

2026 Environmental and Energy Law Forecast

PENNSYLVANIA

Final PADEP Environmental Justice Policy Now in Effect

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On January 3, 2026, the final Environmental Justice (EJ) Policy from the Pennsylvania Department of Environmental Protection (PADEP or the Department) took effect (the Final EJ Policy). The Final EJ Policy's adoption follows an implementation period that ran between September 16, 2023 through January 2, 2026 during which PADEP followed an [Interim-Final EJ Policy](#). In conjunction with its publication of the Final EJ Policy, PADEP also issued a lengthy Comment–Response Document addressing input received during the public comment period. PADEP's PennEnviroScreen mapping tool and the guidance document explaining the underlying methodology for identifying EJ Areas have also been updated in conjunction with adoption of the final EJ Policy.

The text of the Final EJ Policy is essentially the same as that of the Interim-Final EJ Policy but includes some clarifying changes. Under the Final EJ Policy, a project that creates an Area of Concern that touches an EJ Area – including a project located within an EJ Area – is deemed a “Trigger Project” that will automatically be a candidate for the policy's Enhanced Public Participation Process in connection with permits, authorizations, or approvals. An Area of Concern is the geographic area measuring half-a-mile in all directions from the perimeter of a project.

PADEP also may exercise its discretion to evaluate other “Opt-In Projects” through the Enhanced Public Participation Process. Notably, Concentrated Animal Feeding Operations (CAFOs) are now considered Opt-In Projects and are no longer considered Trigger Projects. Projects in areas that were previously designated as EJ Areas, but are no longer designated as EJ Areas, are now also considered to be Opt-In Projects.

Under the Final EJ Policy, an EJ Area is defined as census block groups that score at or above a certain threshold using a set of weighted indicators, and census block groups that lack overall scores due to data gaps, but which have very high pollution burdens. The Final EJ Policy clarifies that “the EJ Area and Area of Concern at the time a permit application or permit renewal is first submitted by the applicant will be used for permits.”

PADEP's Comment–Response Document provides useful clarification on some key topics. In response to comments challenging PADEP's authority to adopt the EJ Policy, the Department emphasized that the EJ Policy “does not add any additional regulatory requirements” and “is nonbinding and places an emphasis

on public outreach and public participation.” PADEP also states that the EJ Policy “does not create any authority for the Department to rely on for the promulgation of new regulations,” and that the Department “cannot create new standards for granting or denying permits without specific statutory authority.” Similarly, PADEP emphasizes that the EJ Policy does not provide the Department with any new or different enforcement tools. The Comment–Response Document also makes clear that a project’s involvement in the Enhanced Public Participation Process does not extend deadlines for PADEP decision-making.

One of the major changes to the PennEnviroScreen mapping methodology is that census block groups with high uncertainty for certain population indicators are no longer excluded from the scoring evaluation. The Final EJ Policy explains that PADEP will *periodically* update the data that underlies PennEnviroScreen, resulting in changes to EJ Areas. The Department does not specify how often such data will be updated and will not offer a formal comment period when updates relate to indicators already included within the model. PADEP, however, intends to hold a public comment period whenever there are proposed substantive changes to its methodology, such as adding indicators or changing the weighting of indicators.

PADEP will review the Final EJ Policy every five years. If you would like to understand how the Final EJ Policy may impact your project or permit application, please contact [Sean Kellem](#), [Will Hitchcock](#), or [Michael Dillon](#) of our firm.

Act 2 Changes Anticipated in 2026

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

PADEP is expected to present final versions of two proposed rulemakings to the Environmental Quality Board (EQB) in March 2026 that, once adopted, will result in extensive changes to the regulations implementing Pennsylvania’s Land Recycling Program, more commonly known as the Act 2 program. These rulemakings have already gone through the public comment process, but interested parties will have one final opportunity to submit comments for consideration by the EQB.

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 SHSs 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 Act 2 cleanup standards; (vi) clarification that drinking water standards become effective as Act 2 cleanup standards upon final publication by the EPA or PADEP; and (vii) revised SHSs for hexavalent chromium in soil.

