

STATEMENTS OF POLICY

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 23]

Processing Rulemaking Petitions

The Environmental Quality Board (Board) has adopted amendments to its statement of policy establishing procedures for the processing of rulemaking petitions, in Chapter 23 (relating to Environmental Quality Board policy for processing petitions—statement of policy). These procedures apply to the processing of petitions to initiate a rulemaking proceeding for the issuance, amendment, or repeal of a regulation administered and enforced by the Department of Environmental Protection (Department), in accordance with section 1920-A of the Administrative Code of the 1929 (71 P. S. 510-20).

The Board adopted the final amendments at its meeting of June 20, 2000.

A. *Effective Date*

The policy amendments will be effective upon publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information contact Sharon K. Trostle, Regulatory Coordinator, Department of Environmental Protection, 15th Floor, Rachel Carson State Office Building, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 783-1303, or Richard P. Mather, Director, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). The final statement of policy is available electronically through the Department's website (<http://www.dep.state.pa.us>).

C. *Statutory Authority*

The authority for the amendments is section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

D. *Purpose of the Amendments*

The amendments clarify a number of sections of the statement of policy, particularly with respect to petitions for the redesignation of streams under Chapter 93 (relating to water quality standards) and The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

A notice of proposed amendments to the policy was published on April 1 with a 30-day public comment period that closed on May 1. There were no public comments received. One change was made to the final amendments in § 23.5 (relating to Board determination) at the suggestion of Senator Mary Jo White, a member of the Board. This change is summarized in the corresponding paragraph in this Preamble.

Section 23.1. Petitions.

This section is amended to clarify the information that petitioners must submit to meet the completeness requirements of the policy. Paragraph (5) contains the data submission requirements necessary for stream redesigna-

tion petitions. These requirements more closely reflect the provisions of the antidegradation regulations in Chapter 93. Adding this information in § 23.1 negates the need for Appendix A, which has been deleted. In addition, the text of § 23.9 (relating to special procedures) is updated and relocated as new subsection (b).

Section 23.3. Notification.

Section 23.3 has been revised to clarify that the Department's determination that a petition is inappropriate for submittal to the Board is based on the petition not meeting each of the three conditions in § 23.2 (relating to Departmental review).

Section 23.5. Board Determination.

This section provides conditions under which the Board may refuse to accept a petition. Paragraph (3) was amended in the final version of the policy to clarify that a petition can be rejected by the Board if the requested action is not appropriate due to policy or regulatory considerations.

Section 23.6. Notice of Acceptance and Department Report.

This section adds language pertaining to the Department's responsibility to publish notice of acceptance of a petition in the *Pennsylvania Bulletin* within 30 days from the date of acceptance by the Board. Paragraph (1) clarifies the steps the Department will take in preparing an evaluation report for those petitions that are not stream petitions, and it maintains the 60-day time period for preparation of the report. Paragraph (2) is new and applies to stream redesignation petitions. It indicates that the Department will publish notice of its intent to assess the waters subject to the evaluation before a draft evaluation report is prepared. There is no time requirement for preparation of a draft evaluation report because the period of assessment for each stream will vary depending upon the amount of data that will need to be collected.

Section 23.8. Board Consideration.

Section 23.8 clarifies that the Department will prepare a recommendation based on its report and any comments received from the petitioner following the petitioner's 30-day review opportunity on the report. The section further clarifies that the recommendation will be in the form of a proposed rulemaking if a change to a regulation is recommended. The proposed rulemaking is to be developed for Board consideration within 6 months from the date the report was mailed to the petitioner. If no change to a regulation is recommended, the Department will present its recommendation to the Board at the first meeting that is held at least 45 days after the Department has mailed its report to the petitioner.

JAMES M. SEIF,
Chairperson

(Editor's Note: The regulations of the Department, 25 Pa. Code Chapter 23, are amended by amending a statement of policy in §§ 23.1—23.8 and by deleting § 23.9 and Appendix A to read as set forth in Annex A.)

Fiscal Note: 7-510. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL
PROTECTION****Subpart A. PRELIMINARY PROVISIONS****ARTICLE I. ADMINISTRATIVE PROVISIONS****CHAPTER 23. ENVIRONMENTAL QUALITY
BOARD POLICY FOR PROCESSING
PETITIONS—STATEMENT OF POLICY****§ 23.1. Petitions.**

(a) Petitions shall be submitted on forms supplied by the Department to the Secretary of the Department of Environmental Protection, Rachel Carson State Office Building, Post Office Box 2063, Harrisburg, Pennsylvania 17105-2063, and shall contain the following information:

(1) The petitioner's name, address and telephone number.

(2) A description of the action requested in the petition and one of the following:

(i) Suggested regulatory language if the petition requests that the EQB adopt or amend regulations.

(ii) A specific citation to the regulations to be repealed if the petition requests that the EQB repeal existing regulations.

(3) The reason the petitioner is requesting this action from the EQB, including factual and legal contentions as well as supporting documentation which establish the petitioner's justification for the requested action by the EQB.

(4) The types of persons, businesses and organizations likely to be impacted by this proposal.

