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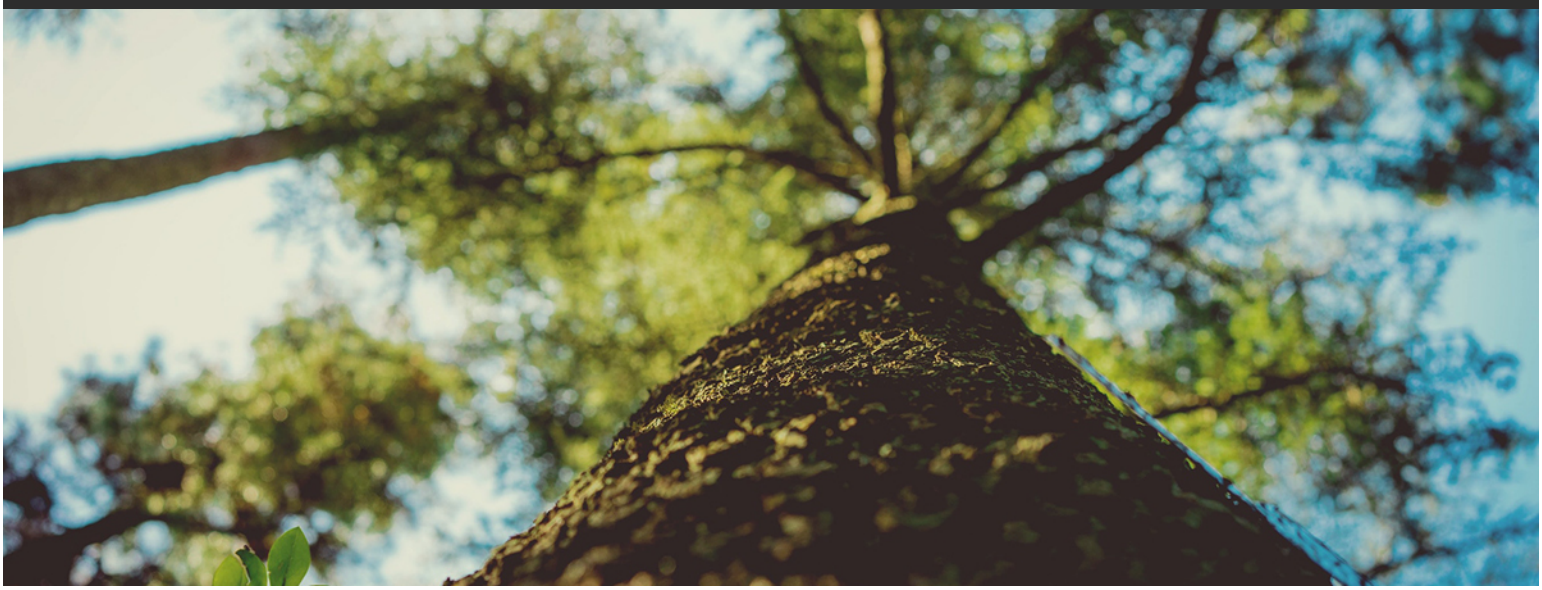
# Pa.'s Advancement of Waste Reduction and Recycling: Amendments to the SWMA



**On Nov. 25, Gov. Tom Wolf approved House Bill 1808 (now, Act No. 127), which amends Pennsylvania's Solid Waste Management Act by categorizing "advanced recycling" as manufacturing rather than waste processing or treatment.**

**By Kaitlyn R. Maxwell | December 17, 2020 | The Legal Intelligencer**

Pennsylvanians have called for action on climate change and resource reuse in the commonwealth. Although the commonwealth has delayed action on a number of "zero waste" bills, Pennsylvania recently took action to join other states in supporting waste-to-energy and advanced recycling. On Nov. 25, Gov. Tom Wolf approved House Bill 1808 (now, Act No. 127), which amends Pennsylvania's Solid Waste Management Act by categorizing "advanced recycling" as manufacturing rather than waste processing or treatment.

"Advanced recycling" is the process by which plastics that are typically incapable of being recycled are converted into liquids, waxes and lubricants to make new plastic or fuel. There is a divide in sustainability discussions when it comes to waste-to-energy; some challenge whether waste-to-energy fits the definition of recycling, while others explain the benefits of utilizing existing technologies to convert and reuse old materials (even when the byproducts are fuels). Pennsylvania's action to support alternative recycling technologies and industries is relevant to more widespread conversations about sustainability.