Additionally, PADEP has been working with EPA to update the 2004 Memorandum of Agreement (MOA) between the two parties that described how the Act 2 remediation process can be used to satisfy certain requirements under the following federal programs: (1) Resource Conservation and Recovery Act (RCRA) Corrective Action; (2) qualifying for the EPA enforcement bar pursuant to Section 128(b) of the Comprehensive Environmental Response Compensation Liability Act (CERCLA); and (3) the investigation and remediation of PCBs pursuant to the Toxic Substances Control Act (TSCA). The update is expected to address a number of inconsistencies between the federal and Act 2 programs, such as: (i) vapor intrusions

screening and modeling approaches; (ii) the use of risk-based remediation targets for groundwater; (iii) ecological risk screening approaches; and (iv) timeliness for remediation.

These upcoming regulatory changes have the potential to impact ongoing and future remediation projects in Pennsylvania. In addition, due to the incorporation of the Act 2 SHSs in PADEP's Management of Fill Policy, these changes also have the potential to significantly impact construction projects requiring fill importation or exportation. Our firm has been significantly involved in these regulatory 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](#).

PA Budget Legislation Expands SPEED Program and “Deemed Approvals” for Certain Permits

Todd D. Kantorczyk, Esq.

This past year, part of the Pennsylvania budget compromise signed by Governor Shapiro expands the [Streamlining Permits for Economic Expansion and Development \(SPEED\) program](#) and adds a new deemed approval process for eligible permits. Regarding the SPEED program, Act 45 added three new permits that are eligible to have an initial review of specific environmental permits conducted by qualified professionals approved by PADEP. The three new permits are:

- Storage tanks permitted under Chapter 245
- Short-term construction permits for non-coal surface mines permitted under Chapter 77, and
- Concentrated animal feeding operations permitted under Chapter 92

Act 45 also requires PADEP to issue decisions on the current set of air quality general permit plan approvals and permits within 30 days of application, so long as PADEP identifies any technical deficiencies within 20 days of application and the applicant responds to the technical deficiencies within 25 days of application. If PADEP fails to issue a determination within the 30-day window, the application is deemed approved. PADEP can extend the 30-day window one time to 35 days with consent of the applicant.

Similarly, Act 45 requires PADEP to issue a decision on a renewal application for certain NPDES general permits within 60 days of application, otherwise the application will be deemed approved. PADEP must identify any technical deficiencies within 40 days of submission, and the applicant must respond to the technical deficiencies within 50 days of submission. The review time period can be extended by an agreement with the applicant. The NPDES general permit renewals subject to this deemed approval section are:

- Discharges of stormwater associated with industrial activities (PAG-03)
- Discharges from small flow treatment facilities (PAG-04)
- Discharges from petroleum product contaminated groundwater remediation systems (PAG-05), and
- Wet weather overflow discharges from combined sewer systems (PAG-06)

Paying for Rain: Are Stormwater Charges a Tax or Fee? PA Supreme Court to Decide in 2026

Diana A. Silva, Esq.

For the last three years, the Pennsylvania Supreme Court has been grappling with whether stormwater charges imposed by local municipalities and municipal authorities throughout the Commonwealth are a tax or a fee, evaluating the still-pending case *Borough of West Chester v. Pa. State System of Higher Education and West Chester University of Pa. of the State System of Higher Education*, Dkt. No. 9 MAP 2023. In [MGKF's 2024 Environmental Forecast](#), we previously reported on this important case, soon after it was taken up on appeal from the Commonwealth Court to the Pennsylvania Supreme Court. Briefing from all parties – including several amicus curiae – is now complete, and oral argument was held before the Pennsylvania Supreme Court on September 11, 2024. A final ruling from the Pennsylvania Supreme Court is anticipated to be issued in 2026.

The foundational question the Pennsylvania Supreme Court must decide is whether stormwater charges, which some have dubbed a “rain tax,” are a fee for service provided by a municipality or municipal authority, or instead, are an unauthorized separately levied tax.

