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# LAWYERS JOURNAL

THE FLAGSHIP PUBLICATION OF THE **ALLEGHENY COUNTY BAR ASSOCIATION**

*PRACTICE AREA PROFILE:* **ENVIRONMENT AND ENERGY LAW**

## Attorneys Against Hunger campaign raises nearly $120,000

By Zandy Dudiak

This year's Attorneys Against Hunger (AAH) campaign has made sure that 18 food pantries across Allegheny County and the Greater Pittsburgh Community Food Bank (GPCFB) have funds available to serve people in need.

"Hunger insecurity is an ongoing problem that requires everyone's attention," said Allegheny County Bar Foundation (ACBF) President Bryan Neft, who has both chaired and co-chaired the campaign in previous years. "AAH strategically contributes to hunger relief programs across Allegheny County to tackle issues facing those who suffer from hunger insecurity and to maximize the impact."

Corrine McGinley and Abby Steidl co-chaired the campaign, which raised $119,219, which is about $20,000 less than the previous year. All donations collected after the end of the 2023-24 Strike Out Hunger event were technically counted toward this year's campaign, ACBF Programs and Projects Manager Stephanie Selya said, adding "but we really started soliciting in November and continued to do so until the end of April."

"We've raised more funds in other years," Neft noted. "But raising nearly $120,000 for hunger relief makes this year as successful as any other."

Since the campaign's inception in 1993, the effort has raised a total of $2,672,231, according to Lorrie Albert, ACBF Associate Executive Director.

"Once again, we had a very successful campaign thanks to our sponsors, challenge grant providers, members, committees and sections, who wholeheartedly support helping to combat hunger in Allegheny County," she said.

PHOTO BY JAMES PIAGGIO

*Members joined the Young Lawyers Division to support Attorneys Against Hunger at Shorty's Pins x Pints for the latest Strike Out Hunger event this past March.*

E.J. Donnelly, an ACBF trustee and AAH committee member, said the largest amount raised in a given year – $146,404 – was during the 2020-21 campaign that took place during the first year of the pandemic. Although the campaign has consistently exceeded its $100,000 goal each year since 2008, he said the amount contributed since the pandemic high mark has "dropped a bit" each year in comparison.

Every dollar donated to Attorneys Against Hunger is distributed to the selected local anti-hunger agencies, thanks to the generous underwriting of lead sponsor Steidl & Steinberg and support sponsors Gleason Experts and the late Judge Raymond A. Novak, who died on June 30. Contributions come primarily from individuals and ACBA sections and committees, Neft said.

Eckert Seamans Cherin & Mellott, the Rita M. McGinley Foundation and the McGinley family members of the bar provided $15,000 in challenge grants.

"Once we raise $85,000, this $15,000 unlocks to get us to our $100,000 goal," Selya said.

The Young Lawyers Division (YLD) held a "very successful" Strike Out Hunger fundraiser, raising $7,142, Albert said.

The 18 agencies benefitting from Attorneys Against Hunger funds this year are: Downtown Ministerium Walk-In Ministry (five church pantries), East End Cooperative Ministry, Greater Pittsburgh Community Food Bank, Urban League of Pittsburgh's Hunger Services, Hope Ministries of McKeesport, Jubilee Kitchen, Just Harvest, (JFCS) Squirrel Hill Community Food Pantry, Allies for Health + Wellbeing, Rainbow Kitchen, North Hills Community Outreach, South Hills Interfaith Movement (SHIM), Focus on Renewal and Casa San Jose.

Downtown Ministerium will divide the contribution it received among five church pantries – First Lutheran, First Presbyterian, Smithfield United, St. Mary of Mercy (Divine Mercy Parish) and Trinity Cathedral. The churches alternate weeks to provide a walk-in open pantry throughout the year.

"Those pantries rely mostly on the bar contribution," Donnelly said.

The AAH money is used in different ways. For instance, Casa San Jose in Beechview, which is building a new center that will have a pantry, has used its grant the past few years to purchase Aldi and Walmart gift cards for those in need, Donnelly said. ■

## ACBA to host CLE program on Title IX Regulations in higher education on Aug. 20 in the Koppers Building

By ACBA Staff

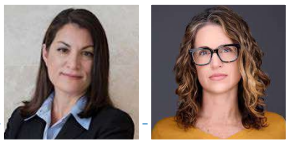
The Allegheny County Bar Association will present a continuing legal education program – "Title IX Regulations in Higher Education: Where Are We Now?" – on Wednesday, Aug. 20, at the Mellon Room in the Koppers Building Conference Center.

The federal 2020 Title IX Regulations are back in effect after the 2024 Title IX Regulations were vacated by a federal district court. This program will focus on the current state of Title IX investigations and resolutions of sexual harassment and misconduct on college campuses.

Attendees will hear from two experienced attorneys in the field – one who advises a university on its compliance obligations and one who represents and advises students and faculty in disciplinary processes. They will discuss the disciplinary process from initial report to final determination and appeal, sharing practical knowledge and insights on the disciplinary process, legal issues that may arise, and opportunities for informal or alternative resolutions.

Speakers will be Lorie Dakessian of Clark Hill PLC, and Laurel Gift of the University of Pittsburgh.

SPEAKERS



Lorie Dakessian and Laurel Gift

The program has been approved for one hour of substantive CLE credit. Pizza will be served. For more and to register visit *ACBA.org.* ■

**Membership renewal statements emailed in June, renew by Aug. 31!**

The Allegheny County Bar Association's 2025-26 membership renewal campaign is now underway, and members are encouraged to renew early to avoid any interruption in benefits and services. Dues renewal statements were emailed to all members in June, and the deadline to renew is Sunday, Aug. 31.

To renew online, log onto the ACBA website and visit "My ACBA Hub."

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# PLAA Community Service Committee lifts Angels' Place

SUBMITTED PHOTO

*The PLAA's generous donations to Angels' Place.*

By Ron Cichowicz

The Pittsburgh Legal Administrators Association (PLAA) promotes the exchange of information regarding the administration and management of legal organizations. In addition to its efforts to support its members professionally, the PLAA also strives through its Community Service Committee to help local communities become better places to live and work by identifying local organizations that need funding or volunteer assistance.

"We find organizations in the Pittsburgh area that sometimes don't get a lot of support," said Diana Berringer, CPA, Director of Finance and Operations for Burns White and Chair of the PLAA Community Service Committee. "At the start of each year, committee members suggest organizations near and dear to their hearts or that they've researched and determined may need some assistance."

The PLAA recently partnered with Angels' Place, a local nonprofit organization that helps families in need find resources to secure a brighter future. The results might even be described as "heavenly."

For more than three decades, Angels' Place, with locations on the North Side and in Swissvale, has provided families with quality early childhood education and childcare and support to parents to help them complete their educational goals and obtain satisfying employment. It has two warm inviting early childhood development and learning centers that serve parents and children (from birth to pre-kindergarten).

"Thanks to the generosity of law firms and individuals who contributed to our mission, we were able to collect diapers, baby wipes, goldfish crackers,

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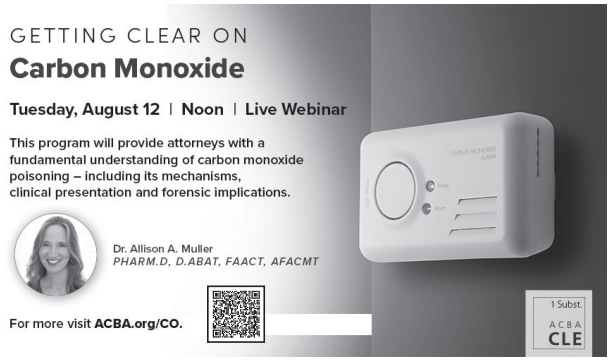
# Aug. 12 CLE to examine carbon monoxide poisoning




By Brian Knavish

They call carbon monoxide "the silent killer" for a reason. Carbon monoxide – or "CO" for short – is an odorless, colorless gas that can cause a spectrum of health effects, from transient, mild symptoms to severe neurological damage or death.

