

### 2025 Environmental and Energy Law Forecast

#### PENNSYLVANIA

##### How The Shapiro Administration Will Respond to Changing Federal Priorities

*Diana A. Silva, Esq. and Reilly Wright, Esq.*

Despite the anticipated shift on environmental policies and enforcement that is expected at the federal level, we anticipate that Governor Shapiro's administration will continue to prioritize its state-led environmental policies in Pennsylvania in the year ahead. The 2024-2025 budget includes \$50 million in funding to clean waterways across Pennsylvania, \$11 million to continue finding and capping abandoned wells, and \$10.5 million to speed up the Pennsylvania Department of Environmental Protection (PADEP) permitting processes. PADEP will launch two new programs in 2025 to address the Department's permit backlog: the [Streamlining Permits for Economic Expansion and Economic Development \(SPEED\) program](#) and Chapter 105 Joint Permit Pilot Program. The SPEED program provides permit applicants the ability to choose to have a PADEP-verified and qualified professional conduct an initial review of various environmental permit applications, which is anticipated to significantly reduce the total time between permit application and issuance. Likewise, the Chapter 105 Joint Permit Pilot Program aims to reduce errors in applications and cut the total time to process Water Obstruction and Encroachment General Permits by 63 days. These new programs will build upon the Shapiro administration's efforts in 2024 to modernize and streamline permitting in the Commonwealth, including the PAYback program, an online system that provides a money-back guarantee to applicants whose permits applications are not processed by PADEP in the allotted review period.

In March of 2024, Governor Shapiro also introduced his energy plan to lower utility bills and reduce carbon emissions across the state. This plan includes the Pennsylvania Climate Emissions Reduction Act (PACER) that would remove the state from the Regional Greenhouse Gas Initiative (RGGI) and establish a Pennsylvania-specific cap-and-invest program. Additionally, the Governor's energy plan includes the Pennsylvania Reliable Energy Sustainability Standard (PRESS) intended to create a more reliable energy grid by incentivizing investments in state renewable energy, nuclear power, and natural gas projects. While the Pennsylvania Legislature did not vote on the 2024 bills introducing Governor Shapiro's energy plan, the anticipated decreased focus on environmental policies and enforcement at the federal level may cause a resurgence of interest in similar state-led energy initiatives over the next four years.

## **PADEP's SPEED Program Seeks to Improve Pennsylvania's Permitting Process but Significant Questions Remain**

***Todd Kantorczyk, Esq. and Reilly Wright, Esq.***

In July 2024, the Shapiro administration announced the [Streamlining Permits for Economic Expansion and Development \(SPEED\) program](#) as part of an effort to reduce current delays associated with certain permits issued by the Pennsylvania Department of Environmental Protection (PADEP). The SPEED program, authorized by the 2024-25 budget legislation, allows applicants to have an initial review of specific environmental permits conducted by qualified professionals approved by PADEP. Depending on the number of available qualified professionals for the specific permit, PADEP will either assign a qualified professional or the applicant will be able to choose from a list of three provided by PADEP. Regardless, applicants must agree to pay the qualified professional's fees upfront as part of the initial review. After considering the qualified professional's review and recommendation, PADEP, which retains final decision-making authority, will either issue a final permit decision or notify the applicant of any technical deficiencies within the application. Permits eligible for the SPEED program include air quality plan approvals (state-only), earth disturbance permits, individual water obstruction and encroachment permits, and dam safety permits.

In October 2024, PADEP began accepting bids for qualified professional reviewers and plans to begin implementing the SPEED program in 2025. As defined in the SPEED program, a qualified professional must have, among other things an applicable professional license and at least five years of relevant permitting experience. Significant questions remain, however, regarding how PADEP will determine and address potential conflicts of interest between the qualified professional and applicant, and whether such rules will dissuade experienced consultants from applying. Notably, the deadline to apply to be a qualified professional was recently extended to March 31, 2025, and it remains to be seen whether enough consultants will apply by then to improve permitting timetables in a meaningful way.

