

Breaking the Backlog

Lessons from Pennsylvania's environmental permitting reforms

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Pennsylvania has a long history of reforming its environmental permitting practices to improve efficiency. Despite periods of progress and some improvements in average review times, experience shows Pennsylvania still falls short of its permit deadlines in many instances. The continuous cycle of reforms followed by further reforms indicates challenges finding lasting solutions, and the return of a money-back guarantee policy from the 1990s indicates a lack of novel solutions. Overall, Pennsylvania's permitting reform history shows a persistence of delays in spite of ongoing reform efforts. Potential paths forward include automating more permitting processes and further centralizing environmental review.

A brief history of Pennsylvania permitting reform

Executive Order 1995-5, issued by Gov. Thomas J. Ridge in 1995, established the Money-Back Guarantee Permit Review Program for the Pennsylvania Department of Environmental Protection (DEP).¹ This program aimed to expedite the permit granting process, ensuring timely decisions while maintaining environmental protections. It included provisions for companies applying for permits to receive refunds if deadlines were missed. In supplementary materials, the DEP set specific processing times for various permits, outlined applicant responsibilities, and required that performance standards be created for department staff.

Executive Order 2012-11,² issued by Gov. Tom Corbett, repealed and replaced the previous Executive Order 1995-5, establishing a new Permit Decision Guarantee (PDG) at the Pennsylvania DEP. Like its predecessor, it set forth clear applicant responsibilities, mandated precise application requirements, and sought to ensure predictable processing times. The order emphasized balancing efficient permit processing with the protection of environmental and public interests, and included provisions for coordinated permit reviews and staff performance evaluations.

In 2018, the Pennsylvania DEP instituted further permitting reforms under the administration of Gov. Tom Wolf. Key initiatives included restructuring the Office of Oil and Gas Management, reducing overall permit backlogs, implementing a "Pittsburgh 100 program" to expedite Erosion and Sediment Control General Permit (ESCGP) reviews,³ introducing new technical guidance documents, and advancing ePermitting to reduce well permit review times by an estimated 30 percent.⁴ Additionally, legislative and regulatory changes were sought that would extend permit terms, enable multi-well pad permitting, and provide financial support to the Oil and Gas program, which faced staff reductions and a \$600,000 monthly deficit.



¹ Gov. Thomas J. Ridge, Executive Order 1995-5, "Money-Back Guarantee Permit Review Program for the Department of Environmental Protection," August 23, 1995, https://drive.google.com/file/d/1qfBFA8k_P7ROJJplnsCbnrmruZCQULWE8jinYY87kVJsUpbtCdZA066jqFV7/view.

² Gov. Tom Corbett, Executive Order 2012-11, "Permit Decision Guarantee for the Department of Environmental Protection," July 24, 2012, https://files.dep.state.pa.us/programintegration/permitdecisionguaranteeportalfiles/2012_11_Permitt_Decision_Guarantee.pdf.

³ The program took place at DEP's Southwest District Office and aimed to reduce review timelines for key permits like the ESCGP to under 100 days and to decrease backlogs for well permits.

⁴ Pennsylvania Department of Environmental Protection, *Permitting Reform White Paper*, 2018, https://files.dep.state.pa.us/LicensingPermitsCertification/PermitDecisionGuaranteePortalFiles/Permitting_Reform_01262018.pdf.



In 2023, Gov. Josh Shapiro's administration initiated additional permitting reforms. Following issues with a new online corporate filing system that caused long delays and backlogs,⁵ Shapiro signed an executive order mandating state agencies across the government (not just at DEP) provide a definite response date for permits, licenses, and certificate applications.⁶ Agencies would have to catalog and create inventories of the permits, licenses and certifications under their purview. Similar to the earlier money-back guarantee policy at DEP, if a deadline is not met, the application fee would be refunded. DEP alone identified 784 unique permits or licenses issued by the department.⁷ The Department of State identified more than 900 permits and licenses it issues.⁸ All told, there were 2,482 permits, licenses, and certifications identified across state agencies.⁹

In 2023, Gov. Shapiro also signed Executive Order 2023-05,¹⁰ establishing the Pennsylvania Office of Transformation and Opportunity within the Governor's Office, along with an accompanying Economic Development Strategy Group. The initiative aimed to boost Pennsylvania's economy by fostering innovation, supporting transformational economic development, and creating opportunities, especially in disadvantaged and

underserved communities. The new office serves as a one-stop-shop centralized entity for businesses, coordinating with various state agencies to expedite permit and license reviews and approvals. These offices also assist in setting permit review timelines across state agencies.¹¹

Mixed record on permitting reforms

Some progress reducing backlogs. Pennsylvania's approach to permitting reform has been inconsistent in terms of success. On one level, there have certainly been periods where permit backlogs were reduced and review times were sped up. The initial money-back guarantee policy proved somewhat effective, for example. From 1995 to 2002, more than 125,000 permit applications were reviewed, and only 22 missed the review deadlines.¹² Nevertheless, the money-back guarantee policy was later replaced by a permit guarantee policy, suggesting the money-back guarantee policy was in some ways inadequate.

