



## Pennsylvania Aggregates & Concrete Association, Monthly Report

April 9, 2024 – May 6, 2024

### I. KEY NEW DEVELOPMENTS FOR THIS PERIOD

#### MSHA Silica Rule.

MSHA's final rule "[Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection](#)" was published in the Federal Register on April 18, 2024, with an effective date of June 17, 2024. Under the final rule, metal and nonmetal mine operators have until June 17, 2026, to come into compliance. Coal mines must come into compliance by June 17, 2025.

This final rule amends MSHA's existing standards, in part, by setting the permissible exposure limit (PEL) of respirable crystalline silica at 50 micrograms per cubic meter of air for a full shift exposure, calculated as an 8-hour time-weighted average, for all miners. It also sets an action level of 25 micrograms per cubic meter that requires mine operators to conduct periodic sampling when the threshold is exceeded over a full, time-weighted shift, until the exposure level drops below the 25 micrograms benchmark.

Under this final rule, all mines are required to install, use, and maintain feasible engineering controls as the primary means of controlling respiratory crystalline silica, such as installing adequate ventilation systems, water sprays or dust collectors. Administrative controls to ensure miners safely remove silica dust from their clothes should supplement engineering controls, as necessary. The final rule also includes other requirements to protect miner health, such as exposure sampling, immediate incident reporting of overexposures to MSHA, corrective actions to be taken when miner overexposures occur, and record making of all sampling and corrective actions taken. Additionally, the final rule requires the temporary use of respirators at metal and nonmetal mines are when miners must work in concentrations above the PEL while engineering controls are being developed and implemented, or as is necessary by the nature of the work involved. The final rule also incorporates by reference *ISO 7709:1995(E) – Air Quality – Particle Size Fraction Definitions for Health-Related Sampling* and *ASTM F3387-19 Standard Practice for Respiratory Protection*.

#### Gibraltar Rock, Inc. v. Pennsylvania DEP

On March 8, 2024, the Commonwealth Court of Pennsylvania [upheld](#) the Pennsylvania Environmental Hearing Board's decision to rescind Gibraltar Rock's permits issued by PADEP. The EHB rescinded the noncoal surface mining permit and the NPDES permit after determining that PADEP issued the permits "prematurely" because it did not consider how quarry pumping would affect remediation at a nearby Superfund Site, Hoff VC Site. In upholding the EHB's decision, the Commonwealth Court found "no hardship in imposing the time and costs of

reapplying for permits” upon Gibraltar Rock, which it found “failed, in the first instance, to demonstrate that its quarrying activities ‘will not cause pollution to the waters of the Commonwealth.’” To proceed, Gibraltar would have to entirely restart the permit application process, as opposed to negotiating permit revisions on remand, which is a very costly and time consuming. Gibraltar may encounter extra delays in a re-application process in light of PADEP’s early phase of remediation at the Hoff VC Site, which the EHB found had a “lack of momentum” with “no immediate or specific plans to conduct further studies or remediation activities.”

**Uptick in Biden Administration Regulations Ahead of Presidential Election**

In the last several weeks there has been an uptick in the number of regulations coming from the Biden Administration, which some commenters believe is the administration’s attempt to “Trump-proof” regulations ahead of the upcoming election. Within weeks of taking office in 2017, President Trump signed more than a dozen resolutions undoing late-term Obama Administration regulations, using the 1996 Congressional Review Act. This Act allows rules finalized by the executive branch to be nullified by a majority vote in the House and Senate and the president’s signature. This Act has a relatively small “look back” window of 60 legislative days. Commenters believe the Biden Administration’s current uptick in issuing regulations is its attempt to finalize regulations before this 60-day window opens. Any regulations finalized before the window opens will require the next administration to undergo full notice and comment to change the regulations.