The ACBA will present a one substantive credit CLE – "Getting Clear on Carbon Monoxide" on Tuesday, Aug. 12 at noon on Zoom. The program will be conducted by noted pharmacy expert witness and consultant Allison A. Muller.

This program will provide attorneys with a fundamental understanding of carbon monoxide (CO) poisoning, including its mechanisms, clinical presentation and forensic implications. Legal cases involving CO exposure often stem from incidents in homes, workplaces or public spaces due to the improper use of fossil-fuel-burning appliances such as heaters, generators or power washers.

Additionally, certain chemical exposures can lead to CO poisoning. Often referred to as "the great imitator," CO poisoning presents with nonspecific symptoms that mimic other medical conditions, making diagnosis and causation key issues in litigation. This talk will also examine the limitations of CO measurement in both environmental and biological samples, equipping attorneys with the knowledge needed to critically assess testing results and expert opinions in CO-related cases.

For more info or to register, visit *ACBA.org/CO.* ■

For information about how the **Lawyer Referral Service** can help more clients find YOU, please contact: Whitney Hughes at 412-402-6703 or *whughes@acba.org*. For a closer look at this unique Pittsburgh legal service, visit *GetAPittsburghLawyer.com.*



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***ACBA.org/Opinions***

The *Pittsburgh Legal Journal Opinions* offers ACBA members timely, full-text opinions from various divisions of the Court of Common Pleas.

**Keyword(s) in latest edition:**

Fiduciary Duties

## Gender Bias Duty Officers

*ACBA.org/GenderBiasHotline*

If you have experienced gender bias in the legal field, you may confidentially report it to a duty officer of the Gender Bias Subcommittee.

Kimberly Brown | 412-394-7995 | *kabrown@jonesday.com*
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Rhoda Neft | 412-606-8387 | *rhoda.neft@gmail.com*

## Professional Ethics Hotline

*ACBA.org/OfficerAssignments*

ACBA Professional Ethics Committee "Ethics Hotline" makes available Committee Members to answer ethical questions confidentially.

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| Gregory Monaco...412-747-8443 | Jeff Wertz.....412-477-1672 |
| | Holly Whalen.....412-586-2141 |

LAW PRACTICE MANAGEMENT

# Learn how to protect your practice from cyber threats

By Evan H. Stein

As cyberattacks grow more sophisticated, no industry is immune, including the legal field.

On May 23, the FBI issued a warning specifically targeting law firms, alerting them to the fact that a cybercriminal group is targeting the legal industry. They are using "IT-themed social engineering calls, and callback phishing emails, to gain remote access to systems or devices and steal sensitive data to extort the victims...the group has consistently targeted US-based law firms, likely due to the highly sensitive nature of legal industry data."

Whether you're a solo practitioner or part of a large firm, understanding threats like this and how to defend against them is essential to protecting your clients and your reputation. Increasingly, our technology systems aren't the weakest link; we are!

### The most common cyber threats facing firms

Law firms are prime targets for cyberattacks because they handle highly sensitive data, including client records, intellectual property, merger details, litigation strategies, and other confidential information. Here are the most common and highest-risk cybersecurity threats law firms face.

### Phishing attacks

Phishing remains the most prevalent form of cyberattack targeting law firms. These attacks employ deception – often through email, text, or phone calls – to trick recipients into clicking on malicious links, transferring funds, or sharing sensitive data.

Messages may appear to come from trusted sources, such as a firm partner or file-sharing services like DocuSign or Dropbox. These well-crafted communications use urgent language that encourages immediate action, allowing busy individuals who are often under pressure to be less vigilant. These attempts are sophisticated enough to mimic email addresses, phone numbers, or even spoof voice calls to impersonate.

### Ransomware

Ransomware is a type of malware that takes your data or device hostage by locking down a device or encrypting files. Then it demands payment (usually in cryptocurrency) to unlock them. These attacks disrupt communications and access to case files, leading to downtime that firms can't afford. They also impact client confidentiality, which can harm a firm's reputation. Hackers understand that firms may pay the ransom quickly to avoid these immediate and critical risks. Even with payment, there is no guarantee that the data will be restored.

### Insider threats

Your firm's biggest strength is its people. Unfortunately, when it comes to cybersecurity, they are also your biggest risk. They are both your first line of defense and most common vulnerability. Threats from employees, such as sharing passwords, falling for phishing scams, or using unsecured devices, either accidentally or intentionally, can expose data or create vulnerabilities. Technology can only go so far to protect your firm's security.

### Passwords

Everyone knows they need strong passwords, but it's easy to fall into the habit of relying on reused, weak, or easily guessable passwords that open the door to attackers. The reality is that one compromised password could allow access to email, file systems, and client communications.

### Unsecured remote access

In an era of hybrid work, connected devices (such as phones, printers, and security cameras) can provide backdoor access to your network. Remote access has become increasingly common in recent years, but it is not always properly secured. Unpatched VPNs, unsecured Wi-Fi, or personal devices without encryption create potential opportunities for malicious actors.

### Building a strong defense

### Strong network security

Every time a new unsecured device connects to your network, you are

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PRACTICE AREA PROFILE: **ENVIRONMENT AND ENERGY LAW**

## ENVIRONMENT AND ENERGY LAW SECTION CHAIR'S MESSAGE

# Anticipating change: The year ahead in environmental and energy law

By Brian L. Greenert

On March 12, 2025, the Administrator of the U.S. Environmental Protection Agency Lee Zeldin announced that "Today is the greatest day of deregulation our nation has seen." Administrator Zeldin was referring to 31 regulatory and policy actions that the new administration's EPA would take in the coming months. These actions, along with a host of other completed and contemplated regulatory changes by other federal agencies, signal significant change in environmental and energy law in the year ahead.

The anticipated pace and scale of regulatory change in environmental and energy law over the next year presents a unique challenge and opportunity to attorneys practicing in Southwestern Pennsylvania. Allegheny County is home to a wide variety of regulated energy industries, such as oil and gas, mining, chemical, industrial, renewable energy, and more. ACBA attorneys advising clients in these industries will be challenged to keep pace with the statutory and regulatory changes on the federal level. On the other hand, such change also presents opportunities. With over 180 attorneys in the ACBA Environment and Energy Law Section, with a wide variety of experience and expertise, the Allegheny County bar is uniquely positioned to adapt and thrive in this time of change.

Participation in the ACBA Environment and Energy Law Section is a fantastic way to understand and master the changing regulatory environment. The Section will continue to provide ACBA members with timely, high-quality educational programming on the latest developments in environmental and energy law. The Section's members have deep and broad expertise in all facets of environmental and energy law, from oil and gas, air, water, mining, renewables, and environmental justice. Our Section members practice in all levels of state and federal courts and administrative tribunals. One only needs to page through this edition of the *Lawyers Journal* to see a representation of the deep insight that our Section members have to offer.

Beyond the formal educational programming, participation in the Environment and Energy Law Section provides ample opportunities to network with other members. We anticipate hosting happy hours and other networking opportunities in connection with in-person CLE programming. And we also look forward to another fantastic Green Event, which serves as the Section's annual meeting at which we award scholarships to law students who demonstrate an interest in pursuing a career in the field of environmental or energy law in Allegheny County, Pennsylvania upon graduation. These events allow both members and non-members to make connections and broaden their knowledge base and resources.

