



Tad J. Macfarlan

Partner

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OVERVIEW

Tad Macfarlan is an experienced environmental and land use lawyer and a partner in the firm's global Environment, Land, and Natural Resources practice group. Tad's practice focuses on the environmental aspects of project development, transactional, litigation, and government enforcement matters (both civil and criminal). His clients include developers and operators of utility-scale wind and solar projects; shale gas production, transmission and electric generation facilities; water and wastewater utilities; mine and quarry operators; hazardous waste processing facilities; other heavy manufacturing and industrial facilities; and financial entities holding or acquiring an interest in such facilities. Tad regularly provides advice with respect to the regulatory regimes governing air emissions (including greenhouse gases); wetland and stream protection; wastewater and stormwater discharges; water withdrawals; hazardous wastes and materials; threatened and endangered species; cultural resources and historic properties; and local land use and zoning requirements.

PROFESSIONAL BACKGROUND

Prior to joining K&L Gates, Tad was a law clerk for the U.S. Environmental Protection Agency Region III Office of Regional Counsel. He also worked as a legal intern for the National Wildlife Federation Great Lakes Regional Center.

ACHIEVEMENTS

- *The Best Lawyers in America*® "Ones to Watch" - Energy Law (2021-2022), Environmental Law (2022), and Land Use and Zoning Law (2021-2023)

PROFESSIONAL / CIVIC ACTIVITIES

- American Bar Association, Section on Environment, Energy, and Resources (Vice Chair of Constitutional Law Committee, 2017-2021)
- Pennsylvania Bar Association, Environmental and Energy Law Section
- Dauphin County Bar Association

SPEAKING ENGAGEMENTS

- Waters of the United States (WOTUS) and Beyond, National Stone, Sand & Gravel Association (NSSGA) Water Update Webinar, 25 July 2023
- Municipal Storm Water Charges (and a Pennsylvania Environmental Policy Update), 2023 Pennsylvania Asphalt Pavement Association (PAPA) Environmental Seminar, 12 April 2023
- Redefining WOTUS, Strafford Webinars, 4 April 2023
- Agency Regulation After West Virginia v. EPA: Climate Change, Major Questions Doctrine, Future of Chevron, Strafford Webinars, 27 September 2022
- Crypto Mining Energy and Environmental Policy Developments, Bank of America Virtual Crypto Mining Conference, 29 September 2022
- Endangered Species Act Update, National Stone, Sand & Gravel Association (NSSGA), 22 June 2022
- Environmental Justice: What You Need to Know About Recent State and Federal Policy Updates, 2022 PAPA Environmental Seminar, 13 April 2022
- WOTUS: Current Status and the Path Ahead, Strafford Webinars, 28 September 2021
- Preparing for Change: Federal and State Environmental Law, Policy and Enforcement, 2021 PAPA Environmental Webinar, 14 April 2021
- Hot Topics in Water Law and Regulation, 2020 Annual Environmental Conference, PA Chamber of Business and Industry, 28 October 2020
- EPA's New Navigable Waters Protection Rule: Taking Advantage of a Reduced Federal Role, Strafford Webinars, 6 May 2020
- Current Issues Under the Clean Water Act, Halfmoon Education, Pennsylvania Water Laws and Regulations Seminar, 2 February 2020
- Environmental and Local Permitting Process for Energy Generation Projects, Halfmoon Education, Issues in Pennsylvania Energy and Electric Utility Regulation Seminar, 15 January 2020
- MS4s and Stormwater Fees: Emerging Challenges, 2019 Pennsylvania Aggregates and Concrete Association (PACA) Annual Meeting, 14 November 2019
- Waters of the United States – Recent Actions and What's Next, National Water Supply Alliance 2019 Annual Meeting, 3 October 2019
- Environmental Enforcement Actions and Company Response, 2019 PAPA Environmental Seminar, 9 April 2019
- Air Update: State and Federal Regulatory Developments Impacting the Oil and Gas Midstream Sector in Pennsylvania, Pennsylvania Bar Institute Pipeline & Midstream Update 2018, 7 November 2018

