

# ALERT

## ENERGY & NATURAL RESOURCES



## Groups Petition Environmental Quality Board for Full-Cost Bonding for Oil & Gas Well Plugging

On September 14, 2021, the Sierra Club, PennFuture, Clean Air Council, Earthworks and other groups (Petitioners) submitted two parallel rulemaking petitions to Pennsylvania’s Department of Environmental Protection (DEP) asking the Environmental Quality Board (EQB) to require full-cost bonding for conventional and unconventional oil and gas wells, for both new and existing wells. The petitions do not address or consider the permit surcharges and other funding mechanisms for plugging wells, including the federal infrastructure bill that is expected to provide millions of dollars to plug abandoned wells.

### Background

The Pennsylvania General Assembly addressed and increased bonding in 2012. Under Act 13, well owners/operators are required to file a bond for each well they operate or a blanket bond for multiple wells. Currently, the bond amount for conventional wells is \$2,500 per well, with the option to post a \$25,000 blanket bond for multiple wells. 72. P.S. §1606-E. For unconventional wells, the current bond amount required varies by the total well bore length and the number of wells, and is limited under the statute to a maximum of \$600,000 for more than 150 wells with a total well bore length of at least 6,000 feet. 58 Pa.C.S. §3225(a)(1)(ii). EQB has statutory authority to adjust these amounts every two years to reflect the projected costs to the Commonwealth of plugging the well.

### Proposed Changes to Bond Amounts

The Petitioners contend that a lack of full-cost bonding has resulted in the abandonment of thousands of wells and that such wells pollute the environment and adversely affect the health of communities, and allege that the EQB has an obligation to increase bond amounts pursuant to the petition under the Environmental Rights Amendment. Pa. Const. art. I, § 27. Petitioners argue that increased bond amounts would encourage operators to plug non-producing wells or provide funds for the state to plug wells if an operator does not plug them.

The Petitioners rely upon the EQB’s authority to adjust a well’s bond “every two years to reflect the projected costs to the Commonwealth of plugging the well” (58 Pa.C.S. § 3225(a)) to propose a dramatic increase in bond amounts, applying the increases retroactively.

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### *Petition for Full-Cost Bonding for Conventional Wells*

The petition for conventional well bonding seeks to amend 25 Pa. Code § 78.302.

The petition requests the bond increase from \$2,500 to \$38,000 per well and the blanket bond increase from \$25,000 to the sum of the applicable individual bond or security amount required for each well. For example, a blanket bond for 10 wells at \$38,000 per well would total \$380,000. The Petitioners contend that the proposed bond amount is supported by an expert analysis of average well plugging costs from 1989 to 2020. The expert report concludes that the bond should be raised to \$25,000 and \$70,000, for conventional and unconventional wells respectively. The Petition notes, however, that \$38,000 is in line with DEP's estimate of \$33,000 for its average historical cost of plugging abandoned/orphaned conventional wells.

The amendment requested would apply to new as well as existing wells drilled after April 17, 1985. The amendment also would require DEP to report to EQB every two years (four years, if two is not feasible) whether EQB should adjust the bond amount.

### *Petition for Full-Cost Bonding for Unconventional Wells*

The petition asks EQB to adopt a new regulation for unconventional wells in 25 Pa. Code Chapter 78, which would mirror an amended regulation for conventional wells, even though 25 Pa. Code § 78a.302 already exists and would contradict the proposed new regulation.

The Petitioners want EQB to increase the bond from the current range, which starts at \$4,000 per well, to \$83,000 per unconventional well. Blanket bonds would equal the sum of the applicable individual bond or security amount required for each well. For example, a blanket bond for 10 wells at \$83,000 per well would total \$830,000. The Petitioners rely on substantially the same analysis and rationale used in their petition for conventional wells to support the increased bond amounts.

Like the petition for conventional wells, the regulation would apply to new and existing unconventional wells drilled after April 17, 1985 and would require DEP to report to EQB every two years (four years, if two is not feasible) whether EQB should adjust bond amounts.

### What happens next?

Per the EQB Petition Policy, as set forth in the regulations at 25 Pa. Code Chapter 23, DEP has 30 days from receipt of the petitions to determine whether the petitions are complete and if they request an action that can be taken by the EQB that does not conflict with federal law. If the DEP determines the petitions meet the above conditions, the EQB will be informed of the petition for rulemaking and the nature of the request. At the next EQB meeting occurring at least 15 days after the Department's determination, the Petitioners may make a brief oral presentation and DEP will make a recommendation whether the EQB should accept the petition.

Babst Calland will be tracking these petitions and subsequent actions taken by DEP and the EQB. If you have any questions regarding the potential regulatory changes described in this *Alert*, please contact Kevin Garber at (412) 394-5404 or [kgarber@babstcalland.com](mailto:kgarber@babstcalland.com); Sean McGovern at (412) 394-5439 or [smcgovern@babstcalland.com](mailto:smcgovern@babstcalland.com); or Jean Mosites at (412) 394-6468 or [jmosites@babstcalland.com](mailto:jmosites@babstcalland.com).

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