We invite anyone with an interest in environmental and energy law to join our Section in this coming year as we collaborate to keep pace and thrive in this changing regulatory environment. For more information, please visit *ACBA.org/CDS* and click on Environment and Energy Law Section. ■

**Brian L. Greenert** *is the incoming Chair of the Environment and Energy Law Section. He is an Assistant Counsel with the Commonwealth of Pennsylvania, Department of Environmental Protection, where he primarily counsels the Department's Air Quality and Mining Programs. The views and opinions expressed herein are those of the author and do not necessarily reflect those of the Commonwealth, the Governor, the Governor's Office of General Counsel or the Department of Environmental Protection.*



ENVIRONMENT AND ENERGY LAW SECTION
PAST-CHAIR'S MESSAGE

# Outgoing section Chair reflects on the past year

By Jane Story

The 2024-2025 bar year has been an eventful one, both in terms of changes that have occurred in environmental and energy law, and in the activities of the ACBA Environment and Energy Law Section. It is therefore an apt time for a special edition of the *Lawyers Journal* that focuses on environmental and energy law.

One constant is that the Environment and Energy Law Section continued to work to present CLEs on a variety of topics relevant to section members. In November, Tom Maher of Civil & Environmental Consultants presented a CLE on the CERCLA hazardous substance designation of per and polyfluoroalkyl substances. In January, Rimkus presented a CLE on investigating moisture intrusion claims. In February, we hosted an in-person, environmental and energy law year-in-review CLE at the Engineers' Society of Western Pennsylvania. Kathleen Ryan of the Pennsylvania Department of Environmental Protection presented on state developments, while Brandon Coneby of Peacock Keller, LLP presented on federal developments. Given the recent change in presidential administration, Brandon also did double duty by presenting a year-in-preview as well. Finally, we concluded our CLEs with a NPDES-focused water sampling and analysis presentation in May by Ben Blasingame of Civil & Environmental Consultants.

Another tradition is the annual holiday party. This year, we were pleased to have panelists from both the Pennsylvania Environmental Hearing Board and the Pennsylvania Department of Environmental Protection. Michael Heilman from the Pennsylvania Department of Environmental Protection presented first on the Department's initiatives and priorities. Judge Maryanne Wesdock of the Pennsylvania Environmental Hearing Board then presented on notable recent EHB decisions. Eric Delio of the Pennsylvania Environmental Hearing Board concluded with a presentation on changes to the EHB's electronic filing system. Panelists kindly fielded audience questions and stayed for the reception thereafter to socialize with attendees. We also requested donations for Attorneys Against Hunger at this event, resulting in a $1,700 contribution to this important cause.

But what I am most proud of this year is our efforts to engage with local law students interested in environmental and energy law. In February, we participated in the inaugural Law Student Career

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*Incoming Chair Brian Greenert presented outgoing ChairJane Story with a plaque in recognition of her service at the Environment and Energy Law Section's Scholarship Fundraiser "Green Event" in May.*

# Tread lightly: Environmental implications of tire particles

By Kara Hunter

Tire particles are an inimitable threat to the environment. The regulation of tire particles is a rather bumpy road to traverse, especially when considering recent federal administrative changes.

Tire particles contribute to both microplastic and nanoplastic pollution. Since tire particles are derived from rubber mixed with a sophisticated blend of synthetic and natural materials, they are chemically unique. As tires shed, the materials which they are comprised of go on to pollute the environment in the form of particles and leachate. After tire particles are released into the air, they travel varying distances prior to their deposition.

Tire particles end up in wastewater, road/stormwater runoff and in oceans. The International Journal of Environmental Research and Public Health states that tire particles account for approximately five to ten percent of ocean plastic pollution. According to Science of the Total Environment, researchers estimate that the U.S. emits 1,524,740 metric tons of tire particles into the environment yearly.

Tire particles and the chemicals that they leach can be detrimental to aquatic life. According to a 2021 study in Science, 6PPD-quinone, the rubber-derived ozone transformation product of 6PPD, was discovered as a causative agent for urban runoff mortality syndrome in coho salmon. 6PPD is a chemical that prevents tires from degrading and helps them last.

On November 22, 2024, the EPA developed an agency-wide Action Plan to address 6PPD-quinone. The Action Plan coordinates activities across the EPA's programs to support progress towards Action Plan activities over the next four years.

Interestingly, tire pollution emitted per vehicle has increased in recent years as the production of electric vehicles has amplified. Since electric vehicles are much heavier than gas-powered or hybrid vehicles, electric vehicles contribute approximately 20 to 30 percent more tire pollution to the environment than gas-powered or hybrid vehicles of a comparable size. This begs the question as to whether the electric vehicle industry is in fact causing more harm than good for the environment.

The UN Economic Commission for Europe's World Forum for Harmonization of Vehicle Regulations developed a proposed methodology to measure emissions from tire abrasion. This data will be used to determine tire abrasion limits to be incorporated in UN Regulation No. 117 by September 2025 for tires fitted to passenger cars. Once the abrasion limits are in force, tire manufacturers must ensure that tires are below the set limits.

Further, the EU agreed to emission standards for cars and trucks, with a new regulation, Euro 7, set to be enforced in 2026. Euro 7 will regulate tire and brake particle emissions generated by the abrasion of brake pads and discs. Euro 7 rules are fuel and technology neutral, imposing the same limits regardless of whether the vehicle uses gasoline, diesel, electric drive trains, or alternative fuels. Euro 7 rules will set additional limits for particulate emissions generated by brakes and rules for microplastic production due to tire wear. The goal of the Euro 7 standards is to ensure cleaner vehicles, improve air quality, protect citizens' health, and protect the environment.

Starting in November 2026, European auto makers will be required to demonstrate that all new type-approved vehicles emit less than 7 mg of particulate matter per km from their brakes. By November 2027, this limit will also become mandatory for all newly registered vehicles. By 2035, this number will drop to less than 3 mg/km per vehicle. Electric vehicles must reach the 3 mg/km limit by November 2026.

Researchers and organizations have called for the regulation of tire particles in the U.S.; however, based upon recent reversals of EPA standards, it is likely that any regulation efforts pertaining to tire particles will be thwarted by the current administration.

For example, in March of 2025, lawmakers voted to reverse EPA standards set to reduce hazardous emissions from the rubber tire manufacturing process. Republicans argued that the rule increased compliance costs for the industry, resulting in higher prices for consumers. The EPA is currently reconsidering National Emission Standards for Hazardous Pollutants for various industries, including the rubber tire manufacturing industry. The Trump administration is also considering a two-year compliance exemption via Section 112(i)(4) of the Clean Air Act for affected facilities while the EPA goes through the rulemaking process. The CAA allows the President to exempt stationary sources of air pollution from compliance with any standard or limitation under Section 112 for up to two years if the technology to implement the standard is not available, and if it is in the national security interests of the country to do so. The EPA accepted Presidential Exemptions through March 31, 2025.

This is a vast departure from the Biden administration's finalized amendments to the NESHAP, which addressed unregulated emissions of hazardous air pollutants from the rubber processing subcategory and fulfilled the EPA's obligation to address all hazardous air pollutants from the rubber processing subcategory, as well as the EPA's obligation to address all

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# What the recent SCOTUS opinion on nationwide injunctions means for environmental law



By Chad Wissinger, Emily Thomas and Jesse Bell-Taylor

Although the underlying issue of the end-of-term Supreme Court case on nationwide, or "universal," injunctions focused on citizenship rights, not environmental law, the far-reaching ruling will have significant ramifications for environmental practitioners. This article provides a brief background on injunctions (both universal and those more geographically limited), includes a recent example of the confusion caused by competing rulings, explains the recent ruling in Trump v. CASA, Inc., and ends with considerations for the practice of environmental law.

