



April 2, 2025

Jessica Shirley, Acting Chair
Environmental Quality Board
16th Floor Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101

Re: Rulemaking Petition on New and Expanded Setbacks for Unconventional Natural Gas Facilities

Dear Acting Chair Shirley:

The Marcellus Shale Coalition (MSC) represents the upstream, midstream, transmission and downstream operators engaged in the development of Pennsylvania's unconventional natural gas resources. As such, our member companies – and the tens of thousands of employees they represent – have a vested interest in the above-referenced rulemaking petition. On behalf of the MSC, we urge the members of the Environmental Quality Board (EQB) to reject this petition and expend no more time or resources on its consideration.

Before outlining our reasons for requesting this action by the EQB, let us first acknowledge what is the clear intent of this petition: to ban future production and development of Pennsylvania's natural gas resources.

Pennsylvania has a robust regulatory framework in place that has served as a model for other shale gas producing states. Pennsylvania's policymakers – both within the General Assembly and regulatory agencies – have worked over the past fifteen years to modernize a host of statutes and regulations to strike a balance between producing the energy resources that our society needs and safeguarding our environment.

As proposed, the petitioners seek to impose setback conditions that effectively ban new development through draconian distance requirements that make any meaningful development prohibitive. A GIS analysis conducted by MSC member companies shows that in most of the top natural gas producing counties, nearly 99% of all land mass is prohibited from hosting natural gas facilities. The petitioners also propose a waiver system that knowingly conflicts with state law and court precedent and is designed in such a manner as to be rendered useless.

Pennsylvania already has among the strictest setback distances in the nation. Enhanced and adopted as part of Act 13 of 2012, the setback distances represented a collaborative effort put forth and supported by members of industry, environmental organizations and local government associations. The setbacks contained in Act 13 are the strictest and most protective among the top five natural gas producing states in the nation.

Setbacks work in conjunction with a suite of very specific operational and regulatory standards and requirements designed to safeguard workers, the public and our environment and natural resources. These standards and requirements were developed by the Pennsylvania Department of Environmental Protection (PA DEP) and in some cases by U.S. Environmental Protection Agency through a rigorous public process and have a scientific basis. The fact that Petitioners ignore these

science-based standards and focus only on setbacks reveals their true purpose. With this background in mind, we offer the following specific reasons justifying the EQB's rejection of this petition.

Lack of Statutory Authority

To accept a petition and present it to the EQB, the Department must determine that *"the petition requests an action that can be taken by the EQB."*¹ This has always been interpreted as the Department evaluating whether the requisite statutory authority exists to pursue the substance (in whole or in part) of the petition before the EQB authorizes investing significant Department staff and resources to a study. And this has been applied as such in the past; the Department has chosen not to present petitions to the EQB because it lacked such statutory authority or withdrawn petitions because subsequent legislation further clarified the issue. The Department has been clear in its guidance to the EQB in the past that evaluation of statutory authority is a function it undertakes prior to acceptance of the petition by the EQB.²

State law currently establishes which features or resources that natural gas wells must be setback from and at what distance³. There is no authority within the revised Oil and Gas Act⁴ or other statutes for the EQB to expand, contract or add to these setback requirements.

This is not a controversial position; indeed, it is the same exact position taken by the PA DEP several times in the past. For example:

- In response to public comments urging the EQB to impose setback distances of 3,281 feet (one of the distances included in this petition) as part of its Chapter 78a regulatory promulgation, PA DEP stated in 2016 that ***"to the extent the commentator suggests that the General Assembly should extend these setbacks or provide setbacks for particular facilities or resources that change should be made through an amendment to the 2012 Oil and Gas Act."***
- Four years later, in response to an investigative grand jury convened by the Attorney General's Office, PA DEP provided the following response to a recommendation by the grand jury that new and expanded setbacks should be imposed: ***"Only the General Assembly can modify or eliminate these statutory limitations [setbacks], and this recommendation should be re-directed exclusively to the General Assembly. To the extent that the report blames DEP for these setbacks, the report is erroneous and misleading."***

¹ 25 PaCode §23.2

² *"Mr. Reilly reinforced that part of the criteria included in the evaluation is a legal assessment. This assessment includes a review of statutory authority. The preliminary review conducted prior to bringing this petition to the Board includes evaluating whether the petition's request is an action that the Board can take. If it is determined that it is not, the petition is not presented to the Board for any action, including acceptance for further study."* April 16, 2019 EQB Meeting Minutes

³ 58 Pa.C.S. §3215 (related to well location restrictions)

⁴ Act 13 of 2012 repealed the Oil and Gas Act of 1984 while re-enacting and revising provisions related to oil and gas development and consolidating these provisions within 58 Pa.C.S. Chapter 32. Act 13 of 2012 and Chapter 32, while not formally named the "Oil and Gas Act" are colloquially referred to as the Oil and Gas Act.