## **Pennsylvania's Implementation of Climate Change Initiatives**

***Jessica D. Hunt, Esq. and Reilly Wright, Esq.***

On March 1, 2024, the Pennsylvania Department of Environmental Protection (PADEP) released its Priority Climate Action Plan (the Plan) to be eligible to receive federal funding pursuant to the United States Environmental Protection Agency's Climate Pollution Reduction Grant Program authorized by the Inflation Reduction Act. The Plan identifies the following nine cost-effective, ready-to-implement greenhouse gas (GHG) reduction measures that PADEP believes will significantly reduce GHG emissions: (1) industrial electrification, efficiency, and reducing process emissions; (2) incentivizing and increasing the production and use of low-carbon fuels, such as hydrogen and biomethane; (3) developing on-site renewable energy and energy storage systems; (4) carbon capture utilization and storage; (5) reducing fugitive methane emissions; (6) leveraging clean and renewable resources in the region to achieve a net zero electricity generating sector; (7) decarbonizing buildings through energy efficiency, fuel switching, and adaptive reuse; (8) transitioning light-duty conventional internal combustion engine vehicles to electric vehicles and accelerating the adoption of zero-carbon medium- and heavy-duty vehicles; and (9) reducing emissions from the transportation sector by reducing vehicle miles traveled for passenger vehicles. PADEP has estimated that the implementation of these measures will result in a reduction of 102.43 million metric tons

of carbon dioxide equivalent emissions by 2030 and 2,023.5 million metric tons of carbon dioxide equivalent emissions by 2050.

PADEP is beginning to implement the measures identified in the Plan. In early 2025, PADEP will be releasing a new grant program, entitled the Reducing Industrial Sector Emissions in Pennsylvania Program (RISE PA), that will award up to \$360 million for industrial decarbonization projects aimed at decreasing GHG and co-pollutant emissions from the industrial sector in Pennsylvania. PADEP anticipates providing multiple funding opportunities annually for projects that can be completed prior to April 2029. Additional information regarding PADEP's RISE PA Program can be found [here](#).

If you have any questions regarding climate change initiatives in Pennsylvania or the RISE PA Program, please contact [Jessica Hunt](#) at 484-430-2338 or [Reilly Wright](#) at 484-430-4996.

## **Act 2 Changes Anticipated in 2025**

***Jonathan H. Spergel, Esq. and Technical Consultant Will Hitchcock***

In July 2024, the Pennsylvania Department of Environmental Protection (PADEP) proposed extensive changes to the regulations implementing Pennsylvania's Land Recycling Program, more commonly known as the Act 2 program. These proposed changes were commented on by the Pennsylvania Independent Regulatory Review Commission (IRRC) in October 2024, and based on the remaining steps in the Pennsylvania rulemaking process, it is likely that the proposed regulatory revisions will become effective in 2025. The regulatory changes include: (i) the addition of new statewide health cleanup standards (SHSs) in soil and groundwater for certain PFAS substances; (ii) updates to the models, values, and attainment methods for lead-contaminated soils, which will result in more stringent remediation standards for lead in soil; (iii) revisions to the methods for deriving toxicity values for carcinogenic polycyclic aromatic hydrocarbon (PAH) compounds; (iv) newer and more stringent toxicity values for other compounds based on EPA guidance; (v) updates to the sources of toxicity information used by PADEP to develop cleanup standards; and (vi) clarification that drinking water standards become effective as Act 2 cleanup standards upon final publication by the EPA or PADEP.

Additionally, PADEP is currently working to update the Act 2 Technical Guidance Manual and other related guidance documents. Through these updates, PADEP will seek to clarify specific aspects of the Act 2 program, including: (i) what land uses constitute residential or non-residential use; (ii) applicability of vapor intrusion screening values at sites with fluctuating groundwater elevations and/or very shallow sub-slab contamination; (iii) rounding of sample results for demonstrating compliance with cleanup standards; and (iv) remediation of historically-applied pesticides at former agricultural sites.

These upcoming changes have the potential to impact ongoing and future remediation projects in Pennsylvania, and due to the incorporation of the Act 2 cleanup standards in PADEP's Management of Fill Policy, also have the potential to significantly impact construction projects requiring fill importation or exportation. Our firm has been significantly involved in these developments through participation in PADEP's Cleanup Standards Scientific Advisory Board. If you would like to know more about these changes and how they may impact your projects, please contact [Jonathan Spergel](#) or [Will Hitchcock](#).