(5) For petitions for redesignation of streams under Chapter 93 (relating to water quality standards) and The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the petition shall include the following information to satisfy paragraph (3):

(i) A clear delineation of the watershed or stream segment to be redesignated, both in narrative form and on a map.

(ii) The current designated uses of the watershed or segment.

(iii) The requested designated uses of the watershed or segment.

(iv) Available technical data on instream conditions for the following: water chemistry, the aquatic community (benthic macroinvertebrates or fishes, or both) or instream habitat. If these data are not included, provide a description of the data sources investigated.

(v) A description of existing and proposed point and nonpoint source discharges and their impact on water quality or the aquatic community, or both. The names, locations and permit numbers of point source discharges and a description of the types and locations of nonpoint source discharges should be listed.

(vi) Information regarding any of the qualifiers for designation as High Quality Waters (HQ) or Exceptional Value Waters (EV) in § 93.4b (relating to qualifying as high quality or exceptional value waters) used as a basis for the requested designation.

(vii) A general description of land use and development patterns in the watershed. Examples include the amount

or percentage of public lands (including ownership) and the amount or percentage of various land use types (such as residential, commercial, industrial, agricultural and the like).

(viii) The names of all municipalities through which the watershed or segment flows, including an official contact name and address.

(ix) Locational information relevant to subparagraphs (iv)—(viii) (except for contact names and addresses) displayed on maps, if possible.

(b) The general procedures in this chapter apply to petitions unless the EQB adopts specific procedures for a particular type of petition. Special procedures have been adopted for petitions requesting that the EQB designate an area as unsuitable for mining activity. These petitions are reviewed under Chapter 86 (relating to surface and underground coal mining; general).

§ 23.2. Departmental review.

The Department will examine the petition to determine if it meets the following conditions:

(1) The petition is complete as required by § 23.1 (relating to petitions).

(2) The petition requests an action that can be taken by the EQB.

(3) The requested action does not conflict with Federal law.

§ 23.3. Notification.

The Department will notify the EQB and petitioner of its determination within 30 days of receipt of the petition. If the Department determines that the petition is not appropriate for submittal to the EQB because it does not meet each of the conditions in § 23.2 (relating to Departmental review), the Department's notification shall state the reasons for its determination and give the petitioner 30 days to complete the petition or modify the request.

§ 23.4. Oral presentation.

At the next EQB meeting occurring at least 15 days after the Department's determination that a petition is appropriate for consideration by the EQB, the Chairperson of the EQB shall inform the EQB of the petition for rulemaking, the nature of the request and the petitioner. The Chairperson shall give the petitioner or the petitioner's representative the opportunity to make a 5-minute oral presentation on why the EQB should accept the petition. The Department will also make a recommendation on whether the EQB should accept the petition.

§ 23.5. Board determination.

The EQB may refuse to accept a petition if it determines that one or more of the following conditions exist:

(1) The EQB has within the previous 2 years considered the issue addressed by the petition for rulemaking as part of an earlier decision concerning the adoption, amendment or deletion of a regulation.

(2) The action requested by the petitioner concerns a matter currently in litigation.

(3) The requested action is not appropriate for rulemaking by the EQB due to policy or regulatory considerations.

(4) The petition involves an issue previously considered by the EQB, and it does not contain information that is new or sufficiently different to warrant reconsideration of that decision. If a petition does present new or suffi-

ciently different information, this information must have been either unavailable at the time of the EQB's previous decision or not contained in the record of the proceeding in which the previous decision was made.

§ 23.6. Notice of acceptance and Department report.

If the EQB accepts the petition, a notice of acceptance will be published in the *Pennsylvania Bulletin* within 30 days. In addition, a report will be prepared in accordance with one of the following procedures:

(1) *Petitions other than stream redesignation petitions.* The Department will prepare a report evaluating the petition within 60 days. If the report cannot be completed within the 60-day period, at the next EQB meeting the Department will state how much additional time is necessary to complete the report. The Department's report will include a recommendation on whether the EQB should approve the action requested in the petition. If the recommendation is to change a regulation, the report will also specify the anticipated date that the EQB will consider a proposed rulemaking.

(2) *Stream redesignation petitions.* The Department will publish notice of its intent to assess the waters subject to evaluation. The notice will include a request for submittal of technical data that interested persons have. Following the assessment and review of all technical

data, the Department will prepare a draft evaluation report.

§ 23.7. Response to report.

Upon completing the report, the Department will send a copy of the report to the petitioner. Within 30 days of the mailing of the report, the petitioner may submit to the Department a written response to the report.

§ 23.8. Board consideration.

The Department will prepare a recommendation to the EQB based on the report and comments received from the petitioner. If regulatory amendments are recommended, the Department will develop a proposed rulemaking for EQB consideration within 6 months after the Department mailed its report to the petitioner. If regulatory amendments are not recommended, the Department will present its recommendation and basis to the EQB at the first meeting occurring at least 45 days after the Department mailed its report to the petitioner.

§ 23.9. (Reserved).

APPENDIX A. (Reserved)

[Pa.B. Doc. No. 00-1635. Filed for public inspection September 22, 2000, 9:00 a.m.]