- Energy Production: Potential Water Supply and Quality Issues, Halfmoon Education Water Laws and Regulations Seminar, 20 February 2018
- Current Issues with the Clean Water Act, Halfmoon Education Water Laws and Regulations Seminar, 20 February 2018
- Water Issues Update, Environmental Compliance Issues Conference, PA Chamber of Business and Industry, 29 October 2015
- Waters of the U.S.: Key Issues and Implications, Law Seminars International, 11 June 2015

EDUCATION

- J.D., University of Michigan Law School, 2011 (*cum laude*; *University of Michigan Journal of Law Reform*, *Contributing Editor*)
- B.A., Pennsylvania State University, 2006 (*Political Science and Philosophy*; *with distinction*)

ADMISSIONS

- Bar of New Jersey
- Bar of Pennsylvania
- United States Court of Appeals for the Third Circuit
- United States District Court for the District of New Jersey
- United States District Court for the Eastern District of Pennsylvania
- United States District Court for the Middle District of Pennsylvania

THOUGHT LEADERSHIP POWERED BY HUB

- 20 September 2023, Pennsylvania DEP Publishes Final Interim Environmental Justice Policy
- 14 September 2023, Following Sackett, Another New Final WOTUS Rule
- 5 June 2023, US Supreme Court Issues Landmark Clean Water Act Decision, Significantly Narrowing the Scope of "Waters of the United States" Under Federal Law
- 10 January 2023, A New Final (But Not the Final?) WOTUS Rule
- 22 December 2022, Carbon Quarterly – Special Edition
- 7 October 2022, Taking a New Approach: USFWS Proposes Streamlined Eagle Take Permit Program
- 20 September 2022, Pennsylvania's Growing Electric Vehicle Charging Network: What's All the Buzz About NEVI Plans?

- 7 July 2022, Carbon Quarterly – Volume 6
- 6 July 2022, Supreme Court Advances Major Questions Doctrine and Limits EPA's Authority to Regulate Power Plant Carbon Emissions
- 31 March 2022, U.S. Fish and Wildlife Service Proposes "Endangered" Listing for Northern Long-Eared Bat
- 15 March 2022, PADEP Releases Updated Environmental Justice Policy for Public Comment
- 28 January 2022, NEPA: The Old Becomes New
- 11 January 2022, Carbon Quarterly – Volume 5
- 15 November 2021, EPA Gets Serious About Environmental Justice
- 20 September 2021, Back to the Drawing Board on WOTUS: Federal Court Vacates Trump Administration's Navigable Waters Protection Rule
- 2 September 2021, Carbon Quarterly – Volume 4
- 22 April 2021, Carbon Quarterly – Volume 3
- 24 February 2021, D.C. Circuit Grants EPA's Request to Keep Clean Power Plan on Ice
- 4 February 2021, Carbon Quarterly – Volume 2
- 8 October 2020, Carbon Quarterly – Volume 1
- 28 April 2020, UPDATED: The Nation Goes the Way Montana Goes? Nationwide Permit 12 Vacatur and Injunction
- 25 March 2020, COVID-19: Businesses Face Supply Chain Challenges as Pandemic Triggers State 'Stay at Home' and Business Curtailment Orders
- 14 January 2019, Trump Administration Begins "Round 4" in the Battle Over Clean Water Act Jurisdiction
- 14 August 2018, EPA to "Veto" Its Own Veto Authority under the Clean Water Act?
- 13 August 2018, EPA to "Veto" Its Own Veto Authority under the Clean Water Act?
- 15 June 2017, To Disclose or Not to Disclose? D.C. Circuit Resolves Clash Between FOIA's Exemption 4 and Section 308 of the Clean Water Act
- 1 July 2016, Federal Judge: Authority Lacking for Regulation of Hydraulic Fracking
- 6 June 2016, Supreme Court Authorizes Judicial Review of Clean Water Act Jurisdictional Determinations Over Federal Government's Objection
- 20 May 2016, Full Court Press: EPA Issues Final Rulemakings and a Draft Information Collection Request in Its Ongoing Effort to Reduce Methane Emissions from the Oil and Gas Industry

- 27 January 2016, The Beat Goes On: Pennsylvania Takes Aim at Reducing Methane Emissions from the Oil and Gas Industry
- Fall 2015, Environmental Policy Quarterly
- 14 October 2015, Clean Water Rule Stayed Nationwide
- 18 September 2015, EPA Publishes Regulatory Proposals that Would Further Curb Methane and VOC Emissions from the Oil and Gas Sector
- 15 July 2015, EPA's Chesapeake Bay TMDL Survives Legal Challenge: Stricter Water Quality Regulation of Farms, Municipalities, Industry, and Business May Follow
- Spring 2015, Environmental Policy Quarterly
- 19 June 2015, EPA and the Army Corps Issue Final Clean Water Rule, but Does This New "Line in the Water" Clarify, Expand or Narrow Clean Water Act Jurisdiction?