## **PADEP Expected to Raise the Bar for Residual Waste Coproduct Determinations**

***Rodd W. Bender, Esq.***

In the coming year, the Pennsylvania Department of Environmental Protection (PADEP or the Department) plans to tighten the requirements for materials that would otherwise be regulated as residual waste to qualify as unregulated “coproducts.” Under the residual waste regulations in Pennsylvania Code Title 25, Chapter 287, a coproduct is a secondary material generated by a manufacturing or production process, or a spent material, that is (1) consistently equivalent physically and chemically to an intentionally manufactured product or produced raw material; (2) transferred as a commodity, or used by the generator, as a substitute for the product or raw material either for application to the land (or to produce products applied to the land) or as a fuel; and (3) no more harmful to human health and the environment for such use than the use of the product or raw material. The coproduct provisions include several specific conditions that the proponent must evaluate to demonstrate that its proposed use of a secondary material satisfies these three criteria. Materials that qualify as coproducts are not regulated as a waste when used for the proposed application.

A key difference between the coproduct concept and seeking a permit from PADEP for beneficial use of a residual waste is that qualifying a material as a coproduct is a self-implementing process. In other words, it is up to the proponent to satisfy itself that its proposed use of a material satisfies the coproduct criteria, unlike a permit where a party submits an application to PADEP for review and approval. This self-implementing process carries some risk of enforcement action should PADEP become aware of a coproduct use and question whether the proponent adequately demonstrated that the use satisfies the criteria.

PADEP’s interest in tightening the coproduct requirements has been motivated by several instances over the past few years where produced water (known as “brine”) from oil and gas wells was spread on roads as a purported dust suppressant. In investigating this activity, PADEP determined that none of the oil and gas operators had performed valid coproduct determinations to authorize this land application of brine. The Department has expressed concerns that the effectiveness of brine as a dust suppressant is limited, and that runoff of contaminants in brine following precipitation events can threaten waterbodies and drinking water supplies.

As a result, in its December 2024 Regulatory Update PADEP indicated its intent to propose amendments to the coproduct regulations to ensure that coproduct determinations adequately demonstrate that the material is effective for the proposed coproduct use and is produced from a consistent process. PADEP is currently developing the new regulatory language, which will likely be reviewed by the Department’s Solid Waste Advisory Committee prior to publication in the Pennsylvania Bulletin for public notice and comment.

For more information on this topic, please contact MGKF’s [Rodd Bender](#) at 484-430-5700.

## **PADEP Proposing Changes to Spill Reporting under 25 Pa. Code Section 91.33**

***Jessica D. Hunt, Esq.***

On November 12, 2024, the Environmental Quality Board adopted a proposed rule to clarify the immediate notification requirements for unauthorized discharges that would cause or threaten pollution of waters of the Commonwealth, endanger downstream users, or damage property under 25 Pa. Code § 91.33. The proposed rule would incorporate the Federal list of reportable quantities (RQ) of specific hazardous substances in 40 C.F.R. § 117.3 that, if discharged in a quantity greater than or equal to those quantities, must be immediately reported to the Pennsylvania Department of Environmental Protection. If the hazardous substance is discharged in a quantity less than the RQ, then the proposed rule would require the responsible person to evaluate and document the following five factors to determine that the substance does not cause or threaten pollution, endanger downstream users or cause property damage: (1) the properties of the substance or substances involved, including any harmful effects caused by such substance, the persistence of the substance in the environment, the mobility of the substance in soil and water, and the concentration and quantity of the substance; (2) the location of the discharge including the proximity to nearby waters, the characteristics of the nearby waters, land use, soils and geology, and the presence and qualities of relevant infrastructure, such as spill containment systems; (3) the weather conditions before, during, and after the incident; (4) the presence and implementation of adequate response plans, procedures or protocols; and (5) the duration of the accident or other activity. If any single one or combination of factors can adequately establish that there is no risk of the substance reaching waters of the Commonwealth, such as when a spill occurs into secondary containment or where a spill response plan is used to immediately capture all of a substance with low mobility, then, under the proposed rule, immediate notification would not be required.

The Environmental Quality Board will soon be publishing notice of the proposed rule in the Pennsylvania Bulletin. Interested parties will have an opportunity to submit comments on the proposed rule before it is finalized.

If you would like to learn more about the proposed changes and how they may impact a facility's reporting obligations, please reach out to MGKF's [Jessica Hunt](#) or call 484-430-5700.

---

Please feel free to forward this information to your colleagues and encourage them to subscribe to our mailing list.

This alert is intended as information for clients and other interested parties. It is not intended as legal advice. Readers should not act upon the information contained herein without individual legal counsel.

Portions of this email may contain attorney advertising under the rules of some states.

Copyright © 2025. Manko, Gold, Katcher & Fox, LLP [www.mankogold.com](http://www.mankogold.com)