### A brief overview of universal injunctions

Injunctions halt enforcement of a governmental action. A typical injunction only applies to the parties in the suit or is otherwise limited in some way, whereas a universal injunction applies to everyone. Universal injunctions ensure that Americans' rights do not fundamentally differ based on residency, yet plaintiffs who maneuver their case into a favorable forum could obtain an injunction applicable to the entire country across all jurisdictions. Thus, obtaining a cohesive national understanding of a particular issue could politically favor the party who appointed a particular judge. None of these scenarios is satisfying.

Universal injunctions were historically rare; however, this trend changed recently. For example, in April 2024, the Harvard Law Review identified 96 new national injunctions from 2020 to 2023 alone. The recent flood of injunctions largely relates to modern Presidents issuing comparatively more Executive Orders, though legal scholars have also noted that the uptick in nationwide injunctions ties to the recent decrease in the certification of nationwide class actions. Either way, modern litigants have utilized these i njunctions across multiple areas of law, including in the environmental space.

### Injunctions and environmental law

The Congressional Research Service identified environmental law as one of the top five overall topics for the issuance of injunctions *(www.congress.gov/crs-product/R46902 (v.3).*

For example, the Clean Water Act (CWA), established a regime for regulating discharges of pollutants into "navigable waters," later defined as Waters of the United States (WOTUS). In 2015, the "WOTUS Rule" was promulgated to establish a "simpler, clearer, and more consistent" definition. 80 FR 37053. Plaintiffs filed multiple challenges to this rule, which covered inter¬mittent waters including saturated wetlands, pools, and prairie holes. By the end of 2015, absent a universal injunction, partial or limited injunctions prohibited enforcement of the WOTUS Rule in 13 states, with the expanded definition still being used in the 37 others. The WOTUS Rule continued under this dual interpretation model over the next several years. The Supreme Court finally ruled in 2023 that the WOTUS Rule was broader than the statute intended, thus removing many of these newly added waters from coverage.

### Trump v. CASA, Inc.

In a 6-3 decision, the Supreme Court, in Trump v. Casa, 606 U.S. at ____, held that federal courts cannot grant universal injunctions that provide relief to non-participating parties. The majority held, "Universal injunctions likely exceed the equitable authority that Congress has given to federal courts." Basing their analysis on the Judiciary Act of 1789, which granted federal courts jurisdiction over "all suits...in equity" to provide "complete relief," the Court concluded that "complete relief" was limited to "complete relief for the party involved" as granting a universal injunction does not provide further relief to the moving party.

While the decision limits federal courts from granting universal injunctions, Justice Alito's concurrence points out two distinct workarounds: (1) preliminary injunctions for nation-wide class actions pending class certification (serving the same purpose as "universal injunctions" for individuals); and (2) third-party standing (whereby states represent their citizens in executive order litigation). Nationwide injunctions can only be granted to a state if the injunction is the least restrictive means to achieving an equitable outcome for the parties involved.

The Supreme Court limited the frequency which federal courts can issue universal injunctions absent class certification, while still allowing some limited discretion to do so. The Supreme Court will defer to the lower federal courts in determining when it is fit to grant a universal injunction in the case of third-party state representation.

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# Significant federal deregulatory efforts may reshape environmental and energy legal landscape

By Jane Story

The Trump Administration has environmental and energy regulations in its crosshairs, targeting them in historic deregulatory efforts. These efforts began just days after the president took office for his second term and have continued at a rapid pace since then.

On January 31, 2025, President Trump issued Executive Order (EO) 14192, entitled "Unleashing Prosperity Through Deregulation," which directs agencies to identify at least ten existing regulations to be repealed whenever the agency publicly proposes one new regulation. EO 14219 followed on February 19, 2025, requiring all agency heads to provide a list within 60 days, identifying regulations by certain classes targeted for deregulation, including "unconstitutional regulations," regulations "based on anything other than the best reading of the underlying" statute, and regulations impeding energy production, among others. The president issued a related memorandum on April 9, 2025, directing agencies to take immediate steps to repeal regulations identified based on the review performed under EO 14219.

The memorandum directs agencies to prioritize regulations for repeal based on ten specific Supreme Court decisions, including Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024); West Virginia v. Environmental Protection Agency (EPA), 597 U.S. 697 (2022); Michigan v. EPA, 576 U.S. 743 (2015); and Sackett v. EPA, 598 U.S. 651 (2023). The memorandum also states that repeals should be finalized without notice and comment as applicable under the "good cause exception" – when it is impracticable, unnecessary, or contrary to the public interest to provide a notice-and-comment period – in the Administrative Procedure Act (APA).

On April 9, 2025, the president also issued EO 14270, ordering the EPA, Department of Energy (DOE), Federal Energy Regulatory Commission, and Nuclear Regulatory Commission to issue a sunset rule, effective by Sept. 30, 2025, for "Covered Regulations" issued under certain statutes, including the Energy Policy Acts of 1992 and 2005, the Federal Power Act of 1935, the Natural Gas Act of 1938, the Endangered Species Act of 1973, and additional statutes to be identified by the EPA and Army Corps of Engineers. The sunset rule will: (1) insert a "Conditional Sunset Date" one year from the effective date of the sunset rule into all of the currently existing Covered Regulations; and (2) require that any newly issued Covered Regulations include a Conditional Sunset Date no more than five years into the future. Prior to a rule's expiration under its Conditional Sunset Date, the respective agency must provide an opportunity for the public to comment on the costs and benefits of the regulation and, if warranted, may extend the Conditional Sunset Date by no more than five years. Notably, the expiration of a rule under EO 14270 does not count toward the ten-for-one deregulatory requirement in EO 14192.

Federal agencies have in turn been taking steps to follow these directives. On March 12, 2025, the EPA announced the launch of an expansive deregulatory effort, including reconsidering Biden and Obama era regulations on climate change. The EPA also invited the regulated community to apply for a Presidential Exemption under section 112(i)(4) of the Clean Air Act (CAA) while EPA reconsiders several rules issued at the end of President Biden's term. On June 11, 2025, EPA announced proposed rulemakings to repeal for power plants (1) all greenhouse gas emission standards under Section 111 of the CAA and (2) the 2024 amendments to the Mercury and Air Toxics Standards, both subject to a 45 day notice-and-comment period after publication in the *Federal Register*.

On April 11, 2025, the Office of Management and Budget (OMB) requested information on ideas for deregulation. OMB received thousands of comments in response, though it remains to be seen which specific regulations will be prioritized for recission based on these comments.

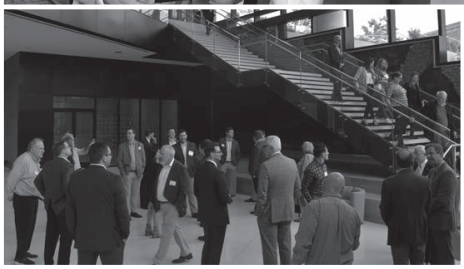
The first formal regulatory change without notice and comment based on an EO occurred on April 15, 2025, when the DOE announced the repeal of the definition of "showerhead," previously codified at 10 C.F.R. § 430.2. The DOE did so based on EO 14264 – which specifically directed the recission of this definition – and invoked the "good cause" exception of the APA, citing the non-discretionary nature of the DOE duty in light of the president's order.

