



# Peter J. Fontaine

## Co-Chair, Utility, Environmental & Energy

### Philadelphia

[pfontaine@cozen.com](mailto:pfontaine@cozen.com) | (215) 665-2723

#### Practice Areas

- Utility, Environmental & Energy
- Brownfields Redevelopment
- Government & Regulatory
- Consumer Protection
- Wind Energy

#### Education

- George Washington University Law School, J.D., 1990
- University of New Hampshire, B.A., 1986

#### Bar Admissions

- District of Columbia
- Maine
- New Jersey
- New York
- Pennsylvania

#### Court Admissions

- Pennsylvania Supreme Court
- Superior Court of New Jersey
- U.S. Court of Appeals for the District of Columbia Circuit
- U.S. Court of Appeals for the Third Circuit
- U.S. District Court -- Eastern District of Pennsylvania
- U.S. District Court -- New Jersey

#### Affiliations

- American Bar Association
- New Jersey State Bar Association
- Pennsylvania Bar Association

#### Awards & Honors

- Chambers & Partners USA 2015 - 2018
- Climate Science Legal Defense Fund Defender of Science Award, 2017
- New Jersey Super Lawyers: Environmental Law, 2005
- Philadelphia Business Journal "40 Under 40 Award," 2003
- New Jersey Volunteer of the Century Award, Camden County, 2000
- New Jersey Environmental Federation Environmental Achievement Award, 1999
- U.S. EPA Special Act Achievement Awards, 1991-1994
- U.S. EPA Assistant Administrator's Award for Excellence, 1993

Pete is co-chair of the firm's Utility, Environmental & Energy Practice and the Climate Change Practice. He counsels large, medium, and small companies across the United States to help them manage and resolve their environmental liabilities and capture new business opportunities arising from the convergence of the energy and environmental demands of the world. Pete initiated Cozen O'Connor's formation in 2004 of an integrated environmental and energy practice to provide comprehensive environmental and energy guidance to energy companies, public utilities, and independent power providers in the evolving marketplace of energy and environmental regulations.

Pete is environmental counsel to two natural gas pipeline projects that will increase natural gas supplies to communities in the northeast and thereby lower electricity and heating costs for millions of consumers while also reducing carbon emissions and criteria air pollution. In this capacity, he advises the pipeline owners on a multitude of environmental regulatory issues and interfaces with state and federal agencies. He is assisting an offshore wind energy company to secure regulatory approvals for a new project on the Outer Continental Shelf off of the New Jersey Coast. Pete also helps a wide range of businesses assess, manage, and resolve environmental liabilities associated with soil, water, and air pollution. He has deep experience advising laboratories and testing services companies on data integrity issues. He also leads the firm's Brownfields Development Practice, which assists landowners and developers in identifying, managing, and resolving the challenges posed by real or perceived soil and groundwater contamination. This includes helping manage due diligence, negotiate environmental provisions in purchase agreements, procure liability protection from insurers and regulatory agencies, and structure remediation projects. He has advised landowners and developers on some of the most complex brownfields projects, including helping secure closure, remediation, and redevelopment of sites in Pennsylvania, New Jersey, New York, Connecticut, Massachusetts, and Maryland. He helps Fortune 500 companies structure and implement internal environmental compliance programs, including compliance audits, policy development and implementation, and internal investigations. He defends and prosecutes environmental claims in state and federal courts and administrative agencies, including before the Pennsylvania Environmental Hearing Board and the New Jersey Office of Administrative Law. He advises consumer product manufacturers in connection with toxic and hazardous substances subject to California's Proposition 65 and similar state and federal laws.

Pete also represents clean technology companies including energy storage companies and electric vehicle companies, seeking to develop projects and explore new markets. In 2008, he conceived and helped form the Battery Electric Vehicle Coalition, which advocated for legislation to level the playing field for electric vehicles and secured a federal investment tax credit for electrical vehicle charging infrastructure.

Prior to private practice, Pete served as an enforcement lawyer with the U.S. Environmental Protection Agency in Washington, D.C., where he helped write regulations implementing the 1990 Amendments to the Clean Air Act, prosecuted civil violations of environmental laws, and served as a Special Assistant to the EPA's Director of Civil Enforcement. He received the EPA's Award for Excellence for his contribution to the EPA's first multimedia enforcement team. He routinely draws on his EPA experience to help clients navigate EPA and state agency regulations to achieve practical solutions to their environmental problems.

