



Oil and Gas Management

# Petition for Rulemaking: Conventional Oil and Gas Well Bonding

Environmental Quality Board Meeting  
July 11, 2023

Josh Shapiro, Governor

Richard Negrin, Secretary

# Description of Petition

On September 14, 2021, the Sierra Club, Clean Air Council, Earthworks, Mountain Watershed Association, PennFuture, and Protect Penn-Trafford (Petitioners) submitted a petition to amend the Department's regulations to the Environmental Quality Board (EQB) requesting full-cost bonding for both new conventional oil and gas wells and existing conventional oil and gas wells drilled after April 17, 1985.

# Description of Petition

- 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;
  - establishing an ongoing obligation for the Department to submit a report to the EQB evaluating whether the EQB should adjust bond amounts further.

# EQB Petition Acceptance

- On November 16, 2021, the EQB voted to accept the Petition for further study.
  - Acceptance based upon DEP's determination the Petition met the conditions for further review, including the requirement that the Petition requested an action that can be taken by the EQB.
- On December 4, 2021, the EQB published a notice of acceptance of the Petition in the *Pennsylvania Bulletin*.

# DEP's Report on Petition

- On April 21, 2023, the Department sent its evaluation report (Report) on the Petition to the Petitioners.
- The Report recommended that the Petition be denied because the EQB no longer had the authority to make the regulatory changes requested.

# Summary of DEP's Report

- When the EQB voted to accept the Petition for further study on November 16, 2021, the EQB had the statutory authority under the act of February 14, 2012 (P.L. 87, No. 13) (Oil and Gas Act) to adjust bond amounts for conventional oil and gas wells.
- The Report provided a history of bonding requirements for conventional oil and gas wells in Pennsylvania, beginning in 1984 with the establishment of requirements and the grant of discretionary authority to the EQB to amend bond amounts every two years to reflect the projected costs to the Commonwealth of performing well plugging.

# Summary of DEP's Report

- The Report to the Petitioners concluded that with the enactment of the act of July 19, 2022 (P.L. 1622, No. 96) (Act 96), the EQB no longer had the statutory authority to take the action requested by the Petitioners.
- Act 96 set specific individual and blanket bond amounts for conventional wells at \$2,500 and \$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, respectively.
- Act 96 also withdrew the EQB's authority to adjust those amounts for 10 years.

## Petitioners' May 19 Reply

- **May 19, 2023** – The Petitioners agreed that the EQB does not currently have the authority to change bond amounts for conventional wells and, therefore, the Petition should not be considered any longer.
- Petitioners also commented on DEP's analysis of the Petition and the applicability of the Pennsylvania Constitution's Environmental Rights Amendment.



# Petitioners' Reply & DEP's Response

## **Petitioners' Comment:**

- DEP's recommendation to deny the Petition is based solely on the EQB's current lack of statutory authority to act on the petition and not on an analysis of the facts contained in the petition or the regulatory changes requested.

## **DEP's Response:**

- Yes. Once the General Assembly suspended the EQB's statutory authority to establish bond amounts, the Department did not conduct an analysis of all the factual assertions and financial assessments made in the Petition.

# Petitioners' Reply

## Petitioners' Comment:

- The Commonwealth is obligated under the Environmental Rights Amendment, Article 1, Section 27 of the Constitution, to act as a trustee of the Commonwealth's natural resources and to ensure the peoples' rights to "clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment."
- As a trustee, Pennsylvania is required to ensure that every well will be promptly remediated, whether the plugging and clean-up is performed by the operator or by the Commonwealth. The Commonwealth's low bond amounts for conventional wells do not allow it to fulfill this obligation. The passage of Act 96 does not change these obligations.

# Response to the Petitioners' Reply

## DEP's Response:

- The Department acknowledges that it is one of the Article I, Section 27 Commonwealth trustees, and is one of the executive agencies responsible for protecting and preserving the rights contained in Article I, Section 27 of the Pennsylvania Constitution.
- The passage of Act 96 eliminated the statutory authority of the EQB to establish bond amounts. Article I, Section 27 does not overcome the requirement for EQB rulemakings to be authorized by statute.

## DEP Recommendation

Because the EQB no longer has the statutory authority to take the action requested by the Petitioners, the Department recommends the Petition for Rulemaking be denied.



Oil and Gas Management

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