GOVERNOR SHAPIRO TAKES ACTION TO IMPROVE PERMITTING EFFICIENCY WITHIN PENNSYLVANIA AGENCIES

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U.S. Policy and Regulatory Alert

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On 31 January 2023, Governor Josh Shapiro signed an Executive Order to improve Pennsylvania's licensing, permitting, and certification processes.[1] The Executive Order will help to establish a "date-certain" by which applicants will hear back from an agency about each license, permit or certificate application. This improvement initiative will effect all applications to Pennsylvania's agencies, including environmental permitting decisions by the Pennsylvania Department of Environmental Protection (DEP).

As part of his recent Executive Order, Governor Shapiro outlined plans for a comprehensive review of how long it takes agencies to process applications and how workers and businesses apply for such regulatory approvals online. Additionally, as "date-certain" guarantees are put in place by Pennsylvania agencies, applicants will have recourse if these deadlines are not met. If an agency does not meet its obligation to provide an applicant with a response by the "date-certain," then the agency will be responsible for refunding the application fee.

Agencies will now have 90 days to send information about application processes to the Governor's Office for review. Under the Executive Order, Governor Shapiro is directing all state agencies, boards, and commissions to compile a catalog of the licenses, certificates, and permits they issue, including statutorily-determined processing times and application fees. The Governor's Office will then review, analyze, and establish efficient application processing times for all permits or licenses based on agency recommendations.

Notably, Governor Shapiro's Executive Order is the latest in a series of executive actions taken by governors over the past 18 years seeking to improve permitting efficiency in Pennsylvania. On 24 July 2012, former Governor Tom Corbett signed the "Permit Decision Guarantee for the DEP" Executive Order into effect.[2] As its title suggests, this Executive Order specifically targeted delays in DEP permitting decisions. Building on a 1995 Executive Order by former Governor Tom Ridge ("Executive Order 1995-5 Money-Back Guarantee Permit Review Program for the DEP")[3], Governor Corbett required DEP to establish clear guidance that describes permit application requirements and a permit decision guarantee policy, including a predictable processing time for each permit application covered by the permit decision guarantee. Governor Corbett's Executive Order also required the DEP to coordinate the review of applications for projects with multiple permits and to develop standard operating procedures for staff and applicants to promote increased efficiency.

Governor Shapiro's Executive Order does not rescind Governor Corbett's 2012 Executive Order covering DEP, and the Shapiro administration has maintained some prior efforts in this area, including a money-back guarantee for delays in agency permitting decisions. It has yet to be seen what DEP-specific application processing requirements the Governor's office will establish following its review of application processes for all Pennsylvania

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agencies. At present, the DEP is still operating under its “Permit Decision Guarantee” policy under the 2012 Executive Order.[4] Additionally, in 2018, the DEP issued a “Permitting Reform White Paper,” outlining the agency's findings from a comprehensive review of its permit processes.[5] In releasing this publication, the DEP reaffirmed its commitment to reducing permit backlogs and complying with its Permit Decision Guarantee policy.

Ultimately, Governor Shapiro's Executive Order confirms the Commonwealth's commitment to efficiency within its agencies, including those with permitting authority for environmental permitting and development. In the near future, state agencies will be required to implement the findings of the Shapiro administration's review, with the aim of increased certainty for regulated entities and individuals within Pennsylvania. These resulting policy modifications, particularly those adopted by the DEP, will likely impact Pennsylvania's environmental permitting processes for years to come.

FOOTNOTES

[1] https://www.governor.pa.gov/newsroom/governor-shapiro-signs-executive-order-to-improve-commonwealth-licensing-permitting-and-certification-processes-by-establishing-standard-response-times-and-money-back-guarantee/.

[2] https://files.dep.state.pa.us/LicensingPermitsCertification/PermitDecisionGuaranteePortalFiles/2012_11_Permit_Decision_Guarantee.pdf.

[3] https://drive.google.com/file/d/1qfBFA8k_P7ROJJpInsCbnrmruZCQULWE8jinYY87kVJsUpbtCdZA066jqFV7/view.

[4] https://files.dep.state.pa.us/ProgramIntegration/PermitDecisionGuaranteePortalFiles/021-2100-001_PRP_and_PDG_Policy.pdf.

[5] https://files.dep.state.pa.us/LicensingPermitsCertification/PermitDecisionGuaranteePortalFiles/Permitting_Reform_01262018.pdf.

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