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P: (215) 665-2723 | F: (856) 910-5075

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Outside the office, Pete is deeply committed to civic engagement in the Greater Philadelphia community. He helped secure passage of three open space public referendum questions in 1998, 2005, and 2006, which created stable funding for preserving open spaces, farms, historic sites, and recreational areas in Camden County, N.J. From 1999 to 2013, he chaired Camden County's Open Space Advisory Committee, which, since 1999, has preserved more than 2,000 acres of farmland and open space. He recently served on New Jersey Governor Phil Murphy's environmental and energy transition committee where he developed a set of policy recommendations to address climate change. He is a former board member of the New Jersey Conservation Foundation, the state's oldest land conservation organization.

Pete is a thought leader on issues surrounding climate change and has authored a number of articles on the topic.

Pete earned his Bachelor of Arts from the University of New Hampshire in 1986, where he was a member of the varsity soccer team. He received his J.D. from George Washington University Law School in 1990.

## Experience

On behalf of Perdue AgriBusiness, LLC, secured from the Pennsylvania Department of Environmental Protection the first-ever Nonattainment New Source Review construction permit for a soybean vegetable oil manufacturing facility in the United States, and then defended the permit in a citizen's group challenge before the Commonwealth of Pennsylvania Environmental Hearing Board. The case was the first of its kind in the United States and centered on claims that the facility's air pollution controls were insufficiently stringent under Pennsylvania's Air Pollution Control Act and the federal Clean Air Act, Lowest Achievable Emission Rate requirements. Following a two-week *de novo* trial, featuring the direct testimony of eight expert witnesses for our client, and the cross-examination of three opposing expert witnesses, the Board affirmed the facility's permit on all issues. The decision sets the standard for air pollution control for vegetable oil manufacturing in the United States.

Represented renowned climate scientist Dr. Michael Mann in state court litigation *American Tradition Institute v. University of Virginia and Dr. Michael Mann*, 287 Va. 330 (Va. April 17, 2014) holding that correspondence of public university faculty in furtherance of research may be withheld from disclosure under the Virginia Freedom of Information Act (FOIA).

Resolved state enforcement action involving chlorinated water pollution incident and resulting fish kill on behalf of Fortune 500 company.

Represents natural gas distribution company in securing environmental permits for the construction of 22-mile natural gas pipeline to repower coal electrical generation plant and improve system resiliency in wake of Hurricane Sandy.

Represented a group of energy companies in securing environmental permits for the construction of 100+-mile natural gas pipeline from the Marcellus Shale region.

Represented a potentially responsible party at the Former Macon Naval Ordnance Plant Site in connection with the EPA's proposed addition of the site to the Superfund National Priorities List. We developed and submitted technical arguments demonstrating that mercury contamination in a local stream did not originate from the site, but was more likely derived from other local sources.

Represented a Fortune 500 company in the complete revamping of a corporate environmental compliance program for facilities located throughout North America. We developed the recommended principles of an environmental compliance program, drafted corporate environmental policies, and

structured an environmental auditing program and protocols.

Represented a petroleum refiner in the negotiation of a Hurricane Sandy emergency administrative order and consent agreement with EPA and state/local permitting agency allowing for temporary suspension of Clean Air Act Title V permit limits on fluid catalytic cracking units to allow for increased refinery production to respond to the Northeastern United States petroleum supply shortage.

Represented a biofuel refiner in waiver petition filed with the EPA demonstrating pursuant Clean Air Act §211(f) that a biofuel-gasoline blend was “substantially similar” to a prior EPA waiver, and therefore did not cause or contribute to a failure of any vehicle emission control device or system.

Represented a biofuel refiner in connection with the registration of a biofuel additive with the EPA pursuant to the Clean Air Act §211(b). We worked with health effects consultants in developing Tier 1 and Tier 2 information on combustion, evaporative emissions, and toxicity in support of registration.

Represented a leading technology company in the negotiation of a commercial agreement to deploy the largest privately funded network of electric vehicle charging infrastructure in the world at the time.

Resolved underground storage tank litigation with the EPA on behalf of Fortune 500 company involving alleged failure to conduct monthly release detection monitoring at three retail gasoline locations.

Represented a publicly traded waste management company in the sale of substantially all of its assets, valued at approximately \$80 million, to a private equity fund. This complex transaction drew on the experience of the firm's corporate, tax, employee benefits and executive compensation, labor and employment, commercial litigation, real estate, and utilities, energy, and environmental attorneys.

In a case involving a massive gasoline spill, extensive groundwater contamination, and more than 30 years of remediation, we successfully prosecuted a cost recovery claim on behalf of Aramark Services, Inc. against the City of Los Angeles Department of Water Power (DWP) culminating in a settlement requiring DWP to pay Aramark \$5.75 million in damages and to assume responsibility for future remediation of contamination on Aramark's former West Los Angeles property. Pursuing a novel theory of inverse condemnation, we took more than 20 depositions of DWP and Regional Water Board witnesses, filed a parallel closure petition with the State Water Board, and overcame numerous defenses secure the victory.