

Environmental Quality Board to Consider Proposed Notification Rules for Unauthorized Spills into Waters of the Commonwealth

March 3, 2025

Pittsburgh, PA

The Foundation Mineral and Energy Law Newsletter

Pennsylvania – Mining

(by **Joe Reinhart**, **Sean McGovern** and **Christina Puhnaty**)

In November 2024, the Pennsylvania Department of Environmental Protection (PADEP) submitted to the Pennsylvania Environmental Quality Board (Board) a proposed rule that would establish notification requirements for persons reporting unauthorized discharges to waters of the Commonwealth under 25 Pa. Code § 91.33. Section 91.33 currently requires the person responsible for an unauthorized discharge to immediately notify PADEP if a discharge results in pollution, creates a danger of pollution of the waters of the Commonwealth, or would damage property. PADEP's proposed rule references 40 C.F.R. § 117.3 to identify a list of reportable substances and quantities that require immediate PADEP notification if discharged into waters of the Commonwealth and outlines five categories of factors for consideration when determining if an unauthorized discharge does not require immediate PADEP notification. Those five categories are:

1. properties of the substance or substances involved;
2. location or locations involved;
3. weather conditions before, during and after the incident;
4. presence and implementation of adequate response plans, procedures or protocols; and
5. duration of the accident or other activity or incident.

PADEP's **preamble** to the proposed rule provides that

[i]f any single one of the following factors, or a combination of the factors, can adequately establish that there is no risk of the substance reaching waters of the Commonwealth, no further analysis of the other considerations is necessary to determine that immediate Department notification is not required. This may be the case 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.

PADEP's proposed rulemaking further requires a person to maintain documentation regarding a decision not to notify PADEP of an unauthorized discharge and a signed statement attesting to the document's accuracy must accompany the documentation if it is provided to PADEP at PADEP's request.

The Board adopted the proposed rule at its November 12, 2024, meeting. The proposed rule will be published in the *Pennsylvania Bulletin* for a 60-day public comment period.

PADEP Issues Clarification for Blast Site Buffer Area in Noncoal Mining Operations Rules

The Pennsylvania Department of Environmental Protection (PADEP) issued a final rule correcting an inconsistency between the noncoal mining regulations in 25 Pa. Code ch. 77 and the storage, handling, and use of explosives regulations in 25 Pa. Code ch. 211. Noncoal mine operators are required to conduct blasting operations with explosives in compliance with these two chapters. Chapter 211 provides that when explosives are being loaded into drill holes ahead of a blast, the blast site plus a buffer zone of 50 feet around the blast site must be cleared of all persons and equipment except those necessary to prepare for the blast. Prior language at 25 Pa. Code § 77.564(g)(7), however, required "work within a radius of 50 feet of the blast area" to cease, which PADEP determined resulted in "a larger disruption of activities at a noncoal mine than is necessary to ensure mine worker and public

safety, which was not intended and is not consistent with the same safety requirements in Chapter 211.” [Exec. Summary](#), Final-Omitted Rulemaking: Blast Site Clarification for Noncoal Mining Operations (Nov. 12, 2024). PADEP has revised section 77.564(g)(7) to resolve this inconsistency by replacing the term “blast area” (defined in 25 Pa. Code § 211.101 as “the area around the blast site that must be cleared and secured to prevent injury to persons and damage to property”) with “blast site” (defined in section 211.101 as “the specific location where the explosives charges are loaded into the blast holes”).

Governor Shapiro Signs Executive Order Adding Pennsylvania Permit Fast Track Program to Administration’s Broader Efforts to Improve Permitting Processes

On November 19, 2024, Governor Josh Shapiro signed [Executive Order 2024-04](#) (EO 2024-04) creating the Pennsylvania Permit Fast Track Program (Program). According to its website, the Program “streamlines permitting for high-impact economic development and infrastructure projects in Pennsylvania that require multiple permits from different Commonwealth agencies.” Commw. of Pa., “PA Permit Fast Track Program,” available [here](#). EO 2024-04 states that the Program’s purpose is to “enhance public awareness, collaboration, accountability, coordination, transparency, and predictability in the Commonwealth’s permitting, licensing, and authorizations processes for critical infrastructure projects and projects delivering significant economic development to Pennsylvanians” through a collaborative process between the government and stakeholders. EO 2024-04, § 1.

EO 2024-04 directs the state Office of Transportation and Opportunity to take certain actions to implement the Program. These include: (1) issuing program guidance, offering training, and providing technical assistance to implement the Program; (2) determining if a project is eligible to participate in the Program; (3) providing project management services via coordination with the Governor’s office, e.g., developing coordinated timelines across relevant agencies; and (4) assisting with the online dashboard to inform the public of progress and timelines for designated projects. *Id.* § 2. Permits that may be fast-tracked under the Program include Chapter 102 National Pollutant Discharge Elimination System permits for Construction Stormwater and Industrial Stormwater, Chapter 105 Permits for water obstructions and/or encroachments, and Air Quality Permits. See Program website. Guidance and current Program projects are also listed on the Program’s website. *Id.*

EO 2024-04 is just one of the Shapiro administration’s ongoing efforts to improve Pennsylvania’s permit programs. On the same day Governor Shapiro signed EO 2024-04 the administration announced that the Pennsylvania Department of Environmental Protection (PADEP) had reduced its permit backlog by 75% since November 2023.

[News Release](#), PADEP, “Shapiro Administration Reduces DEP Permit Backlog by 75 Percent, Completely Eliminates Backlog for Oil and Gas Permits” (Nov. 19, 2024). PADEP attributes the reduction to technology investment, reviews to identify bottlenecks, and hiring additional staff. *Id.* PADEP has also created the Streamlining Permits for Economic Expansion and Development (SPEED) Program, which authorizes approved contractors to review applications for certain permits and recommend to PADEP whether the permit should be approved or denied. Bids to become a qualified reviewer were due by December 31, 2024. More information on the Shapiro administration’s permit modernization efforts is available [here](#).

Copyright © 2025, The Foundation for Natural Resources and Energy Law, Westminster, Colorado