**II. Federal and Other Rulemakings, Policies and Reports**

<b><u>Selected Dates and Deadlines</u></b>		
	<b>Regulation/Policy Proposal/Meeting</b>	<b>Comment Deadline or Meeting Date</b>
<b>Mining</b>	MSHA <a href="#">Final Rule</a> : Lowering Miners’ Exposure to Respirable Crystalline Silica and Improving Respiratory Protection	<u>Effective Date:</u> June 17, 2024  <u>Compliance Date:</u> June 17, 2026
	MSHA <a href="#">Final Rule</a> : Safety Program for Surface Mobile Equipment	<u>Effective Date:</u> January 19, 2024  <u>Compliance Date:</u> July 17, 2024
<b>Air</b>	USEPA <a href="#">Final Rule</a> : Reconsideration of the National Ambient Air Quality Standards for Particulate Matter	<u>Effective Date:</u> May 6, 2024

	USEPA <a href="#">Final Rule</a> : Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention	<u>Effective Date:</u> May 10, 2024
<b>Water</b>	USEPA <a href="#">Final Rule</a> : Clean Water Act Hazardous Substance Facility Response Plans	<u>Effective Date:</u> May 28, 2024
	USEPA <a href="#">Final Rule</a> : PFAS National Primary Drinking Water Regulation	<u>Effective Date:</u> June 25, 2024
	USEPA <a href="#">Final Rule</a> : Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances	<u>Effective Date:</u> July 8, 2024
	USEPA <a href="#">Final Rule</a> : Clean Water Act Methods Update Rule for the Analysis of Effluent	<u>Effective Date:</u> June 17, 2024
	SRBC Public Hearing and Business Meeting. Links and meeting materials are posted <a href="#">here</a> .	<u>Business Meeting:</u> June 13, 2024  <u>Public Hearing:</u> August 8, 2024
	DRBC Public Hearing and Business Meeting. Links and meeting materials are <a href="#">here</a> .	<u>Business Meeting:</u> June 5, 2024
<b>OSHA</b>	OSHA is <a href="#">Requesting Comments</a> on Information Collection Related to Concrete and Masonry Construction Standard	<u>Comments Due:</u> May 24, 2024
	OSHA is <a href="#">Requesting Comments</a> on Information Collection Related to Personal Protective Equipment	<u>Comments Due:</u> May 28, 2024
	OSHA is <a href="#">Requesting Comments</a> on Information Collection Related to Occupational Noise Exposure	<u>Comments Due:</u> June 10, 2024
<b>Miscellaneous</b>	CEQ <a href="#">Final Rule</a> : National Environmental Policy Act Implementing Regulations Phase 2	<u>Effective Date:</u> July 1, 2024

	USEPA <a href="#">Final Rule</a> : Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles – Phase 3	<u>Effective Date:</u> June 21, 2024
	USFWS <a href="#">Final Rule</a> : Endangered and Threatened Wildlife Plants; Enhancement of Survival and Incidental Take Permits	<u>Effective Date:</u> May 13, 2024
	USFWS <a href="#">Final Rule</a> : Endangered and Threatened Wildlife and Plants; Listing Endangered and Threatened Species and Designating Critical Habitat	<u>Effective Date:</u> May 6, 2024
	USFWS <a href="#">Final Rule</a> : Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants	<u>Effective Date:</u> May 6, 2024
* <i>Deadlines and meeting dates may be subject to change.</i>		

***Summary of New Federal Developments***

**A. Mining**

1. **Fifth Circuit Upholds Pecan Farm’s Flood Win Against Sand Mine** – On April 25, 2024, a Fifth Circuit panel upheld a \$659,882 jury verdict against a sand and gravel mine operator after a “120-year flood” event on October 30, 2015, damaged a pecan farm in Austin, Texas. The jury found, and the Fifth Circuit upheld, that the sand and gravel mine violated Texas Water Code § 11.086 and committed common law negligence.<sup>1</sup> The jury found the pecan farm’s water damage was not from overflow water from the Colorado River, but from surface water accumulated in the sand gravel company’s impoundments “in such quantity that it ran contrary to the riverine flow.” The jury also found that it was foreseeable that impoundments would overflow and flood the pecan farm’s property, and the sand and gravel operator had a duty—that it breached—to control the surface water impounded on its property. This case is *Good River Farms LP v. TXI Operations LP et al.*, No. 23-50330 (5<sup>th</sup> Cir. 2024). Case documents are available upon request.

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<sup>1</sup> Texas Water Code § 11.086(a) states that “[n]o person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water diverted or impounded.”

