

Introduction

Robinson Township, Delaware Riverkeeper Network, et. al. v. Commonwealth

Anyone interested in figuring out what can be done to protect communities from the risks associated with wide-scale industrial development must start by studying the Delaware Riverkeeper Network's 2013 landmark legal victory in the Pennsylvania Supreme Court. The case, Robinson Township, Delaware Riverkeeper Network, et al v. Commonwealth, is widely recognized as the case that overturned Act 13, a pernicious law that took away local zoning authority over oil and gas development. The case did accomplish that very significant victory, but it did much more. For the first time ever, the court gave real meaning and weight to the Environmental Rights Amendment to the Pennsylvania Constitution (Art I, Sec 27). As a result of the decision, everything we thought we knew about land use law, environmental law and the role of local governments in Pennsylvania needs to be reconsidered.

Ratified over 40 years ago, the Environmental Rights Amendment had been largely considered toothless. Never before had it been used to declare a legislative action unconstitutional. Never before had the Court recognized that our environmental rights are inherent, inalienable, and inalienable. Never before had the Court recognized that, just like the government can't take any action that would unreasonably interfere with our free speech rights or our right to bear arms, likewise, the government cannot take any action that would unreasonably interfere with our environmental rights. That means that government agencies cannot enact regulations that would cause an unreasonable degradation of our air or water. It means that government agencies cannot issue permits for any project that would unreasonably degrade our shared natural resources. It means that government agencies must protect our natural resources for future generations.

How will this impact what happens at the local level? The truth is that we do not fully know. Legislative bodies, executive agencies and courts have disregarded our constitutional environmental rights in the past, many are disregarding our constitutional environmental rights now, and they might try to disregard them in the future. As the Rev. Martin Luther King, Jr. said, "The arc of the moral universe is long, but it bends towards justice." We might not obtain justice in every case, but now that this understanding of our constitutional environmental rights has been expressed by the highest court in our state, there is only so far backward we can go. There is no putting the genie back in the bottle. We have entered a new era of environmental rights. The text of the Environmental Rights Amendment has meaning and it cannot be ignored. At every turn, we must insist that our elected representatives, our appointed government officials, and our judges respect and fulfill the promise of the Environmental Rights Amendment. The discussion that follows provides a framework for this vital long-term effort.

The Marcellus Shale Frack Frenzy

Shale gas development has engulfed parts of Pennsylvania underlain by the Marcellus Shale formation. All of Pennsylvania is experiencing impacts from shale gas development because of gas-related infrastructure buildout, waste disposal, and end use of fracked gas.

The undeniable environmental and community impacts that have occurred have changed life in municipalities where drilling and gas related operations are located and indelibly changed the face of the state.

The unsustainable practices that are being used by the shale industry have taken their toll despite current regulations and industrial "best management practices". The inability to make drilling safe is explained in detail in Delaware Riverkeeper Network's publication *Unsafe and Unsustainable; Experts Review the Center for Sustainable Shale Development's Performance Standards for Shale Gas Development* at www.bit.ly/DRN-CSSDExpertReviews.

This municipal guide was created following the Supreme Court decision on Act 13 to help citizens and local officials where drilling is occurring. The following sections of this guide provide information on what Pennsylvania law says about municipal control over oil and gas development and how zoning and other types of ordinances can help protect health, quality of life, and the environment. It also offers sample resolutions that can help communities express the policies and principles they envision for themselves.

With these, we seek to support citizens who want to have input into the laws and practices that affect them and elected officials who want to fulfill their sworn responsibilities to protect their communities for years to come.