The Borough and its supporters argue stormwater charges are a “fee” tied to each property owner’s respective “use” of municipal stormwater infrastructure, generally calculated by the amount of paved/impervious surfaces on a property. The larger the surface area of pavement or structures on a property, the higher the “fee” that is charged, allegedly commensurate with the higher “use” of the stormwater infrastructure. The Borough’s calculus – a similar version of which has been adopted by dozens of other municipalities and municipal authorities throughout the Commonwealth – typically results in large institutional, commercial, and industrial properties that have significant impervious areas being charged significantly higher “fees” as they are considered more significant “users” of the municipal stormwater infrastructure than single-family properties. The political balance scale also typically favors charging higher stormwater charges to a select group of property owners in a municipality – usually local businesses and institutions – rather than raising local property taxes on all residents.

On the other side of the argument is the Pennsylvania State System of Higher Education and West Chester University, represented by the Pennsylvania Attorney General, together with aligned institutional, commercial, and industrial groups. The University and its supporters argue that the Borough’s stormwater charge is a classic municipal tax or assessment because it is assessed on all properties with no possibility for a property to opt out. Moreover, the Borough could not show a concrete, direct, or discrete benefit that a property owner receives that is specifically tied to the stormwater charge imposed. Rather, the Borough only pointed to generalized community-wide benefits – like decreased flooding – benefits that are shared equally by all property owners and residents, and that typically are costs borne by the municipal general fund generated by tax revenue. The University also argued the Borough’s stormwater charge was also inappropriately high and not commensurate with any alleged “benefit” property owners receive from using the Borough’s stormwater systems.

The outcome of the *Borough of West Chester* case will dictate how stormwater charges can be levied throughout the Commonwealth. If the Pennsylvania Supreme Court determines that stormwater charges are an unauthorized tax, rather than a fee for service, tax-exempt entities, like West Chester University, will not be required to pay stormwater charges. In contrast, if stormwater charges are held to be a fee for

service, tax-exempt entities will be treated the same as any other property owner and must pay the fee. Even if the Pennsylvania Supreme Court finds that stormwater charges are fees rather than taxes, those stormwater fees must still be commensurate with the actual service being provided to a particular property, and tied specifically to stormwater infrastructure needs and uses, rather than generalized charges devoid from property-specific conditions. A decision in the *Borough of West Chester* case will have far-reaching implications for stormwater projects, maintenance, and operations throughout the Commonwealth.

Pennsylvania Withdraws from RGGI, but a State-Specific Cap-and-Trade Program may be in the Commonwealth's Future

Michael Dillon, Esq. and Kelly A. Hanna, Esq.

In a significant move for energy policy and climate action, Pennsylvania has officially announced its withdrawal from the Regional Greenhouse Gas Initiative (RGGI), a cap-and-trade program aimed at reducing greenhouse gas emissions in the Northeastern and Mid-Atlantic regions. RGGI was established in 2009, facilitating what is touted as a cooperative, market-based approach to controlling greenhouse gas emissions from the power sector. Through a cap-and-trade system, participating states set a limit on emissions and distribute or auction off allowances that power plants must hold to emit CO₂.

In 2019, former Governor Tom Wolf signed an executive order directing Pennsylvania's Department of Environmental Protection (PADEP) to develop rules enabling the state's participation in RGGI. PADEP spent two years producing the CO₂ Budget Trading Program, which was finalized and immediately subject to legal challenges in April 2022. The Program's implementation was stayed pending the ongoing litigation and has never gone into effect. In 2023, a court order permanently enjoined PADEP from implementing the program on the basis that it constituted an unlawful tax on regulated entities. The Shapiro administration appealed the decision to the Pennsylvania Supreme Court, where it remains pending.

However, since filing the appeal, Governor Shapiro and democratic state representatives agreed to withdrawal from RGGI in the budget-enabling fiscal code bill, HB 416, to finalize the state's delayed \$50.1 billion budget for fiscal year 2025-2026. PADEP has since filed applications with the court to discontinue its appeal on the basis that it is now moot. Democrats' acquiescence to passage of the budget without RGGI may be due in part to the fact that Governor Shapiro has proposed an energy plan of his own, which would include a state-specific cap-and-trade program. The plan, referred to as the Pennsylvania Climate Emissions Reduction Program (PACER) was introduced in the House in April 2025 and would require support from the GOP to pass.