2. **MSHA Final Rule on Safety Program for Surface Mobile Equipment** – MSHA’s [Final Rule](#) published on December 20, 2023, became effective on January 19, 2024. This rule has a compliance date of July 17, 2024, when MSHA will begin enforcing it. As described in our April 2024 Monthly Report, mine operators must develop, implement, and periodically update a written safety program for surface mobile equipment at surface mines and surface areas of underground mines. The written safety program must be developed with input from miners and describe how mine operators will identify hazards and reduce risks of accidents, injuries, and fatalities related to surface mobile equipment. MSHA will not be “approving” your safety programs but will ask to see them during inspections. Operators must verify that miners and reps participated in the development of the Surface Mobile Equipment program. MSHA’s FAQs are available [here](#) and MSHA’s Presentation on the Surface Mobile Equipment Safety Program is available [here](#).
3. **Department of Labor Completed Impact Inspections at 14 Mines in 11 States in March 2024** – On April 30, 2024, the U.S. Department of Labor [announced](#) that its Mine Safety and Health Administration completed impact inspections at 14 mines in 11 states (Alabama, Colorado, Illinois, Kentucky, Louisiana, Michigan, Oklahoma, Pennsylvania, Utah, Virginia, and West Virginia) in March 2024, which resulted in 199 issued violations, including 74 significant and substantial and four unwarrantable failure findings.

## B. Water

1. **USEPA Designates PFOA and PFOS as “Hazardous Substances” Under CERCLA** – On May 9, 2024, USEPA published its [final rule](#) designating two per- and polyfluoroalkyl substances (PFAS)—perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS)—as “hazardous substances” under the Comprehensive Environmental Response, Compensation, and Liability Act. This rule is effective July 8, 2024. Under this rule, EPA, states, Tribal Nations, and responsible parties will be able to seek investigation and cleanup costs for PFOA and PFOS releases into the environment from another potentially responsible party under CERCLA. This rule also requires immediate reporting of any release of one pound or more of PFOS or PFOA within a 24-hour period to the National Response Center and applicable state, tribal, and local emergency response authorities.
2. **USEPA Sets National Drinking Water Standards for Certain PFAS** – On April 26, 2024, USEPA published a [final rule](#) establishing the first-ever nationally enforceable drinking water standard for PFAS. The final rule establishes Maximum Contaminant Levels (MCLs) of 4.0 ng/L for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) and MCLs of 10.0 ng/L for perfluorohexane sulfonic acid (PFHxS), perfluorononanoic acid (PFNA), and hexafluoropropylene oxide dimer acid (HFPO-DA, commonly known as GenX chemicals). Under the final rule, public water systems must complete initial monitoring by 2027 and provide information on the levels of these PFAS in their drinking water beginning in 2027. This final rule supersedes any less stringent

state-specific MCLs . Pennsylvania adopted MCLs for PFOA (14 ppt) and PFOS (18 ppt) in January 2023. Pennsylvania’s regulation already incorporates the federal drinking water standards by reference but DEP will likely need to amend the regulation to remove Pennsylvania’s earlier standards. 25 Pa. Code § 109.202.

3. **USEPA Final Rule “Clean Water Act Methods Update Rule for the Analysis of Effluent”** – On April 16, 2024, USEPA published a [final rule](#) updating test procedures industries and municipalities must use to analyze chemical, physical, and biological properties of wastewater and other samples for reporting under the NPDES permit program. USEPA intends for these changes to provide increased flexibility for the regulated entities in meeting monitoring requirements while improving data quality. This update also incorporates technological advances in analytic technology and makes a series of minor changes and corrections to existing approved methods. This final rule is effective June 17, 2024.

### C. OSHA

1. OSHA did not publish any significant policy materials or final or proposed rules during this reporting period. Please see our April 2024 Monthly Report on previous new developments from OSHA.

### D. Miscellaneous

1. **USEPA Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles: Phase 3** – On April 22, 2024, USEPA published a final rule, “[Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles – Phase 3](#)” with an effective date of June 21, 2024. This rule applies to companies that manufacture, sell, or import into the U.S. new heavy-duty highway vehicles and engine. This rule does not remove any heavy-duty vehicles from the road, nor does it apply to nonroad or offroad vehicles such as construction equipment. Phase 3 standards apply to a wider range of vehicles than Phase 2, now including refuse haulers, public utility trucks, and delivery trucks. USEPA states that the Phase 3 standards are technology-neutral, allowing compliance through a wider range of technologies, now including hybrid vehicles, plug-in hybrid electric vehicles, battery electric vehicles, and hydrogen fuel cell vehicles. Some stakeholders have expressed concerns with the lack of available electric and hydrogen infrastructure and note that the timelines included in Phase 3 may not allow sufficient time for charging and refueling infrastructure to be built.
2. **Council on Environmental Quality Issues Final NEPA Regulations** – On May 1, 2024, the Council on Environmental Quality published a [final rule](#) implementing Phase 2 of its National Environmental Policy Act regulatory revisions as required the [Fiscal Responsibility Act of 2023](#). The revisions include new categorical exclusions – a class of actions that a federal agency and CEQ have determined do not individually or cumulatively have a significant effect on the human environment – as well as expanded



