gas Act to limit the EQB's authority to adjust bonding amounts for conventional wells. The amendments clarified that the EQB retains the authority to adjust bond amounts every two years for unconventional wells. 58 Pa.C.S. § 3225(a)(1)(i)-(ii). Act 96 codified the bond amount for "a well other than an unconventional well" at \$2,500 and withdrew the EQB's authority to adjust that amount for 10 years. 58 Pa.C.S. § 3225(a)(1)(iii). Act 96 also fixed the blanket bond at \$25,000, plus \$1,000 per new well drilled six months after the effective date of the law but not to exceed a total of \$100,000. 58 Pa.C.S. § 3225(a)(2)(ii)(A)-(C). This provision withdrew the EQB's and the Department's authority to adjust per-well and blanket bond amounts for 10 years. 58 Pa.C.S. § 3225(a)(2)(ii)(E).

D. DEPARTMENT RECOMMENDATION ON THE PETITION FOR RULEMAKING

As stated in Section A of this report, when a petition for rulemaking is submitted to the EQB, the Department first examines the petition to determine if it meets certain criteria, which include that the petition requests an action that can be taken by the EQB. 25 Pa. Code § 23.2. The Department performs this initial review to ensure the EQB has the statutory authority to adopt the rule requested by the Petitioners. If the EQB is not permitted by law to take the requested action, the Department will not recommend the EQB accept the petition and the process ends there.

This Petition for Rulemaking asks the EQB to amend the Department's regulations at 25 Pa. Code § 78.302 to require full-cost bonding for conventional oil and gas wells by increasing bond amounts to \$38,000 for each new or active conventional oil and gas well drilled after April 18, 1985 and setting blanket bonds to the sum of total per-well bond amounts. At the time the EQB considered accepting the petition on November 16, 2021, the EQB had the statutory authority under the Oil and Gas Act to adjust bond amounts for conventional oil and gas wells. However, the enactment of Act 96 on July 19, 2022, explicitly suspended the EQB's authority to make any changes to individual or blanket bond amounts for conventional wells for 10 years. 58 Pa.C.S. § 3225(a)(1)(iii) and 58 Pa.C.S. § 3225(a)(2)(ii)(E). Act 96 set the individual bond amount at \$2,500 and the blanket bond at \$25,000, plus \$1,000 per new well drilled six months after the effective date of the law but not to exceed a total of \$100,000. 58 Pa.C.S. § 3225(a)(2)(ii)(A)-(C). While the Department agrees the current bonding requirements for conventional oil and gas wells are insufficient, the EQB no longer has the statutory authority to take the action requested by the Petitioners. As a result, the Petition for Rulemaking must be denied.

E. CONCLUSION

At the time of the EQB's acceptance of this Petition for Rulemaking for further study in 2021, the EQB could amend bond amounts for conventional oil and gas wells. However, with the passage of Act 96 in 2022, the General Assembly subsequently withdrew the EQB's statutory authority to amend individual and blanket bond amounts for conventional oil and gas wells for ten years. *See* 58 Pa.C.S. § 3225(a)(1)(iii); 58 Pa.C.S. § 3225(a)(2)(ii)(E). Therefore, the EQB is statutorily prohibited from taking the action requested by the Petitioners to increase bond amounts to \$38,000 for each new or active conventional oil and gas well drilled after April 18, 1985, or to set blanket bonds to the sum of total per-well bond amounts. While the Department agrees the current bonding requirements for conventional oil and gas wells are insufficient, the Petition for Rulemaking must be denied.

F. APPENDIX: REGULATORY LANGUAGE SUGGESTED BY THE PETITIONER

Please Note: The suggested regulatory language that follows was provided by the petitioner and is not a product of the Department. This language is for reference only.

25 Pa. Code § 78.302. REQUIREMENT TO FILE A BOND FOR CONVENTIONAL WELLS

- (a) For a conventional well that has not been plugged, the owner or operator shall file a bond in the amount of \$38,000 per well.
- (b) In lieu of individual bonds for each well, an owner or operator may file a blanket bond covering all of its wells in this Commonwealth. The blanket amount shall be computed as the sum of the applicable individual bond or security amounts required for each well.
- (c) This requirement shall apply to existing wells requiring a bond under 58 Pa. Cons. Stat. § 3225 and 72 Pa. Stat. and Cons. Stat. Ann. § 1606-E (West).
- (d) By January 2, 2025, the Department shall submit a report to the Environmental Quality Board evaluating whether the Board should adjust bond amounts further. The Department's report will include a recommendation on whether the Board should adjust the bond amounts. If the recommendation is to adjust bond amounts, the Department will develop a proposed rulemaking for Board consideration within six months after the Department submits its report to the Board.
 - 1) The Department's report shall be made available to the public.
 - 2) Within thirty days of the Department submitting the report to the Board, any member of the public may submit to the Department written comments on the report.
 - 3) The Department shall undertake this same process, under the same deadlines, every odd-numbered year after 2025.
 - 4) The Department may issue one joint report to fulfill its obligations under this provision and under 25 Pa. Code § 78.302a(d).