OTHER PUBLICATIONS

- "U.S. Supreme Court Issues Landmark Clean Water Act Decision, Significantly Narrowing the Scope of 'Waters of the United States' Under Federal Law," *Thomson Reuters Westlaw Today*, 8 June 2023
- "Vacatur Of Trump Water Rule Means More Uncertainty Ahead," *Law360*, 29 September 2021
- Pennsylvania Environmental Law and Practice, Ch. 6 (Wetlands) and Ch. 23 (A Practical Guide to Obtaining Wetland Permits), The Pennsylvania Bar Institute
- Pennsylvania Environmental Laws and Regulations, Ch. 5 (In Depth Guide to PA Water and Wastewater Issues), PA Chamber of Business and Industry
- "Noise Regulation of the Shale Oil & Gas Extraction and Production Industry," 6th Law of Shale Plays Conference, Institute for Energy Law, Center for American & International Law, Energy & Mineral Law Foundation, 10-11 September 2015

NEWS & EVENTS

- 14 November 2023, New NEPA Amendments and CEQ Phase 2 Proposed Rule: Impacts on Federal Project Planning, Hosted by Strafford
- 9 May 2023, K&L Gates Advises SPX Technologies on Agreement to Purchase Electrical Heating Solutions Leader
- 4 April 2023, Waters of the U.S. (WOTUS) Updated & Redefined, Hosted by Strafford
- 27 September 2022, Agency Regulation After West Virginia v. EPA: Climate Change, Major Questions Doctrine, Future of Chevron, Hosted by Strafford CLE

- 18 August 2022, More Than 350 K&L Gates Lawyers Named Among 2023 Best Lawyers in America, Ones to Watch
- 28 September 2021, Waters of the United States (WOTUS): Current Regulations, Pending Litigation, and the Path Ahead, hosted by Strafford
- 19 August 2021, Nearly 300 K&L Gates Lawyers Named Among 2022 Best Lawyers in America, Ones to Watch
- 21 July 2021, K&L Gates Advises Reliant Bancorp on \$517 Million Merger with United Community Banks
- 11 June 2021, K&L Gates Advises SPX Corporation on Agreement to Sell SPX Transformer Solutions to GE-Prolec Transformers
- 23 February 2021, K&L Gates Advises Sinch AB on \$1.14 Billion Acquisition of U.S. Telecom Provider Inteliquent
- 24 February 2020, K&L Gates Names 41 New Partners Across Global Platform
- 3 August 2018, K&L Gates Advises innogy on Acquisition of More Than 2,000 MW Onshore Wind Projects

AREAS OF FOCUS

- Environment, Land, and Natural Resources
- Construction and Infrastructure
- Land Use, Planning, and Zoning
- Oil and Gas
- Power
- Renewables
- Water and Wastewater

INDUSTRIES

- Energy
- Manufacturing
- Power Generation and Transmission
- Utilities

REPRESENTATIVE EXPERIENCE

Project Development

- Advised developers of multiple utility-scale wind and solar projects on all aspects of federal, state and local environmental and land use permitting and related project financing matters.
- Advised the developer of a 1,000 megawatt combined-cycle natural gas-fired power plant in Western Pennsylvania on all aspects of federal, state and local preconstruction environmental permitting requirements.
- Advised the developer of a petrochemical complex in Western Pennsylvania on compliance with major source air permitting requirements under the federal Clean Air Act and Pennsylvania Air Pollution Control Act.
- Advised the developer of a cross-border electric utility line project regarding environmental permitting requirements and condemnation authority under state and federal public utility laws.
- Advised a rare-earth metals refiner undertaking facility upgrades regarding environmental permitting requirements under the federal Resource Conservation and Recovery Act, federal Clean Water Act, Pennsylvania Solid Waste Management Act and Pennsylvania Clean Streams Law.
- Advised midstream oil and gas operators on pipeline permitting requirements under the Clean Water Act and Pennsylvania Clean Streams Law, including ancillary requirements relating to the protection of endangered species, historic properties and cultural resources.
- Advised a bottled water production company regarding compliance with local zoning and land-use requirements in potential siting of new spring water development facilities.
- Advised a shale gas exploration and production company in relation to local permitting matters in several Western Pennsylvania municipalities.