use of categorical exclusions between federal agencies; wider adoption of programmatic environmental impact statements; clarifications regarding lead and cooperating agency roles; proposed deadlines and page limits to increase the efficiency of agency review; and requirements to consider the effects of climate change and environmental justice, and where applicable, quantification of greenhouse gas emissions of a proposed project. The White House released a fact sheet summarizing the rule, available [here](#), and the final rule will be effective July 1, 2024.

3. **USFWS Final Rule on Agency Consultation Under Section 7 of the Endangered Species Act** – On April 12, 2024, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service published a [final rule](#), with an effective date of May 13, 2024, revising agency consultations under Section 7 of the Endangered Species Act. The Endangered Species Act requires federal agencies to ensure the actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitat. This new rule clarifies key definitions including “effects of the action” and “environmental baseline” and expands the scope of “reasonable and prudent measures” that can be included as part of an incidental take statement in a biological opinion. These definition changes will come into play when federal agencies take discretionary actions, such as permitting.
4. **USFWS Final Rule Revising Species Listing and Critical Habitat Designations** – On April 5, 2024, USFWS published a [final rule](#), with an effective date of May 6, 2024, revising species listing and critical habitat designations under the Endangered Species Act. Under this final rule, USFWS must make listing determinations for species and critical habitats “without reference to possible economic or other impacts of such determination.” The Trump Administration removed this now reinstated language in 2019 that allowed the USFWS to assess economic impacts when making determinations whether to list species or critical habitats. This reinstatement to pre-2019 considerations means that the economic impacts of listing a species or critical habitat will no longer be considered when making the determination, a factor that tends to weigh in favor of industry. This final rule also revises the set of circumstances for when critical habitat designations may not be prudent and revises the criteria for identifying unoccupied critical habitat.
5. **USFWS Final Rule Reinstating Endangered Species Act “Blanket 4(d) Rule”** – On April 5, 2024, USFWS published a [final rule](#) on with an effective date of May 6, 2024, that reinstates the general application of the “blanket rule” to protect newly listed threatened species under the Endangered Species Act. The “blanket rule” expands the Endangered Species Act protections for endangered species to threatened species as well, unless the USFWS develops a species-specific “special 4(d) rule” relaxing those protections. This final rule reinstates the “blanket rule” as it existed before the Trump Administration rescinded the blanket protection rule. The reinstating of this “blanket rule” may make it more difficult to conduct activity in areas with threatened species.

**III. Pennsylvania Rulemakings, Policies and Reports**

<b><u>Selected Dates and Deadlines</u></b>		
	<b>Regulation/Policy Proposal/Meetings</b>	<b>Comment Deadline or Meeting Date</b>
<b>Mining</b>	Mining and Reclamation Advisory Board meeting. Links and meeting materials will be posted <a href="#">here</a> .	<u>Meeting Date:</u> July 25, 2024
	Aggregate Advisory Board meeting. Links and meeting materials will be posted <a href="#">here</a> .	<u>Meeting Date:</u> August 28, 2024
<b>Air</b>	Air Quality Technical Advisory Committee Meeting. Links and meeting materials will be available <a href="#">here</a> .	<u>Meeting Dates:</u> July 11, 2024
<b>Water</b>	Water Resources Advisory Committee meeting. Links and meeting materials will be posted <a href="#">here</a> .	<u>Meeting Date:</u> May 16, 2024
<b>Miscellaneous</b>	Climate Change Advisory Committee meeting. Links and meeting materials will be posted <a href="#">here</a> .	<u>Meeting Date:</u> June 25, 2024
	Citizens Advisory Council meeting at 12:30 p.m. Links and meeting materials will be posted <a href="#">here</a> .	<u>Meeting Date:</u> May 14, 2024
	Environmental Quality Board meeting at 9:00 a.m. Links and meeting materials will be posted <a href="#">here</a> .	<u>Meeting Date:</u> July 9, 2024
	Conservation and Natural Resources Advisory Committee Meeting. Links and meeting materials will be posted <a href="#">here</a> .	<u>Meeting Date:</u> May 22, 2024
	Environmental Justice Advisory Board meeting at 9:00 a.m. Links and meeting materials are posted <a href="#">here</a> .	<u>Meeting Date:</u> May 14, 2024
	Storage Tank Advisory Committee meeting. Links and meeting materials will be posted <a href="#">here</a> .	<u>Meeting Date:</u> June 5, 2024
* <i>Deadlines and meeting dates may be subject to change</i>		