Further federal environmental and energy deregulatory efforts can be expected to continue, following through on the directives in these and additional EOs. The stated purpose of these efforts is to promote goals including economic growth, innovation, and increased domestic energy production. Critics, however, have raised concerns about the legality of these efforts – particularly whether they are consistent with existing environmental and energy statutes and whether an expansive interpretation of the "good cause" exception is supported by the APA – and argue that they will

*continued on* ***page 12***

# CONSTRUCTION LAW SECTION TOUR

PHOTOS BY **JAMES PIAGGIO**



*Erin Fallon of J.S. Held, Construction Law Section 2024-25 Chair-Elect David Scotti, Construction Law Section 2024-25 Chair James Doerfler and Jacklyn Stoughton of F.N.B. Wealth Management paused for a photo following the Construction Law Section tour at FNB Financial Center at the end of May. The event was sponsored by F.N.B. Wealth Management and J.S. Held.*

**TOP LEFT:** *Construction Law Section members observed the new views from the F.N.B. Financial Center during the tour.*

**MIDDLE LEFT:** *Construction Law Section Chair-Elect David Scotti recognized Chair James Doerfler on behalf of the Section for his work as chair over the past bar year.*

**BOTTOM LEFT:** *Attendees ended the tour at the "green wall" in the lobby of the F.N.B. Financial Center.*

## PLAA

*CONTINUED FROM PAGE 2*

animal crackers, bubbles, outdoor chalk and other high priority needed items," Berringer said. "We took them to the North Side location and they were so grateful, I can't describe how ecstatic they were."

Berringer said there is a natural partnership between the Allegheny County Bar Association and the PLAA.

"The PLAA represents all walks of a law firm, including operations and finances," she said. "We work together often to sponsor events, offer CLEs and other activities."

Some of the other community services projects the Committee has done include:

• Collecting and distributing blankets and socks to local personal care homes

• Organizing an annual Thanksgiving food drive in partnership with the Greater Pittsburgh Food Bank and the Light of Life Rescue Mission

• Preparing bagged lunches for summer camp at Urban Impact, a local non-profit focused on helping at-risk children, youth and families

• Collecting donations for the White Oak Animal Safe Haven

• Partnering with local Boys' and Girls' Clubs to provide backpacks filled with school supplies

"The legal community has a lot of pride in how it serves the community and always embraces an opportunity to assist those in need," said Berringer. ■

## LAW PRACTICE MANAGEMENT

*CONTINUED FROM PAGE 3*

putting your entire system at risk. Your firewall is your first line of defense, monitoring and blocking threats before they can cause damage. You want comprehensive protection, including firewalls that safeguard both hardware and software. A hardware firewall separates devices from the Internet, while a software firewall protects individual devices.

Beyond your firewalls, you want to implement a multi-pronged approach that includes secure connections, reliable antivirus software, and encryption protocols.

### Multi-Factor Authentication (MFA)

With the increase in data breaches, adding Multi-Factor Authentication (MFA) to a strong password adds an extra layer of security so only the right people can access your data. MFA requires users to provide two or more verification factors to gain access, such as a password and a unique code sent to their mobile device. They often provide different options, such as a passkey, a trusted device that's not easily duplicated, like a phone or hardware key, or biometrics, like a fingerprint or face scan.

### Antivirus and anti-malware protection

Malware and viruses are two of the most common threats to businesses. They can enter through emails, downloads, or even legitimate-looking websites. That's why reliable antivirus software on all devices is a must. Regular updates to these programs are crucial, ensuring protection against the latest threats. These updates, combined with firewalls and encryption, add multiple layers of defense.

### Human risk management

Cybersecurity is not just a tech issue. It's a people issue. No matter how good your technology is, it only takes one employee clicking on the wrong link, reusing a weak password, or sending sensitive info to the wrong person for a company to get hacked or suffer a data leak. Most breaches begin with human error, so your firm must develop a strong "security culture."

As your first line of defense and greatest risk, it is essential to keep cybersecurity at the forefront of all employees' minds. This begins with effective security policies, so everyone understands established protocols for protecting business data.

However, policies alone aren't enough. Consistent and ongoing training is crucial for educating partners and staff on security basics, reinforcing best practices, and keeping them up to date on the latest vulnerabilities and threats. Additionally, you should incorporate cybersecurity training into your company's onboarding process to make sure new employees are up to speed.

FSA recommends KnowBe4's HRM+ platform. This innovative solution is in line with Pittsburgh's own Duolingo. It is user-friendly, behavioral-focused training through engaging videos, quizzes, and simulated attacks – no more dry staff training sessions or sleep-inducing webinars.

KnowBe4 also understands the novel threats of each industry, so they tailor their training to the dangers facing the legal sector. They go beyond training by providing organizations with insights into who might be more vulnerable, based on behavioral patterns, and offer support to mitigate those risks.

### Final thoughts

The Pittsburgh Legal Community is built on trust, confidentiality, and professionalism. In today's threat landscape, cybersecurity is foundational. By understanding the threats and implementing robust defenses, your firm can safeguard its clients, reputation, and future.

If you're not sure where to start, FSA Consulting is here to help. From infrastructure assessments to employee training and cloud configuration, we can help. ■

**Evan H. Stein** *is the founder and managing partner of FSA Consulting. He can be reached at 412-228-3100 or support@fsaconsulting.us.*

## EELS PAST-CHAIR'S MESSAGE

*CONTINUED FROM PAGE 5*

Reception, at the Power Center on Duquesne University's campus, for students from both the Thomas R. Kline School of Law of Duquesne University and the University of Pittsburgh School of Law. There we met many enthusiastic students who asked great questions about the opportunities in environmental and energy law. As a result of talking with students at this reception and separate outreach to members of the Energy & Environmental Law Society at the University of Pittsburgh School of Law and *Joule: Environmental & Energy Journal* at the Thomas R. Kline School of Law of Duquesne University, we also had terrific law student attendance at our year-in-review CLE and were able to engage with them at a reception immediately following that presentation. We also had a great pool of applicants for our annual scholarship award and were pleased to announce three winners in May at our annual Green Event, which was held this year at the beautiful Pittsburgh Botanic Garden. Congratulations to Emily Grecu from the University of Pittsburgh School of Law and Natalee Codispot and Thane Zeeh of the Thomas R. Kline School of Law of Duquesne University!

Thank you to all who contributed their time and talents to making the last ACBA bar year a success. I look forward to another great year under the leadership of our new Chair, Brian Greenert, and would encourage those interested in environmental and energy law to join the section and participate in future events. ■

**Jane Borthwick Story** *is a Partner at Jones Day. She has counseled clients for more than fifteen years in state and federal environmental health and safety issues in the context of litigation and enforcement, compliance counseling, and business transactions. She is the outgoing Chair of the ACBA Environment and Energy Law Section. The views and opinions set forth herein are the personal views or opinions of the author; they do not necessarily reflect views or opinions of the law firm with which this attorney is associated.*

PHOTO BY BRIAN KNAVISH

*Ginger Rosendahl of title event sponsor Civil & Environmental Consultants presented Natalee Codispot, a student at the Thomas R. Kline School of Law of Duquesne University, with a $1,000 scholarship check.*





## REAL PROPERTY SECTION ANNUAL MEETING

PHOTOS BY **BRIAN KNAVISH**

*It was a packed house at Dollar Bank during the Real Property Section Annual Meeting last month.*

**LEFT:** *Melissa Krawczynski of Dollar Bank, Outgoing Real Property Section Chair Ed Preston and Paul Brahan of Fort Pitt Capital Group share a laugh during the event.*

**RIGHT:** *Incoming Chair Peter Schnore and outgoing Chair Ed Preston posed for photo after Ed was recognized for his contributions to the Section as Chair.*

## TREAD LIGHTLY

*CONTINUED FROM PAGE 6*

hazardous air pollutants listed in the CAA. The action would have reduced emissions of total hydrocarbons and filterable particulate matter from the rubber tire manufacturing source category by approximately 171 tons per year.