Given that PADEP's CO₂ Budget Trading Program never went into effect, the state's withdrawal from RGGI does not alter the substantive requirements of its greenhouse gas producers. However, they should be on the lookout for the Shapiro Administration's and Democratic lawmakers' continued advocacy to pass and implement PACER and other climate initiatives in 2026.

Changes on the Horizon to PADEP's Air Quality Civil Penalty Policies

Jessica D. Hunt, Esq.

The Pennsylvania Department of Environmental Protection (PADEP) is planning to make substantive revisions to its air quality civil penalty policies in early 2026 that will, among other changes, significantly increase the amount of base civil penalties for air quality violations. The policies that are being revised include the following: the Guidance for Application of Regional Civil Assessment Procedures; the Compliance Assurance Policy for Cement Kilns with Continuous Emission Monitoring Systems (CEMS); the Compliance Assurance Policy for CEMS on Fluid Catalytic Cracking Units; and the Compliance Assurance Policy for CEMS on Combustion Units (collectively referred to as the Policies).

There are four noteworthy changes. First, PADEP is proposing to add provisions to the Policies that would automatically increase civil penalties for inflation. After January 1, 2028, and every two years thereafter, PADEP proposes to apply an inflation adjustment multiplier to penalties calculated under these Policies based on the Consumer Price Index for All-Urban Consumers. The inflation adjustment would not apply to the economic benefit of noncompliance or the cost to PADEP portions of the penalty.

Second, PADEP is proposing to increase the civil penalty amounts for each category of violation under the Policies. The amount of the increase depends on which policy is being updated. For example, under the applicable Compliance Assurance Policy, PADEP is proposing to increase the visible emission and data non-availability penalties applicable to cement kilns with CEMS by 100 percent, versus a 50 percent increase for emissions and data availability violations for combustion units with CEMS. PADEP is generally proposing a 40 percent increase across all violation categories in the Guidance for Application of Regional Civil Assessment Procedures. Civil penalties remain capped at the statutory maximum of \$25,000 per day per violation.

Third, PADEP is proposing to modify the way in which emissions-related civil penalties are calculated under the Guidance for Application of Regional Civil Assessment Procedures. Under the proposed changes, the amount of the civil penalty for excess nitrogen oxide and volatile organic compound emissions will no longer be based on whether the violations occurred during ozone or non-ozone season and instead PADEP will apply a set dollar amount per pound based on the attainment classification of the area in which the emissions occurred. PADEP is also proposing to include a new alternative methodology for calculating civil penalties for hazardous air pollutant (HAP) emissions for sources that have annual HAP emission limits less than 5 tons per year or short-term emission limits that are equivalent to 5 tons per year or less when expressed on an annual basis. Under this alternative approach, penalties would be calculated based on the percentage of the actual emission rate over the standard, as opposed to the amount of excess emissions, generally resulting in lower civil penalties.

Lastly, PADEP is proposing to add to the Guidance for Application of Regional Civil Assessment Procedures methods for calculating violations for incomplete reports or notifications and for late permit fees.

Copies of the revised draft Policies are available on the [Air Quality Technical Advisory Committee website](#). If you would like to learn more about the proposed changes and how they may impact the Department's calculation of civil penalties, please reach out to MGKF's [Jessica Hunt](#).

Updated Changes to PADEP's 91.33 Spill Reporting Framework Expected in 2026

Todd D. Kantorczyk, Esq. and Jessica D. Hunt, Esq.