Efforts continued during the period from 2016 to 2019, when the average number of days for a business decision for well permits fell from 250 to 23 days. For surface permits, it fell from 450 to 91 days.¹³ As part of Gov. Wolf's reforms, the backlog of permits was also reduced by 1,544. Permit applications overdue for review were decreased by 2,164, and those overdue for completeness review were cut by 2,454.¹⁴ This reduction was partly achieved through initiatives like the Pittsburgh 100 program.

Looking at a typical week in late January of 2023, the DEP reported action on 690 permits, with 93 percent of these actions meeting the permit review deadlines.¹⁵ For the week ending December 17, 2023, the DEP took action on 850 permits, and processed 94 percent of PDG applications on time.¹⁶ Throughout 2023, DEP took action on 39,591 permits and processed 94 percent of PDG

⁵ Charlotte Keith, "Switch to Pa.'s Corporate Filing System Led to Backlog and Longer Waits for Business Owners," Spotlight PA, April 25, 2023, <https://www.spotlightpa.org/news/2023/04/pa-business-filings-delayed/>.

⁶ Gov. Josh Shapiro, Executive Order 2023-07, "Building Efficiency in the Commonwealth's Permitting, Licensing, and Certification Processes," January 31, 2023, <https://www.oa.pa.gov/Policies/eo/Documents/2023-07.pdf>.

⁷ Pennsylvania Right-to-Know Request, Dec 18, 2023, data available from author upon request.

⁸ Keith, "Switch to Pa.'s Corporate Filing System Led to Backlog and Longer Waits for Business Owners."

⁹ Pennsylvania Right-to-Know Request, Dec 18, 2023, data available from author upon request. See also, Jan Murphy, "Shapiro's Money-Back Guarantee for Pa. Permits, Licenses is Working," PennLive Patriot-News, March 6, 2024, <https://www.pennlive.com/politics/2024/03/shapiros-money-back-guarantee-for-pa-permits-licenses-is-working.html?s=09>.

¹⁰ Gov. Josh Shapiro, Executive Order 2023-05, "Pennsylvania Office of Transformation and Opportunity," January 24, 2023, <https://www.oa.pa.gov/Policies/eo/Documents/2023-05.pdf>.

¹¹ Murphy, "Shapiro's Money-Back Guarantee for Pa. Permits, Licenses is Working."

¹² "Gov. Shapiro Issues Order Directing Agencies To Set Deadlines For Permit Reviews, Requires Money-Back Guarantee If Deadlines Not Met; A Similar Program Started At DEP In 1995," PA Environment Digest Blog, January 31, 2023, <https://paenvironmentdaily.blogspot.com/2023/01/gov-shapiro-issues-order-directing.html>.

¹³ "Permit Average Days for a Business Decision 2016-Current," OpendataPA, Commonwealth of Pennsylvania, accessed January 26, 2024, <https://data.pa.gov/Energy-and-the-Environment/Permit-Average-days-for-Business-Decision-2016-Cur/r738-5ree/data>.

¹⁴ Pennsylvania Department of Environmental Protection, *Permitting Reform White Paper*.

¹⁵ "Gov. Shapiro Issues Order Directing Agencies To Set Deadlines For Permit Reviews, Requires Money-Back Guarantee If Deadlines Not Met; A Similar Program Started At DEP In 1995," PA Environment Digest Blog.

¹⁶ Pennsylvania Department of Environmental Protection, "Businesses," accessed January 26, 2024, <https://www.dep.pa.gov/Business/Pages/default.aspx/1000>.

applications on time.¹⁷ While these numbers suggest delays on some applications, the overall track record at DEP looks strong, at least on paper.

