



Tad J. Macfarlan

Partner

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OVERVIEW

Tad Macfarlan is a partner in the firm's environment, land and natural resources practice group. Tad is a full-service environmental lawyer who specializes in providing environmental and permitting advice to clients in the energy, utility, industrial and manufacturing sectors. His clients include developers and operators of utility-scale wind and solar projects; shale gas production, transmission, processing and electric generation facilities; water and wastewater utilities; non-coal mines; and a variety of traditional manufacturing facilities. Over the past decade, Tad has developed extensive experience with the regulatory regimes governing wetland and stream protection; wastewater and stormwater discharges; water withdrawals; waste management; air emissions; threatened and endangered species; cultural resources and historic properties; and local land use and zoning requirements. His practice includes project development, transactional, litigation and enforcement defense matters.

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, Land Use and Zoning Law (2021)

PROFESSIONAL / CIVIC ACTIVITIES

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

SPEAKING ENGAGEMENTS

- 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
- 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, Pennsylvania Asphalt and Pavement Association 2019 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

- 22 April 2021, Carbon Quarterly – Volume 3 (*Alerts/Updates*)
- 24 February 2021, D.C. Circuit Grants EPA's Request to Keep Clean Power Plan on Ice (*Alerts/Updates*)
- 4 February 2021, Carbon Quarterly - Volume 2 (*Alerts/Updates*)
- 8 October 2020, Carbon Quarterly - Volume 1 (*Alerts/Updates*)
- 28 April 2020, UPDATED: The Nation Goes the Way Montana Goes? Nationwide Permit 12 Vacatur and Injunction (*BlogPost*)
- 25 March 2020, COVID-19: Businesses Face Supply Chain Challenges as Pandemic Triggers State 'Stay at Home' and Business Curtailment Orders (*Alerts/Updates*)
- 14 January 2019, Trump Administration Begins "Round 4" in the Battle Over Clean Water Act Jurisdiction (*Alerts/Updates*)
- 14 August 2018, EPA to "Veto" Its Own Veto Authority under the Clean Water Act? (*BlogPost*)
- 13 August 2018, EPA to "Veto" Its Own Veto Authority under the Clean Water Act? (*Alerts/Updates*)
- 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 (*Alerts/Updates*)
- 1 July 2016, Federal Judge: Authority Lacking for Regulation of Hydraulic Fracking (*Alerts/Updates*)
- 6 June 2016, Supreme Court Authorizes Judicial Review of Clean Water Act Jurisdictional Determinations Over Federal Government's Objection (*Alerts/Updates*)
- 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 (*Alerts/Updates*)
- 27 January 2016, The Beat Goes On: Pennsylvania Takes Aim at Reducing Methane Emissions from the Oil and Gas Industry (*Alerts/Updates*)
- Fall 2015, Environmental Policy Quarterly (*Alerts/Updates*)
- 14 October 2015, Clean Water Rule Stayed Nationwide (*Alerts/Updates*)
- 18 September 2015, EPA Publishes Regulatory Proposals that Would Further Curb Methane and VOC Emissions from the Oil and Gas Sector (*Alerts/Updates*)

- 15 July 2015, EPA's Chesapeake Bay TMDL Survives Legal Challenge: Stricter Water Quality Regulation of Farms, Municipalities, Industry, and Business May Follow (*Alerts/Updates*)
- Spring 2015, Environmental Policy Quarterly (*Alerts/Updates*)
- 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? (*Alerts/Updates*)

OTHER PUBLICATIONS

- 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

- 23 February 2021, K&L Gates Advises Sinch AB on \$1.14 Billion Acquisition of U.S. Telecom Provider Inteliquent (*Noteworthy Work*)
- 24 February 2020, K&L Gates Names 41 New Partners Across Global Platform (*Press Release*)
- 3 August 2018, K&L Gates Advises innogy on Acquisition of More Than 2,000 MW Onshore Wind Projects (*Noteworthy Work*)

AREAS OF FOCUS

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

INDUSTRIES

- Energy

- Manufacturing
- Power Generation and Transmission
- Utilities

REPRESENTATIVE EXPERIENCE

Project Development

- Advised the developer of a suite of utility-scale wind and solar projects on all aspects of federal, state and local environmental and land use permitting.
- 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

- Represented a major North American energy company with respect to multiple environmental criminal investigations.
- 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.
- Advised the operator of several waste coal-fired power plants on new and pending federal environmental regulatory developments related to cooling water intake structures, cross-state air pollution, greenhouse gas and hazardous air pollutant emissions, and management of coal ash.
- 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 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

- 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.