

PADEP Finalizes Cap and Liner Guidance for Coal Refuse Disposal Areas

August 1, 2022

FNREL Mineral and Energy Law Newsletter

Pennsylvania – Mining

(By [Joseph K. Reinhart](#), [Sean M. McGovern](#), [Gina N. Falaschi](#) and [Christina Puhnaty](#))

On May 28, 2022, the Pennsylvania Department of Environmental Protection (PADEP) finalized the draft technical guidance that explains PADEP's considerations when evaluating liners and cap systems installed at coal refuse disposal areas (CRDAs) that was discussed in Vol. XXXVIII, No. 4 (2021) of this *Newsletter*. See PADEP, Final Technical Guidance Document—Liners and Caps for Coal Refuse Disposal Areas (May 28, 2022). The purpose of the guidance document is to “explain[] the procedures that [PADEP] will use in approving liners and caps for facility designs and the criteria for as-built certifications for [CRDAs].” *Id.* PADEP issued a comment and response document with the final guidance. See PADEP, Comment and Response Document (May 28, 2022).

Commenters raised concerns with the extent to which PADEP could enforce the requirements in the guidance document because the document is cited in the regulatory text at 25 Pa. Code § 90.50. PADEP, however, explained that this reference does not make the guidance document binding, as “[g]uidance does not rise to the level of regulation because it is possible to deviate from guidance as necessary.” Comment and Response Document at 5.

PADEP also clarified that it is not the agency's intent to revisit CRDAs that are already reclaimed and have achieved their final configuration and vegetation. *Id.* Where final configuration and vegetation has not yet been achieved, however, PADEP will require that “the operation is completed with a minimum combined thickness of 4 feet of cover, or a demonstration that the previously approved cover material and thickness will be as effective as 4 feet of combined thickness as per [25 Pa. Code § 90.125(c)].” *Id.* The guidance document does not acknowledge the waiver in section 90.125(c) for “coal refuse disposal areas permitted prior to July 27, 1991 if the requirements of [25 Pa. Code §§ 90.150–.157 and 90.159–.165] can be attained.” *Id.* at 13.

In response to one comment pointing out that section 90.50 does not explicitly distinguish between liners and caps, PADEP clarified that the agency's main purpose in issuing this revised guidance is “to incorporate caps because they are necessary components of most permits under the requirements of Chapter 90.” *Id.* at 4.

PADEP also reiterated its position that clay layers as a cap are not typically suitable for “circumstances with high hydraulic head conditions, slurry impoundments or as a permanent cap for any coal refuse,” but applicants will have the opportunity to make a demonstration that a clay cap is at least as effective as a synthetic one. *Id.* at 7. PADEP also reiterated that synthetic liners currently constitute the “best available technology currently feasible.” *Id.* at 14. Additionally, PADEP revised the guidance to require a minimum hydraulic conductivity for “low hydraulic conductivity soils” (clay) of 1×10^{-7} cm/sec. *Id.* at 10.

The final technical guidance document was effective upon issuance on May 28, 2022.

Copyright © 2022, The Foundation for Natural Resources and Energy Law, Westminster, Colorado