The 2020 investigative grand jury serves as a significant part of the petitioners' rationale for seeking to impose and expand setback distances. It is important to note that the legitimacy of the investigative grand jury process itself has been questioned by Pennsylvania's Supreme Court. The Court has noted numerous inherent flaws within the process and its deviation from being truth-seeking, fact-based forums to aid in the formation of public policy.

PA DEP's response to the 2020 grand jury report seems to bear these concerns out. While responding to specific comments and recommendations of the report, the Department – under Democratic Governor Tom Wolf – saw fit to call the grand jury report “*both factually and legally inaccurate*” and “*a disservice to the citizens of the Commonwealth.*”

So, too, is further consideration by the EQB of the petition fruit borne from this poisonous tree.

Petitioners Seek to Ban Natural Gas Development

Among the stated purposes of the revised Oil and Gas Act is to “*permit optimal development of oil and gas resources of this Commonwealth consistent with protection of the health, safety, environment and property of Pennsylvania citizens.*”

How exactly to accomplish this is laid out within the Oil and Gas Act. As discussed above, this Act, in conjunction with a host of other environmental statutes and accompanying regulations, lays out science-based criteria and standards for industry operations that work to protect the environment, while still enabling robust development and production of natural gas resources.

It is clear that the General Assembly's intent is to ensure both protection of the environment and natural resources and the ability to optimally develop oil and gas resources. A petition which effectively seeks to ban natural gas development is inherently at conflict with the statutory intent and authority found within the Oil and Gas Act. The EQB does not have the authority to contemplate and undertake a study premised on effectively banning natural gas development, because to do so is in conflict with the clear intent of the Oil and Gas Act.

Draw on Limited Department Resources

The petition process to the EQB has been compromised.

Unfortunately, some non-governmental organizations view the petition process as a means to circumvent the elected General Assembly and to pursue their desired policy agenda (in this case, banning natural gas development) through a somewhat byzantine rulemaking process.

In choosing to accept the petition for further study – and it is important to emphasize that it is a choice, as the EQB has the full authority to not proceed any further – the Department is compelled to devote some level of internal resources to conduct a thorough review and prepare a recommendation as to whether to proceed with a rulemaking. This review can be time-consuming, as evidenced by ongoing petition reviews still being conducted by Department staff and necessitates the Department place work related to the petition above other internal work it had deemed important and worthwhile.



At a time when the Department has consistently argued that it needs additional staff and financial resources to adequately fulfill its mission, it seems misguided to voluntarily take on the work that advances a third-party's policy priority and is clearly in conflict with state law.

Moreover, doing so seems to only invite third parties – including industry – to submit petitions seeking to modify or adopt their desired regulatory outcomes and to impose additional strain on limited Department resources.

Health Studies

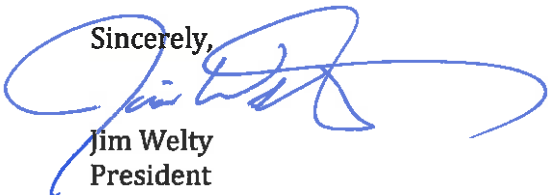
The petitioners attach a litany of health studies to their petition as further justification for its merits. However, the submitted studies are replete with inconsistencies both internally and among the studies themselves. Few if any of the studies use actual air data and sampling. Most seek to assign cause and effect through proximity to natural gas development, while providing little if any controls over variables or consideration of other potential impacts. By contrast, a host of other studies⁵ demonstrate little if any detrimental impact on public health or the environment tied to natural gas development, including various studies undertaken by the Department related to short- and long-term air quality impacts and radiation.

Conclusion

For all of the reasons stated above, we urge the EQB to respect its statutory limitations, its charge under the Oil and Gas Act, and its obligation to respect private property rights as it balances its obligation to protect our shared environment.

We urge the EQB to reject this petition for further study.

Sincerely,



Jim Welty
President

cc: Members of the Environmental Quality Board

⁵ <https://marcelluscoalition.org/wp-content/uploads/2024/12/Health-Environmental-Impacts-Studies-1.pdf>