Although regulation of tire particles is not expected to occur in the U.S. any time soon, changes are happening globally. It is likely that a future administration will follow through with the regulation of tire particles based on global trends. ■

**Kara Hunter** *is an Associate at Langsam Stevens Silver & Hollaender LLP, where she specializes in environmental insurance coverage and litigation. Kara can be contacted at khunter@lssh-law.com.*

## RECENT SCOTUS OPINION

*CONTINUED FROM PAGE 7*

Trump v. CASA may lead to more states versus federal rights cases and will likely increase the filing of class actions suits and more aggressive action by non-governmental environmental advocacy organizations, such as the Sierra Club, which commonly rely upon the characteristics of its members to create standing for purposes of litigation and related injunctions. In fact, on June 27, 2025, in direct response to the Supreme Court ruling, the ACLU, along with other civil rights organizations, filed suit in the District Court of New Hampshire seeking to challenge the same executive order that was the basis of the CASA case – this time seeking class certification instead of a universal injunction. "Barbara" v. Trump, 1:25-cv-00244 (filed June 27, 2025).

### Current impact on environmental law

The Supreme Court ruling in Trump v. CASA could have immediate impacts on current federal environmental cases seeking nationwide relief. See, e.g., Lighthiser v. Trump, No. 9:25-cv-00088-DLC (D. Mont. Filed Apr. 15, 2025) (seeking nationwide invalidation of executive orders expanding fossil fuel development, but post-CASA likely limited to relief for named youth plaintiffs); California Youth v. EPA, No. 4:23-cv-08212-JST (N.D. Cal. Filed Dec. 11, 2023) (requesting a nationwide mandate forcing EPA to curb emissions, which may now be confined to case-specific orders).

In essence, unless environmental practitioners meet one of the two more narrowly-tailored exemptions to nationwide injunctions now called out in CASA, environmental practitioners may soon be forced to give environmental advice on a piecemeal basis like the WOTUS Rule history above, at least until a definitive case addressing any particular issue reaches the Supreme Court for ultimate determination. Our current Supreme Court has repeatedly suggested that it wants more reliance on the concept of "percolation" – where it gets the benefit of competing decisions and analysis from multiple courts prior to rendering a final resolution. CASA guarantees that the Justices will get their wish, while also assuring that increasingly aggressive Executive Orders remain in place, in at least some jurisdictions, prior to their ultimate constitutionality having been ruled upon. ■

**Chad Wissinger** *and* **Emily Thomas** *are Shareholders at Dentons.* **Jesse Bell-Taylor** *is an intern at Dentons.*

## FEDERAL DEREGULATORY

*CONTINUED FROM PAGE 8*

have long-term impacts detrimental to the environment.

Litigation over these issues has already begun. For example, on May 29, 2025, a number of youth plaintiffs challenged three energy-related EOs in a Montana district court, alleging violations of substantive due process and ultra vires presidential actions, and raising concerns about deregulatory efforts by EPA and DOE in their complaint. Lighthiser v. Trump, No. 2:25-cv-00054-DLC (D. Mont.). Additional litigation can be expected as further EOs are issued and regulations repealed.

The ultimate outcome of these federal deregulatory efforts and corresponding litigation remains to be seen. But given the significant changes proposed even thus far, the regulated community should closely monitor the situation to understand what shifts may be coming in the environmental and energy legal landscape and how those may affect ongoing and planned operations. ■

**Jane Borthwick Story** *is a Partner at Jones Day. She has counseled clients for more than fifteen years in state and federal environmental health and safety issues in the context of litigation and enforcement, compliance counseling, and business transactions.* **Jessie Hess**, *a Summer Associate in Jones Day's Pittsburgh Office, assisted with the preparation of this article. The views and opinions set forth herein are the personal views or opinions of the authors; they do not necessarily reflect views or opinions of the law firm with which they are associated.*

# Proposed legislation would curb some unpredictability in local regulation of solar development

By Brendan Lucas

Over the past several years, local land use regulation has finally been catching up with fast-growing commercial solar development in Pennsylvania. The resulting patchwork of local ordinances adopted by many of Pennsylvania's more than 2,500 municipalities has made planning future solar development increasingly unpredictable. A developer who signed a lease for a tract of land a year ago might now discover that commercial solar facilities are entirely prohibited on the same property, or that such facilities are now subject to onerous regulations. However, if adopted, recently introduced statewide legislation may have the effect of curbing such unpredictability, at least in certain circumstances.

### A patchwork of ordinances

Currently, there is no statewide legislation in Pennsylvania that specifically addresses the municipal regulation of land use for solar facilities. That notwithstanding, the Commonwealth's land use planning statute, the Municipalities Planning Code (MPC), does enable municipalities that have adopted zoning ordinances to regulate where and to what extent all land uses, including solar, are permitted within their municipal boundaries. The result is that many zoned municipalities have begun amending their zoning ordinances to restrict, sometimes severely, where and to what extent commercial solar facilities are permitted within the municipality. These amendments will frequently contain burdensome setback, noise emission, screening, stormwater management, and glare/glint requirements.

And, while many rural municipalities permit solar facilities to be located in their larger agricultural zoning districts, some have restricted such facilities solely to their much smaller commercial or industrial zoning districts, where there is often not enough available land to make solar development feasible. Further, many zoned municipalities require either special exception or conditional use approval for solar facilities, which usually involves multiple public hearings and can result in unjustified denials based on political pressure from residents.

In addition to zoning ordinances, under the MPC, municipalities are also permitted to adopt Subdivision and Land Development Ordinances (SALDOs), which provide site development and infrastructure standards for certain development within a municipality. Many rural municipalities that have not adopted zoning ordinances, but which have adopted SALDOs, have attempted to regulate solar facilities by including the same solar-specific restrictions described above in amendments to their existing SALDOs.

Finally, many rural municipalities that have not adopted either a zoning ordinance or a SALDO have attempted to regulate solar facilities via "standalone" solar ordinances, which are purportedly enacted pursuant to a municipality's general police powers granted under its enabling legislation (Borough Code, Second Class Township Code, etc.). These ordinances often contain the same development restrictions described above. However, such ordinances are legally suspect because they attempt to regulate the use of land without an underlying zoning ordinance or SALDO. In the past, similar non-solar related ordinances have been struck down by the courts for that very reason.

### A potential solution

In April 2025, Pa. House Rep. Mandy Steel introduced HB 502, which aims to streamline approvals for certain power generation facilities and address power generation shortfalls through the creation a statewide Reliable Energy Siting and Electric Transition Board (RESET Board). In certain circumstances, for projects with nameplate capacity exceeding 25 megawatts, developers would have the option of submitting their projects to the RESET Board for approval in lieu of obtaining land use approval from the pertinent local municipality. Municipalities would still have the opportunity to comment on such applications, but would no longer be permitted to "require any land use approval, consent, permit, certificate or condition that materially impedes" the RESET Board's decision to approve a facility that "is necessary or proper for the service, accommodation, convenience or safety of the public."

However, there are significant limitations to the RESET Board's authority under HB 502. First, the bill only applies to projects of over 25 megawatts, which is of no moment to the hundreds (if not thousands) of smaller projects currently proposed in the Commonwealth. Second, the bill specifically provides that the RESET Board would not have authority to grant approval where the proposed facility is located on property that is "zoned for residential uses and has been zoned for residential uses since January 1, 2024." In most municipalities, almost all zoning districts (with the exception of commercial and industrial districts), including agricultural zoning districts where solar facilities are most

*continued on* ***page 18***

# Class action challenge to the post-production deduction

By Alexander T. McElroy

When an oil and gas leaseholder obtains a revenue statement for natural gas production under their land, it can be shrouded in mystery. There are lines and lines of numbers, and there can be references to royalty deductions under categories such as "Compression," and "Gathering." Those types of royalty deductions are for post-production costs, which are charged by midstream and gathering companies to process the gas to bring it to market. Post-production costs can include gathering, dehydration, compression, treatment, processing, marketing and transportation costs. These post-production deductions can be controversial, and have been the subject of litigation by leaseholders since the shale boom began in the early 2000s.