Gov. Josh Shapiro's PAYback initiative,¹⁸ which guarantees the processing of state permit, license, and certification applications within a specified timeframe or a refund of the application fee will be issued, has also shown some promising results since its launch on November 1, 2023.¹⁹ As of early March 2024, the Department of State has not had to issue any refunds and has reduced turnaround times for some applications. For example, vehicle salesperson license processing time dropped from 12 days to one day, real estate broker licenses from 15 days to seven days, pharmacist licenses from 26 days to five days, and doctor licenses from 43 days to five days. Additionally, registering corporations or charitable organizations decreased from eight weeks to two or three days. The DEP has also shown signs of progress, with only four out of roughly 2,400 permits not being reviewed within the guaranteed timeframe.²⁰

More work to be done. Early successes stemming from Gov. Shapiro's money-back guarantee policy raise questions about why the refund policy instituted at DEP during the Ridge administration was ever rescinded. If that prior policy was successful, perhaps it should have been extended beyond DEP. On the other hand, the return to a nearly 30-year old policy could be a sign of a lack of ideas.

It is also possible that the statistics touted by agencies in public statements mask problems in individual cases. The business community, for instance, has complained in recent years that the PDG policy is often ignored. One example is the ESCGP permit, which is one of the more basic permits that DEP issues, which authorizes earthmoving activities associated with oil and gas exploration or production. DEP policy stipulates that these permits should have an expedited decision in 14 business days, with standard decisions in 43 business days.²¹ However, industry groups report that decisions often extend well beyond these timeframes, sometimes exceeding 250 days.²²

Permit review times can also vary significantly depending on the office conducting reviews. For instance, in the first three months of 2023, ESCGP review times averaged 79 days at the northwest regional office, 82 days at the northcentral regional office, and 123 days at the southwest regional office.²³ Average permit times actually increased for the ESCGP permit in the southwest and northcentral regional offices from 2015 to 2021 (from 117 to 183 days and 42 to 78 days, respectively).²⁴ These increases occurred at a time when the PDG policy was in place and overlapped partially with the Wolf administration's efforts to speed up ESCGP timelines.

Perhaps most troubling is the fact that some permits do not have PDG deadlines associated with them at all. For example, renewals of some mining permits do not have a PDG timeline. Other items, like bond calculations and completion reports also lack deadlines. Meanwhile, even those permits with a PDG routinely run longer than assigned deadlines. For example, for the years 2018 through 2023, a mining industry analysis of permit data pulled from the Pennsylvania eFacts website revealed that of 7,325 new mining permits that were submitted and had PDG deadlines, 1,876 did not meet the PDG, which is about one quarter of new mining permits.²⁵

It should be noted that missing deadlines is not necessarily a sign the government is at fault, especially since delays can be a result of unexpected increases in the volume of permit applications or can be the fault of the applicant. When volume varies, it could make sense to have permit deadlines that are allowed to change over time. When industry is to blame for delays, creating checklists that clearly lay out the documentation required could prove beneficial.

Also problematic is the Shapiro administration's attempt to increase the role of "environmental justice" (EJ) in permitting practices.²⁶ Even while the administration is moving to speed up some permits, it is simultaneously slowing down the process by requiring that certain permits be analyzed for their effects on EJ areas, that additional outreach to local communities takes place, and that enhanced penalties be imposed for violations

¹⁷ Pennsylvania Department of Environmental Protection, "Businesses."

¹⁸ Welcome to PAYback," Commonwealth of Pennsylvania, accessed March 5, 2024, <https://payback.pa.gov/Home/Who>.

¹⁹ Gov. Josh Shapiro, "Governor Shapiro Launches First-in-the-Nation Online Money-Back Guarantee System to Bring Increased Accountability & Transparency to Commonwealth Permitting, Licensing, and Certification Processes," Press Release, November 1, 2023, <https://www.governor.pa.gov/newsroom/governor-shapiro-launches-first-in-the-nation-online-money-back-guarantee-system-to-bring-increased-accountability-transparency-to-commonwealth-permitting-licensing-and-certification-processes/>.

²⁰ Murphy, "Shapiro's Money-Back Guarantee for Pa. Permits, Licenses is Working."

²¹ Pennsylvania Department of Environmental Protection, Office of Program Integration, "Policy for Implementing the Department of Environmental Protection Permit Review Process and Permit Decision Guarantee," November 2, 2012, https://files.dep.state.pa.us/ProgramIntegration/PermitDecisionGuaranteePortalFiles/021-2100-001_PRP_and_PDG_Policy.pdf.

²² David Callahan, Marcellus Shale Coalition, Testimony before the Liquefied Natural Gas Task Force, May 19, 2023, <https://marcelluscoalition.org/wp-content/uploads/2023/05/May-1923-LNG-Task-Force.pdf>.

²³ David Callahan, Marcellus Shale Coalition, Testimony before the Liquefied Natural Gas Task Force.

