

Petition for Rulemaking: Determination of Attainable Bottom

Environmental Quality Board
12/9/2025



Rulemaking Petition Process

Environmental Quality Board (EQB) Policy for Processing Petitions
codified in [25 Pa. Code Chapter 23](#)

- 1) Petition submitted to DEP
- 2) DEP reviews petition to confirm it meets all criteria for further review
 - a) Petition is complete (all required information provided)
 - b) Petition requests an action that can be taken by the EQB
 - c) Requested action does not conflict with federal law
- 3) DEP notifies petitioner if petition may be submitted to EQB



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Rulemaking Petition Process

- 4) Petition presented to EQB by DEP and petitioner, with DEP recommendation
- 5) EQB votes on whether to accept the petition for further study by DEP; EQB may refuse to accept petition if:
 - a) Issue considered in past 2 years as part of a rulemaking
 - b) Requested action currently in litigation
 - c) Requested action not appropriate for rulemaking (policy or regulatory considerations)
 - d) Issue previously considered by EQB - no new/different information provided



Rulemaking Petition Process

- 6) If EQB accepts petition for further study, DEP prepares a report evaluating the petition, including DEP's recommendation on whether the EQB should approve any or all actions requested by petition
- 7) Petitioner may provide written response to the report
- 8) DEP provides recommendation to EQB based on DEP's report and petitioner response; EQB votes on DEP recommendation

Petition Submission

On April 23, 2025, the Marcellus Shale Coalition, the Pennsylvania Coal Alliance, and the Pennsylvania Independent Oil and Gas Association (Petitioners) submitted a petition for rulemaking to the EQB requesting amendments to 25 Pa. Code Chapters 78a and 78 that would clarify how attainable bottom is determined and how the plugging of wells should proceed once that determination has been made.

Petition Request

The petition calls for the following:

- Adds language to the definition of “Attainable bottom” to define “reasonable effort” in 25 Pa. Code §§ 78.1 and 78a.1
- Adds language to 25 Pa. Code §§ 78.91(c) and 78a.91(c) that instructs operators how to proceed with plugging activities once attainable bottom has been reached

EQB Petition Criteria

DEP reviewed the petition in accordance with the EQB Petition Policy in 25 Pa. Code Chapter 23 by applying the criteria for further review, as listed in Section 23.2:

- 1) The petition is complete as required by Section 23.1
- 2) The petition requests an action that can be taken by the EQB
- 3) The requested action does not conflict with federal law

Notification

The Department notified the petitioners on May 23, 2025, that the petition met the requirements for acceptability as defined in the EQB's Petition Policy in Section 23.2.



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Recommendation

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

**This recommendation does not imply the promulgation of a rulemaking.*

Questions?

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The Department of Environmental Protection's mission is to protect Pennsylvania's air, land and water resources and to provide for the health and safety of its residents and visitors, consistent with the rights and duties established under the Environmental Rights Amendment (Article 1, Section 27 of the Pennsylvania Constitution).