A key case on the issue was Kilmer v. Elexco Land Services, Inc., 990 A.2d 1147 (Pa. 2010), where the Supreme Court of Pennsylvania had to determine whether the deduction of post-production costs was a violation of the Pennsylvania's Minimum Royalties Act (the "Minimum Royalty Act"). The Minimum Royalty Act requires that all lessors receive a minimum royalty of (1/8) one-eighth. One of the concerns that the plaintiffs in Kilmer raised at that time was that, if post-production costs were permitted under the Minimum Royalty Act, producers could exaggerate them, resulting in a diminished royalty.

In the end, the Supreme Court held that producers could deduct a pro-rata share of all post-production costs from a lessor's royalty, and still comply with the Act. Yet the concern raised by the plaintiffs in Kilmer was not unfounded, as evidenced by a more recent case, Kriley v. XTO Energy Inc., No.2:20-cv-416-CBB (W.D. PA 2020).

In Kriley a group of representative plaintiffs of a proposed class have brought breach of contract claims against XTO for improper post-production deductions under the terms of its standard form oil and gas lease. Under the terms of the lease, XTO must pay royalties on a percentage of the sales proceeds it receives, less certain post-production costs actually incurred. According to the Plaintiffs, XTO made improper deductions that resulted in the failure of XTO to pay any royalties to the Plaintiffs in the months of February through August in 2019.

Further, the representative plaintiffs have asserted that XTO caused its wholly owned subsidiary, Mountain Gathering, to charge "inflated, above-market prices for the subsidiary's services," and that XTO then deducted those "excessive" post-production costs when it calculated royalties to the representative plaintiffs. The Plaintiffs have argued that the Gathering Agreement between XTO and Mountain Gathering was not an arms' length transaction, and that XTO is effectively paying itself inflated above-market prices for gathering services. The representative plaintiffs have alleged that XTO violated an implied duty of good faith and fair dealing on the proposed class leases, and the representative plaintiffs have filed a Motion for Class Certification.

In response, XTO has denied that it caused Mountain Gathering to charge excessive, above-market amounts for gathering services and processing services, and has denied the Plaintiffs' other allegations. Further, XTO is challenging the representative plaintiffs' Motion for Class Certification. In opposing the Plaintiff's Motion for Class Certification, XTO has argued that the Plaintiffs cannot prove that XTO owes an implied duty under any (or all) of the proposed class leases. Further, XTO has claimed that there are other deficiencies which bar class certification under FRCP 23, such as material differences among the proposed class wells, and problems with the class member list that the representative Plaintiffs have proposed. Recently a hearing was held by the Court to determine whether the class should be certified under FRCP 23, and a decision is pending.

Kriley is a case that energy attorneys on both sides should keep an eye on over the coming months. First, it has implications on whether leaseholders can form a class to challenge post-production costs, or other lease terms. Second, if a decision is reached on the merits, it will provide guidance on whether producers have an implied duty of good faith and fair dealing for every oil and gas lease provision, and if so, how that duty would apply to the reasonableness of post-production deductions. Those deductions will naturally be subject to more scrutiny if they are charged by a subsidiary of the producer.

With oil and gas producers embracing vertical integration (as evidenced by EQT's acquisition of previously spun-off Equitrans Midstream), the issues raised in Kilmer are unlikely to go away anytime soon. ■

**Alexander T. McElroy** *is the Managing Shareholder at McElroy Law Firm and his practice includes business law, energy law, and employment law. You can reach him at alex@mcelroylawfirm.com.*

For **editorial inquiries** and **Bar Briefs** submissions, contact Jennifer Pulice at *jpulice@acba.org.*

# Navigating local permitting roadblocks to renewable energy deployment in Pennsylvania

By Anna S. Jewart

Over the past several years, developers have targeted the vast rural and undeveloped lands of Pennsylvania for renewable energy development. Yet, Pennsylvania lags behind the rest of the country in terms of renewable energy deployment. Beyond well-reported issues involving grid-interconnection and permitting backlogs, those seeking to develop renewable energy in the Keystone State often experience deal-killing roadblocks early on during local land use permitting.

Pennsylvania law recognizes that effective use of zoning power typically requires expertise and knowledge of local conditions, making it uniquely suited to local regulation. Outside the broad framework established by the Pennsylvania Municipalities Planning Code, 53 P.S. §10101, et seq., (MPC) and rare statutory exceptions, the 2,000-plus municipalities in Pennsylvania are each free to determine if and how to regulate land use matters within their borders. This means that unlike most areas of the law, the rules may change entirely the moment you cross a municipal line.

This decentralized legal framework creates challenges for renewable development, which has faced significant NIMBY-ism over the past several years. In response, many municipalities have sought to make renewable development untenable or even impossible through adoption of onerous land use regulations. While many states have expressly limited municipal discretion in renewables siting through adoption of state-wide permitting or statutory protections, Pennsylvania has not.

However, generally applicable land use jurisprudence does help protect against unreasonable local regulation. First, municipalities cannot expressly prohibit renewable energy uses. Ordinances that attempt to do so are de jure exclusionary, and unconstitutional. Second, an ordinance that appears to permit a use, but under conditions that it cannot in fact be accomplished may be found to be de facto exclusionary. Ordinances often attempt to make renewable development impossible through the imposition of high setbacks, minimum lot sizes, or lot coverage restrictions. Others restrict renewables to zoning districts unsuitable for these uses or impose prohibitions on the use of prime agricultural soils or steep slopes, further limiting the land available. Exclusionary zoning ordinances may be challenged through a "substantive validity" challenge brought before the municipal governing body or zoning hearing board pursuant to the MPC, or one may petition the municipality for a voluntary amendment.

A third manner in which municipalities may seek to restrict renewable development is through the imposition of onerous application requirements. These may include the submission of environmental studies, interconnection studies, or detailed plans and designs not readily available at the early phase of development during which local land use approval processes occur. Others require third-party permitting prior to approval, which might not be practical or legally possible. Ordinances that attempt to duplicate or supplant county, state, or federal regulations may be challenged under a preemption theory, and established land use jurisprudence directs that a lack of third-party permitting is not grounds for denial but should be imposed as a condition of approval. Challenges to these types of provisions can generally be brought in the same manner as a challenge to an exclusionary ordinance.

An increasingly popular fourth way in which municipalities try to limit, or profit from, renewable energy development is through the imposition of high "application," "impact," or "host benefit" fees. Municipalities increasingly attempt to impose five or even six figure "application" fees for solar and wind applications. Others have sought to have developers pay a yearly fee per megawatt hours generated. Municipal fees are required to be reasonably related to the administrative costs associated with them. Excessive fees may be challenged.

While other states have implemented authorization for renewable energy "community benefit agreements" or "impact fees" payable to the host municipality, Pennsylvania has not. As creatures of statute, municipalities lack the authority to exceed the powers granted to them by the General Assembly and cannot, as the law stands today, require a developer to pay out a yearly fee.