²⁴ Marcellus Shale Coalition, Powerpoint Presentation, "What is an ESCGP?," n.d., available from author upon request.

²⁵ Personal Communication with Rachel Gleason of the Pennsylvania Coal Alliance (March 14, 2024).

²⁶ Pennsylvania Department of Environmental Protection, *Environmental Justice Policy*, September 16, 2023, <https://www.dep.pa.gov/PublicParticipation/OfficeofEnvironmentalJustice/Pages/Policy-Revision.aspx>.

that occur in EJ areas.²⁷ While it is important to gather input from historically underserved communities, this one-step-forward two-steps-back approach to permitting reform could prove counterproductive. At a minimum, it creates a perception that the Shapiro administration is not fully committed to permitting reform.

Shapiro's money-back guarantee policy could also be strengthened. Businesses must apply for refunds, as they are not automatic, and there are exceptions based on eligibility.²⁸ Even if a business is eligible for a refund, it might forgo requesting one if there is a concern this will antagonize its regulator or put current or future permit approvals in doubt.

Rising fees. The history of fee increases for permit applications in Pennsylvania also illustrates the mixed track record of success surrounding environmental permitting reforms in the state. Initially, in 1984, the well permit fee was set at \$100 and remained unchanged for 25 years.²⁹ Subsequent increases occurred in 2009 and 2014 to address rising program costs and to differentiate fees for various types of wells, including unconventional, conventional, and home use wells. The 2009 fees were based on a sliding scale that varied based on well bore length and depending on whether wells were vertical, nonvertical, or Marcellus shale wells.³⁰ Fees ranged from \$250 to \$3,000 depending on the well type.

The 2014 amendment established a flat fee structure for unconventional wells, but maintained the sliding scale for conventional wells. The fees were raised again to \$5,000 for nonvertical unconventional wells and \$4,200 for vertical wells.³¹ For conventional wells, fees ranged from \$250 to \$1,950 depending on well bore length.³²

As time went on, fee inflation increased further. The fees for all unconventional well permit applications were increased to \$12,500 in 2020, considerably in excess of fees of similar permits in many other states. For example, according to a 2020 regulatory analysis the DEP performed,³³ West Virginia charges \$10,150 for the first horizontal well on a well site and \$5,150 for subsequent wells on the same pad. Ohio charges a variety of fees, ranging from a few hundred to a few thousand dollars,

depending on the project attribute. And while some states, notably New York and Maryland, have banned horizontal drilling activity, other energy-producing states, like Oklahoma and Texas, have fee schedules that tend to run in the range of less than \$100 to \$2,500, depending on the action.

A path forward for meaningful permitting reform

Pennsylvania's long history of environmental permitting reforms suggests ingrained problems impeding efficient and predictable approval times. While average review times have improved and backlogs have been reduced at various points, Pennsylvania still falls short of its PDG timelines in some instances, and many processes don't even have PDG timelines associated with them.

Ultimately, the decades-long emphasis on deadlines, while commendable, may be a sign of too much focus on what can be measured as opposed to what matters. The state's money-back guarantee policy has helped along some margins, but it is probably not a strong enough enforcement mechanism. The money-back guarantee could be strengthened by establishing it permanently in statute, and by deeming permits approved and making refunds automatic whenever the relevant review time associated with a permit is not met and the fault lies with the regulator. An appeal process should be made available to applicants whose refunds are denied for some reason by the regulator. Additionally, the Shapiro administration should ensure all relevant environmental permit processes have PDG timelines associated with them.

However, this is only the beginning of what can and should be done. First, permit approvals can be made increasingly electronic, removing regulator discretion and by extension unpredictability. Given that the Shapiro administration has already catalogued the various permits that agencies in Pennsylvania issue, as a next step it could begin a process of identifying the stages involved in approving each type of permit. To automate permitting processes in this way, the process for each permit needs to be mapped. This could be done as part of a broader effort to track permits through the permit process, for

²⁷ David J. Raphael, Tad J. Macfarlan, Samuel R. Boden, "Pennsylvania DEP Publishes Final Interim Environmental Justice Policy," K&L Gates, September 20, 2023, <https://www.klgates.com/Pennsylvania-DEP-Publishes-Final-Interim-Environmental-Justice-Policy-9-20-2023#>.

²⁸ "Welcome to PAYback," Commonwealth of Pennsylvania.

²⁹ Environmental Quality Board, "Unconventional well permit application fee amendments," *Pennsylvania Bulletin*, Vol. 50, No. 31 (August 1, 2020), pp. 3845-3854, <https://www.pacodeandbulletin.gov/secure/pabulletin/data/vol50/50-31/50-31.pdf>.

