



December 4, 2025

The Honorable Jessica Shirley, 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 – Resubmitted by Petitioners

Dear 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.

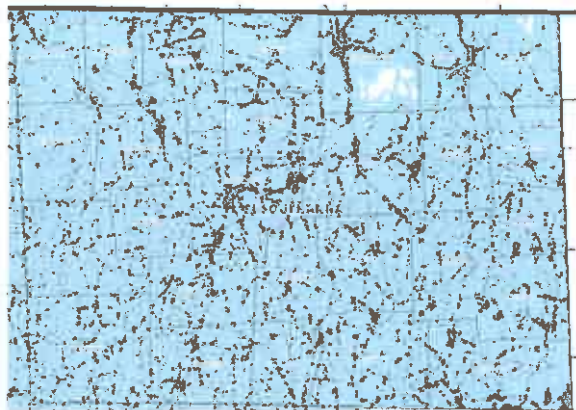
Pennsylvania has a robust regulatory framework in place that has served as a model for other shale gas producing states. Pennsylvania's policymakers – both within the General Assembly and regulatory agencies – have worked over the past fifteen years to modernize a host of statutes and regulations to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

Petitioners Seek to Ban Natural Gas Development

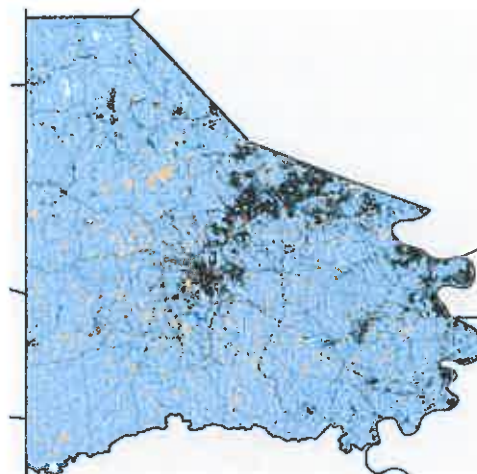
Pennsylvania already has among the strictest setback distances in the nation. Enhanced and adopted as part of Act 13 of 2012, the setback distances represented a collaborative effort put forth and supported by members of industry, environmental organizations and local government associations. The setbacks 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 or Department) 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.

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. Consider the following two counties, among the most rural in the Commonwealth, and how the petitioners' designed setbacks would render their developable land (*hint: all shaded blue acreage would be prohibited from surface development*):



Susquehanna County



Washington County

It is important to note that these maps do not include areas within respective counties that may be off-limits to development due to local zoning or other restrictions. 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.

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 has 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

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

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."***

At the April 2025 EQB meeting it was suggested that court decisions subsequent to the Department's statements above may require a re-examination of those statements. Reference was made to the Pennsylvania Supreme Court's decision in *Marcellus Shale Coal. v. Dep't of Env't Prot.*, 292 A.3d 921 (Pa. 2023). While Petitioners quote extensively from one of the opinions in that case (often out of context) those quotes are taken from an opinion that does not represent a majority opinion of the Court. These quotations represent the views of only two justices and are pointedly rejected by a majority of the Court. Accordingly, there is no basis for a re-evaluation of the Department's long-standing position.

Regardless of the Department's evolving interpretation of when it conducts a legal determination of a petition, nothing precludes the EQB from applying commonsense and recognizing that the petitioners' request far exceeds the EQB's statutory authority. The recently enacted state budget provides \$18 million in new funding to oversee and regulate Pennsylvania's oil and gas industry. It defies logic that the General Assembly would have appropriated any of this money to be spent by the Department to "study" banning the very industry it is charged with overseeing. The Department's abdication of responsibility in drawing the appropriate legal conclusion is not leave for the members of the EQB to do the same.

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.



Petitioners' Ban of Natural Gas Development Conflicts with Oil and Gas Act

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

Setting aside the issue of whether the EQB has the statutory authority to undertake the requested action, it is clear that the petitioners bear the burden of proof that their submitted studies compel action by the EQB (and by extension, the Department). The petitioners have failed to meet this burden, relying not on empirical data and sampling, but rather vague assertions of correlation and causation that fail to meet basic scientific rigors.



To have a health impact, there needs to be at least a threshold level of pollution in the environment and a pathway of that pollution to a person who then needs to be exposed to a harmful dose. These studies ignore these fundamental elements of health impacts. Instead, they rely on publicly available data such as locations of well sites and mapped distances to people to assume harmful exposures which the actual air data shows do not exist. A large body of air monitoring data has been collected by many reliable and objective sources, concurrent with the development of the Marcellus Shale, and has shown no concentration even close to levels of concern for human health.

Instead of using this actual data, the studies submitted by the petitioners rely on subjective modeling, unverified assumptions, and data manipulation.

Finally, the vast majority of the submitted studies pre-date the modern regulatory framework that has been put in place to oversee the unconventional natural gas industry. Submitting studies and drawing conclusions from activities that pre-date Act 13 of 2012 (a comprehensive re-write of Pennsylvania's Oil and Gas Right), pre-date the 2016 Chapter 78a regulatory re-write, and pre-date the adoption of critical permits such as the 2019 GP-5A air quality permit for well pads, renders these (correlation) conclusions useless.

Conclusion

The mere contemplation of this petition sends a chilling message to Pennsylvania's business and investment community. It lends credence to those that wish to harm Pennsylvania property owners, while creating distress for those who depend on the industry for their livelihood and all citizens who depend on access to clean and affordable home-grown energy.

It further lends credence to those who claim, inaccurately, that Pennsylvania elected officials and regulators have not capably regulated and overseen this industry.

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