### *Summary of New Pennsylvania Developments*

#### **A. Mining**

1. **Gibraltar Rock, Inc. v. Pennsylvania DEP** – On March 8, 2024, the Commonwealth Court of Pennsylvania [upheld](#) the Pennsylvania Environmental Hearing Board’s decision to rescind Gibraltar Rock’s permits issued by PADEP. The EHB rescinded the noncoal surface mining permit and the NPDES permit after determining that PADEP issued the permits “prematurely” because it did not consider how quarry pumping would affect remediation at a nearby Superfund Site, Hoff VC Site. In upholding the EHB’s decision, the Commonwealth Court found “no hardship in imposing the time and costs of reapplying for permits” upon Gibraltar Rock, which it found “failed, in the first instance, to demonstrate that its quarrying activities ‘will not cause pollution to the waters of the Commonwealth.’” To proceed, Gibraltar would have to entirely restart the permit application process, as opposed to negotiating permit revisions on remand, which is a very costly and time consuming. Gibraltar may encounter extra delays in a re-application process in light of PADEP’s early phase of remediation at the Hoff VC Site, which the EHB found had a “lack of momentum” with “no immediate or specific plans to conduct further studies or remediation activities.”

#### **B. Water**

1. **PADEP Launches Pilot Program in 10 Counties to Improve Permit Processing of Chapter 102 Construction Stormwater Permits** – On April 29, 2024, DEP [announced](#) a pilot program to begin on May 1, 2024 to improve and accelerate the review process for construction stormwater discharge permits in ten counties (Allegheny, Beaver, Bucks, Chester, Lebanon, Lehigh, Luzerne, Monroe, Montgomery, and York). DEP anticipates this program will reduce the average processing time for Chapter 102 individual NPDES construction stormwater permit applications by 73 business days. During the pilot program, the Conservation Districts in the participating counties will accept a maximum of three permit applications per quarter under the program. More information on the Pilot Program is available on [DEP’s Construction Stormwater Page](#).

#### **C. Climate**

1. **Governor Shapiro Announces Commitment to Get 50% of Electricity For State Government from Solar Energy Facilities in Pennsylvania** – On April 22, 2024, Governor Shapiro [announced](#) a new renewable energy initiative known as the Pennsylvania Project to Utilize Light and Solar Energy (PA PULSE) that includes ten new solar arrays, built, owned, and operated by Lightsource bp in six Pennsylvania counties. The announcement claims Pennsylvania will get 50% of its electricity from solar power by the end of 2025. The Department of General Services signed a 15-year fixed price agreement with Constellation so that, even as energy costs rise, Pennsylvania’s rate will stay the same, with the intent of saving Pennsylvania taxpayer

dollars while providing long-term electricity. This initiative builds on Governor Shapiro's energy plan, the Pennsylvania Reliable Energy Sustainability Standard (PRESS), that he [announced](#) on March 13, 2024.

#### **D. Miscellaneous**

- 1. PADEP Draft Technical Guidance Document on Closure Requirements for Aboveground Storage Tank Systems** – On April 6, 2024, PADEP [announced](#) the availability of a draft technical guidance for [Closure Requirements for Aboveground Storage Tank Systems](#), with comments accepted through May 6, 2024. This technical guidance updates sampling requirements to be consistent with regulatory requirements and other technical guidance documents and includes procedures for closure notification, tank system closure, tank handling, waste management and disposal, site assessment, sampling, sample analysis, release reporting, and recordkeeping. It also includes additional information relevant to the storage tank owner during storage tank closure activities. This technical guidance document will be effective upon publication of notice as final in the Pennsylvania Bulletin.

If you have any questions concerning information included in this update, please contact Kevin Garber at (412)-394-5404, [kgarber@babstcalland.com](mailto:kgarber@babstcalland.com), or Jessica L. Deyoe at (202)-853-3489, [jdeyoe@babstcalland.com](mailto:jdeyoe@babstcalland.com) for questions pertaining to the environmental matters.