³⁰ Environmental Quality Board, "\$ 78.19. Permit application fee schedule," *Pennsylvania Bulletin*, Vol. 39, No. 43 (October 24, 2009), p. 6235, <https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol39/39-43/1987.html>.

³¹ "New Oil and Gas Permit Fees to go Into Effect June 14," PR Newswire, June 13, 2014, <https://www.prnewswire.com/news-releases/new-oil-and-gas-permit-fees-to-go-into-effect-june-14-263035971.html>.

³² Environmental Quality Board, "\$ 78.19. Permit application fee schedule," *Pennsylvania Bulletin*, Vol. 44, No. 24 (June 14, 2014), p. 3522, <https://www.pacodeandbulletin.gov/Home/volume?vol=44&issue=24>.

³³ Department of Environmental Protection, "Unconventional Well Permit Application Fees," Regulatory Analysis Form, 2020, https://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalFiles/Environmental%20Quality%20Board/2020/January%202021/03_7-542_UnconvWellFees_Final/05_7-542_Unconventional%20Well%20Fees_Final_RAF%20.pdf.

example in an online portal. Legislation along these lines has been introduced in the state legislature, as part of Senate Bill 350.³⁴

Related reforms would involve the creation of general permits or permits by rule. A general permit is a type of permit that covers a class of similar facilities or activities. Permit by rule creates an exemption for certain classes of activities from requiring individual permits. In either case, specific criteria are clearly spelled out about what information companies need to demonstrate so that their activities can proceed legally. The idea is again to take discretion away from the permitting authority and make the criteria for approval as predictable and streamlined as possible.

Another idea would be to reduce the overall number of permits altogether. Pennsylvania has nearly 2,500 different permits, licenses and certifications. Using the inventory the Shapiro administration has created, it could set reduction goals based on this count. For example, it could set a goal of reducing 25 percent of permits over some specified time period, such as three years. This would be similar in spirit with regulatory reforms seen in other states, like Virginia.³⁵ The administration could also establish a policy whereby every time a department creates a new permit, it has to identify an old one to phase out.

Another potential pathway for reform is reorganizing the structure of DEP to make it more centralized. There appears to be considerable differences between the various DEP regional offices when it comes to practices and procedures, which by extension affects permit approval times. Pennsylvania policy makers might want to rethink the notion that the regional offices should have the flexibility to pursue their own versions of the permitting process. To the extent review processes can be standardized across offices, this would likely improve efficiency and make the process more predictable for the business community. Again, this might require a careful review of all permits so that the stages for each permit type are carefully mapped.

Finally, the new centralized one-stop-shop Office of Transformation and Opportunity created by Gov. Shapiro could play more of an oversight role. At a minimum, the office should be permanently established in state statute.³⁶

It should also be more than just a centralized coordinator across agencies, it should act as a third-party ombudsman that audits permit-issuing agencies on a regular basis. As part of this responsibility, the office should issue annual reports, present basic statistics about permit times across state agencies, commend departments for best practices, and chastise agencies when they fall short. It could also do more to identify and reduce redundancies where multiple state agencies, and even different offices within DEP, attempt to regulate the same project or otherwise regulate inconsistently.

Conclusion

Pennsylvania's experience with environmental permitting reform offers some valuable lessons. The state has made some important strides, such as creating permit inventories and setting deadlines. However, the need to continually revisit reforms and the persistence of some delays indicates that more ambitious changes are called for. Pennsylvania can build upon its past efforts through expanding automation, strengthening oversight, and improving consistency across regional offices of the DEP. Senate Bill 350 in the legislature would make some significant improvements along these dimensions.

Ultimately, Pennsylvania needs to bridge the gap between its permitting goals and realities. Recent undertakings have proven beneficial. However, the return of the money-back guarantee policy indicates a lack of creative new ideas to expedite the permitting process, even if the policy has also achieved some modest successes. If Pennsylvania's leadership wants to turn its reforms up a notch, bolder solutions are needed.

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³⁴ PA General Assembly, Senate Bill 350 (Regular Session 2023-2024), <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2023&sind=0&body=S&type=B&bn=350>.

³⁵ Virginia Gov. Glen Youngkin, "Executive Directive 1: Laying a Strong Foundation for Job Creation and Economic Growth through Targeted Regulatory Reductions," January 15, 2022, <https://www.governor.virginia.gov/executive-actions/executive-ordersdirectives/executive-action-title-918545-en.html>.

³⁶ PA General Assembly, Senate Bill 350 (Regular Session 2023-2024).



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