The fifth most common way in which municipalities attempt to limit or restrict renewable development applies to those that have not adopted a local zoning ordinance. Many municipalities without a zoning ordinance adopted pursuant to the MPC have adopted "standalone" ordinances with zoning-type restrictions on renewables. These ordinances often purport to be adopted pursuant to the municipal enabling act under which the municipality was created, such as the Second Class Township Code, 53 P.S. §65101-§70105. Pennsylvania courts have long held that the regulation of land use must be done within the

*continued on* ***page 18***

# BANKRUPTCY AND COMMERCIAL LAW SECTION ANNUAL MEETING

*Chair Ryan Cooney was recognized by the Section for his contributions as Chair by Chair-Elect Paul Toigo last month at the Rivers Club during the Bankruptcy and Commercial Law Section Annual Meeting.*

**TOP RIGHT:** *Ryan McCann of the Thomas R. Kline School of Law of Duquesne University received the Bankruptcy Judges Memorial Fund Scholarship from the Hon. Jeffery Deller.*

PHOTOS BY **JAMES PIAGGIO**

**BOTTOM RIGHT:** *Noah Clark of the University of Pittsburgh School of Law received the Bankruptcy Judges Memorial Fund Scholarship from Beverly Manne of Tucker Arensberg, PC.*

For more photo galleries like these, follow the ACBA on Instagram! | **instagram.com/alleghenycobar**

## PROPOSED LEGISLATION

*CONTINUED FROM PAGE 13*

often proposed, are "zoned for" some type of "residential use." Therefore, in rural municipalities that have adopted zoning ordinances, HB 502 would not likely provide developers with much relief.

Nevertheless, HB 502 would provide substantial benefit for developers of large solar projects in non-zoned municipalities. On its face, if RESET Board approval is obtained, HB 502 would almost certainly preclude application of the restrictive SALDO and standalone ordinance requirements discussed above. Furthermore, if RESET Board approval is obtained, a developer could arguably also forego municipal SALDO approval altogether, removing the necessity of obtaining another discretionary (and sometimes politically motivated) municipal approval.

It remains to be seen if HB 502 will be adopted, or whether it will be amended substantially prior to adoption. However, if the current version of the bill becomes law, it should provide substantial benefits to large-scale solar development in the form of a more predictable and uniform land use approval process. ■

**Brendan Lucas** *focuses his practice on energy and natural resources law with an emphasis on commercial real estate transactions, zoning and land development.*



## PERMITTING ROADBLOCKS

*CONTINUED FROM PAGE 15*

guardrails of the MPC, and case law further indicates that statutes like the Second Class Township Code do not on their own authorize the regulation of uses not expressly addressed therein. As they fall outside the parameters of the MPC, standalone ordinances may be challenged as either procedurally or substantively defective in the local court of common pleas.

As it stands today, successful renewables deployment in Pennsylvania depends in part on developers' ability to weave through a wide array of local regulations intended to dissuade development. While this is an uphill battle, it can be won with proper planning and coordination.

Review of local regulations should occur prior to execution of any lease or lease option agreement and should be monitored closely for changes as development progresses. Often, adverse ordinance provisions are reactionary or adopted in response to political pressure and fears, which can be calmed through positive engagement and education. Therefore, public engagement is key, and permitting risks can be mitigated by early outreach to local stakeholders, including municipal officials, solicitors, and neighboring property owners. ■

**Anna S. Jewart** *is an associate in the public sector and energy and natural resources groups of Babst Calland and focuses her practice on land use, zoning, and general municipal matters with a particular focus on solar energy development.*

## ACBA CLEs

**Getting Clear on Carbon Monoxide**
Tuesday, August 12 | Noon | Live Webinar | 1 Substantive credit

**A Primer on Punitive Damages from Pleading through Presentation at Trial**
Wednesday, August 13 | Noon | Koppers Building | 1 Substantive credit

**Common Disciplinary Matters for Family Lawyers**
Tuesday, August 19 | Noon | Live Webinar | 1 Ethics credit

**Title IX Regulations in Higher Education: Where Are We Now?**
Wednesday, August 20 | Noon | Koppers Building | 1 Substantive credit

**Supreme Court Review**
Thursday, August 21 | 2 p.m. | Joseph F. Weis, Jr. U.S. Courthouse
2 Substantive credits

**August Compliance Period – Live Video Replay CLE Sale**
Tuesday, August 26 | 8:30 a.m. | Koppers Building
Up to 6 Substantive and 6 Ethics credits

**Navigating Value:**
**Understanding the Impact of Economic Volatility on Business Valuation**
Wednesday August 27 | 4 p.m. | Dollar Bank Corporate Headquarters
1 Substantive credit
*Reception to follow courtesy of Dollar Bank and Grossman Yanak & Ford

**Digital Forensics and eDiscovery in Construction Law**
Thursday August 28 | 4 p.m. | Union Trust Building | 1 Substantive credit
*Reception to follow courtesy of bit-x-bit

Register today at **ACBA.org/calendar.**

In order to serve the needs of their clients, attorneys partner with an array of businesses, vendors, expert witnesses and consultants. Through the **Expert and Vendor Guide,** the ACBA aims to help attorneys find the right business partners to help their practices excel.

This publication lists dozens of business contacts – organized by business category – that Pittsburgh-area attorneys frequently partner with. This publication is distributed to ACBA membership via email four times per year, and it is available 24/7 at **ACBA.org/EVG.**

Vendors interested in being listed in future editions of the Expert and Vendor Guide should contact Brian Knavish, the ACBA's Director of Marketing, Media Relations and Strategic Partnerships, at bknavish@acba.org or 412-402-6620.

# BAR BRIEFS

## BAR NEWS

The ACBA's **new membership management system,** MemberCentral, is up and running – and members are encouraged to make the most of it.

The "My ACBA Hub" feature allows members to customize their bar association experience. From easier event registration to the ability to pay dues and update contact information, MemberCentral puts the power of connection in members' hands.

To take ownership of your account if you haven't already done so:

- Visit *ACBA.org/Experience*
- Create a new username and password
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Get started today!

## PEOPLE ON THE MOVE

**John H. Williams Jr.**

Pietragallo Gordon Alfano Bosick & Raspanti, LLP is pleased to announce the addition of **John H. Williams Jr.** to the firm's Pittsburgh office. He has joined Pietragallo as special counsel, focusing his practice on civil litigation and appellate advocacy.

Lewis Brisbois is pleased to welcome partners **Jesse Zirillo, Samantha Cavalier, Gabrielle Carbonara** and **Bridget Sasson,** as well as associate **Jesse Harcar,** to its Pittsburgh office as members of the firm's Energy, Marine, & Power and Real Estate & Land Use Practices. Zirillo will serve as co-chair of the Energy, Marine & Power Practice. These attorneys represent companies conducting business in the oil and gas space. The team consistently achieves clients' goals in matters involving a range of legal issues, including energy, natural resources, and mineral law, as well as real estate, construction, and contracts.

**Rachel D. Felton**

The law firm of Sherrard, German & Kelly, P.C. would like to welcome **Rachel D. Felton** to the firm. Felton is a Shareholder and a member of the firm's Employment Services and Litigation and Dispute Resolution practice areas. She provides counsel on a full range of employment matters, including counseling companies on day-to-day employee issues, drafting and reviewing key HR documents, and representing companies before federal and state administrative agencies and in court.

Visit the ACBA's website today at **ACBA.org.**

# LAWYER'S MART

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## Pittsburgh, PA 15222

Houston Harbaugh, P.C. proudly celebrates its 50th anniversary this year, marking five decades of legal counsel, client-first service, and growth from a modest health care practice into a respected, multidisciplinary firm.

With deep roots in Pittsburgh and a reach across Pennsylvania and beyond, its skilled attorneys offer expertise in a wide range of practices. Recognized by Best Lawyers and Super Lawyers, the firm credits its success to a balance of tradition, innovation, and a collaborative culture that mentors future leaders.

As Houston Harbaugh celebrates this golden milestone, the firm extends its deepest gratitude to its clients, employees, and the Pittsburgh community. Without their trust and support, this journey would not have been possible.

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