Last April, the Pennsylvania Department of Environmental Protection (PADEP), through the Environmental Quality Board (EQB), proposed changes to 25 Pa. Code § 91.33 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. Our Special Alert summarizing the proposed changes can be accessed [here](#). Approximately 1,200 comments were submitted to the EQB on the proposed changes, including comments submitted by the Independent Regulatory Review Commission (IRRC). In general, industry commenters were mostly supportive of the proposed rule, although some commenters requested additional clarification to avoid unnecessary reporting. Other commenters expressed concern that the proposed approach would conflict with PADEP's obligations under The Clean Streams Law and Article I, Section 27 of the Pennsylvania Constitution. IRRC also sought clarification from PADEP on whether there is a compelling public interest that justifies the changes and the economic and fiscal impact of the regulation, as well as raising certain questions for PADEP's consideration as to how certain aspects of the regulations would function. PADEP is currently evaluating how to respond to the comments and changes to the proposed regulation are likely forthcoming. If substantive changes are made, the EQB will need to provide another opportunity for public comment, which would likely occur in 2026.

If you would like to learn more information, please reach out to MGKF's [Todd Kantorczyk](#) or [Jessica Hunt](#).

Changes Coming to PADEP's Hazardous Waste Facility Inspection Guidance

Rodd W. Bender, Esq.

The Pennsylvania Department of Environmental Protection (PADEP) is developing significant revisions to a 20-year-old document guiding how PADEP conducts inspections of hazardous waste facilities in the Commonwealth. PADEP's intent in updating technical guidance no. 251-3120-001, entitled *Performing Hazardous Waste Facility Inspections*, is to create a formalized and standardized framework for implementing these inspections across all PADEP regions.

A discussion draft of the proposed revisions was circulated at the September 2025 Solid Waste Advisory Committee meeting. The draft revisions add definitions, establish four types of inspections and the expected content of each, increase inspection frequencies for hazardous waste generators and permitted treatment, storage, and disposal facilities (TSDFs), incorporate review of online data systems, and encourage inspectors to note issues that remain undetermined. The four types of inspections, which evaluate compliance with Resource Conservation and Recovery Act (RCRA) hazardous waste regulatory requirements, include:

- **Compliance Evaluation Inspections (CEI)** – The primary on-site evaluation of all RCRA regulations applicable to a facility. A CEI, which is usually unannounced, includes inspecting all areas of the facility and may involve environmental sampling.
- **Follow-up Inspections** – A partial inspection, also typically unannounced and conducted either on-site or otherwise, to verify compliance with enforcement stemming from a previous inspection or to review previously noted deficiencies.
- **Administrative File Reviews** – A detailed evaluation at PADEP of non-financial facility records.

- **Groundwater Monitoring Evaluations** – A detailed groundwater inspection by a PADEP hydrogeologist, required at all permitted or interim status RCRA TSDFs. A groundwater monitoring evaluation is completed using the federal Environmental Protection Agency's *Groundwater Monitoring Evaluation Guidance*.

A wide range of compliance areas may be evaluated during these inspections. These may include, for example, preparation and recordkeeping for hazardous waste manifests, consistency with generator requirements (e.g., hazardous waste identification; management and labeling of containers in central and satellite accumulation areas; RCRA personnel training; and preparedness, prevention and emergency procedures), compliance with conditions for applicable RCRA exclusions or exemptions, and satisfaction of conditions in any hazardous waste permits. PADEP inspectors follow standardized checklists to perform facility inspections. The checklists are specific to generator facilities and TSDFs, and list specific requirements with citations to Pennsylvania and federal regulatory provisions.

Notably, the proposed revisions to the guidance document will increase the frequency of facility inspections. For hazardous waste generator facilities, PADEP intends to inspect each large quantity generator (LQG) and pharmaceutical reverse distributor every five years, with particular emphasis on LQG facilities located in environmental justice areas. Five percent of small quantity generator and very small quantity generator facilities will be inspected annually. With respect to permitted TSDFs, the agency will aim to inspect these facilities every quarter, including a full CEI in one quarter and more limited inspections in the other three quarters (or less frequently if no violations are identified during the CEI).

PADEP anticipates publishing the proposed revised guidance in the *Pennsylvania Bulletin* on February 14 for public comment. If you would like to discuss this guidance or other hazardous waste issues, please contact MGKF's [Rodd Bender](#) at 484-430-2317.

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