**Amendments to SWMA**

The SWMA requires permits for operating hazardous waste and solid waste storage, processing, treatment, and disposal facilities. The new amendments establish that the conversion of "post-use polymers" through "advanced recycling" is not considered "processing" or "treatment" of waste. "Post-use polymers" are post-use plastic derived from any residential, municipal or commercial source that would not otherwise be recycled and that is not mixed with other regulated categories of waste (besides minor impurities like paper labels or metal rings). Advanced recycling is the manufacturing process by which post-use polymers are converted into "basic hydrocarbon raw materials, feedstocks, chemicals, liquid fuels, waxes and lubricants" or "other products [such as] monomers, oligomers, plastics, crude oil, naphtha, liquid transportation fuels and other basic hydrocarbons" through processes such as pyrolysis, gasification, depolymerization, catalytic cracking, reforming, hydrogenation. Advanced recycling facilities where the conversion occurs are deemed manufacturing facilities. The intermediary facilities that receive unsorted municipal waste are not covered by the definition.

The act further establishes that post-use polymers converted using advanced recycling shall not be considered solid waste, municipal waste or residual waste. The definition focuses, at least in part, on the conversion process. Post-use plastic, therefore, may still be considered waste after being discarded up until the point when it is converted through the recycling process. That means parties further down the chain (outside the advanced recycling facility) seeking to provide the post-use plastic may still have traditional solid waste permitting obligations.

The original proposed definition of "post-use polymers" sought to include a finding that these plastic polymers might otherwise become waste if not converted into "valuable raw, intermediate and final products;" however, the final definition omits that finding. Also notably missing from the final version are more extensive references to gasification and pyrolysis (which can include the conversion of the post-use polymers to certain fuels) even though those processes are expressly referenced as methods of advanced recycling. For example, the original version sought to define gasification as not constituting processing, incineration, or treatment under the SWMA. Gasification can include the conversion of feedstock or post-use polymers into certain fuels, including diesel and gasoline. The gasification definition, however, ultimately was excluded, demonstrating a level of discomfort by the legislators in leaving the door too far ajar with respect to these processes. Instead, gasification falls under the advanced recycling definition, but specific to post-use polymers. Overall, the legislation encourages innovative recycling technologies to reduce the quantity of materials being sent to landfills for disposal.

**Why Do the Amendments Matter?**

According to the American Chemistry Council, Pennsylvania is the ninth state to pass this type of legislation since 2017—the other states with similar provisions are Florida, Wisconsin, Georgia, Iowa, Tennessee, Texas, Illinois and Ohio. When compared to at least some of the other states' legislation on this topic, Pennsylvania appears to have taken a potentially more restrictive approach with respect to the above-mentioned definitions and exclusions.

The Pennsylvania legislation also makes it clear these manufacturing facilities must remain compliant with other permitting obligations just like any other manufacturer. Advanced recycling may assist states in achieving waste reduction goals (while also supporting job creation). Notably, this legislation gained more traction than other "zero waste" bills in Pennsylvania, which focused solely on changing consumer behaviors and increasing disposal and recycling fees. Although there is disagreement in the environmental community as to whether chemical recycling and waste-to-energy processes move the needle in creating a more sustainable society, one could argue that reuse and recycling of various materials are important steps, even if not the only or final step.

**What Happens Next?**

Practitioners anticipate an increased focus on climate change and sustainability with the new federal administration. Along with increased focus on sustainable practices comes increased corporate and investor pressure to select and endorse "green" options and to provide disclosures relating to climate risks. Companies are seeking to do good, while also not overstating their efforts or practices. In August, SEC Commissioner Allison Herren Lee issued a public statement, calling out the need for providing investors with "the standardized, consistent, reliable, and comparable [environmental, social, governance] disclosures they need to protect their investments and allocate capital toward a sustainable economy." (See "Regulation S-K and ESG Disclosures: An Unsustainable Silence" (Aug. 26, 2020). There is likely to be increased litigation in the coming year, doubling-down on greenwashing claims for both consumer products and corporate disclosures.

Environmental groups also have characterized certain waste-to-energy processes as greenwashing. How "green" does a technology need to be to be considered "green"? What metrics should be used in evaluating state performance goals for waste reuse and reduction? Pennsylvania appears to be taking a measured path forward, focusing first on alternative recycling processes that can garner support from both sides of the aisle.



**About the Author:**

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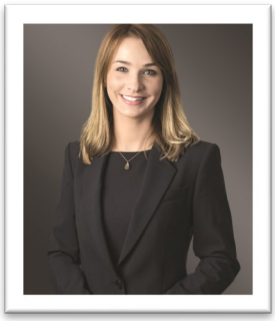

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