Corporate Transactions

- Advised an investor-owned public utility company during its acquisition of municipal water and wastewater treatment systems, including advice with respect to environmental, public utility and municipal law issues.
- Served as environmental counsel for the operator of multiple battery recycling facilities and legacy liability sites in several states through the course of a multi-step corporate restructuring and divestment of operational assets.
- Served as environmental counsel for sellers in a corporate transaction involving the sale of the capitol services business segment of an international engineering, procurement and construction (EPC) company.
- Served as environmental counsel for buyers in a corporate transaction involving the purchase of multiple steel fabrication facilities operating in several states.
- Advised sellers in the sale of substantially all of the assets of a radiopharmacy business on radioactive material (RAM) license transfer requirements in more than 20 states.
- Served as environmental counsel for foreign buyers in its acquisition of an American robotics production company.
- Served as environmental counsel for health care providers in multiple transactions involving the consolidation of the Pennsylvania health care industry.

Enforcement Defense and Litigation

- Advised an operator of multiple hazardous waste incinerator facilities with regard to US Department of Justice and US Environmental Protection Agency civil enforcement actions, Consent Decree implementation, and Clean Air Act information requests.
- Represented a major North American energy company with respect to multiple environmental criminal investigations.
- Represented a coalition of coal-fired power plant owners in litigation challenging the Pennsylvania Department of Environmental Protection's CO2 Budget Trading Program, which is designed to implement the Regional Greenhouse Gas Initiative (RGGI) in Pennsylvania.
- Represented oil and gas industry clients in defending against administrative enforcement actions involving alleged wetlands encroachments, erosion and sediment control issues, waste disposal requirements and well permitting violations.
- Represented a large oil refinery in complex CERCLA natural resource damages litigation in federal district court.
- Represented a diversified energy production, transmission and distribution company in contested municipal stormwater ratemaking proceeding before the Philadelphia Water Department.
- Represented a bottled water production company in a contested special exception hearing before a municipal zoning hearing board in Northeastern Pennsylvania.
- Represented a cardboard manufacturing company in a variance proceeding before a municipal zoning hearing board in Southcentral Pennsylvania.

Regulatory Compliance

- Advised shale gas production companies on compliance with updated environmental protection provisions of Pennsylvania's Oil and Gas Act (Act 13), Chapter 78/78a regulations and agency guidance documents.
- Counseled manufacturing industry clients on compliance with the federal Clean Air Act and Pennsylvania Air Pollution Control Act, including issues involving pre-construction permitting, source aggregation, emission reduction credits, annual emissions reporting and greenhouse gas regulation.
- Drafted public comments on the US Environmental Protection Agency's Clean Power Plan.
- Monitored Pennsylvania Public Utility Commission and Environmental Hearing Board proceedings on behalf of interstate pipeline and private equity clients.

Public Comments

- Drafted public comments on the Pennsylvania Department of Environmental Protection's CO2 Budget Trading Program.
- Drafted public comments on the New York Department of Environmental Conservation's proposed regulations and environmental impact statement on high-volume hydraulic fracturing.

- Drafted public comments on the Susquehanna River Basin Commission's low-flow protection policy and technical guidance.
- Drafted public comments on the Pennsylvania Department of Environmental Protection's general permit for air emissions from natural gas processing and production facilities (GP-5).

Pro Bono

- Counseled a nonprofit nature conservancy regarding interpretation and enforcement of conservation easement requirements.
- Obtained a precedential opinion from the United States Court of Appeals for the Third Circuit in representation of a Salvadorian national in his appeal of a deportation order issued by the Board of Immigration Appeals. See *Mayorga v. Attorney General*, 757 F.3d 126 (2014).
- Successfully represented a domestic abuse victim in an appeal from the issuance of a Protection from Abuse (PFA) order before the Pennsylvania Superior Court.