Frequently Asked Question 1:

Is the Pennsylvania Supreme Court’s decision in the Act 13 case final?

March, 2012, the Delaware Riverkeeper Network, seven municipalities, and Dr. Mehernosh Khan filed legal action challenging Act 13, which was signed into law by Governor Corbett on February 14, 2012. Act 13 amended the Pennsylvania Oil and Gas Act, and among other things, preempted municipal zoning of oil and gas development. The plaintiffs challenged the new law on the grounds it violated the Pennsylvania and Constitution and endangered public health, natural resources, communities and the environment. On December 19, 2013, the Pennsylvania Supreme Court issued a final decision declaring portions of the law unconstitutional, giving the Environmental Rights Amendment of the Pennsylvania Constitution strong substantive importance, and remanding portions of the law for additional litigation. Since issuance of the PA Supreme Court decision there have been many questions asked about the substance, meaning and application of this precedent setting decision. The Delaware Riverkeeper Network and our legal counsel are working to answer these important questions for the community in a series of FAQ information sheets.

The Pennsylvania Supreme Court’s decision in Robinson Township, Delaware Riverkeeper Network, et al. v. Commonwealth, 83 A.3d 901 (2013), reinforced that municipalities can validly zone oil and gas operations like any other industrial use. If a municipality has a zoning ordinance in place that identifies specific districts where this industrial activity is allowed, the municipality cannot allow drilling to occur where it is not permitted, even if a gas drilling company has a lease and even if the company has a permit from the Pennsylvania Department of Environmental Protection (“DEP”).

In addition, when carrying out governmental functions, municipalities must comply with Article I, Section 27 of the Pennsylvania Constitution. This means that municipalities are restrained from unduly infringing on the individual environmental rights of citizens, just as municipalities may not unduly infringe on private property rights. Thus, municipalities cannot allow unchecked shale gas development at the expense of citizens’ rights to clean air, pure water and a healthy environment.

Citizens who have been trying to protect their communities from unreasonable expansion of industrial gas development have confronted opposition from those who place corporate profits above public health and welfare. We hope that this series of FAQ responses helps strengthen community understanding of the PA Supreme Court decision.
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Yes. Some people pushing for more drilling have apparently claimed that the Pennsylvania Supreme Court’s recent decision in Robinson Township, Delaware Riverkeeper Network, et al. v. Commonwealth, 83 A.3d 901 (2013), might not be “final” and that it might still be overturned. There is no basis to any such suggestion.

The Act 13 decision declared Sections 3303 and 3304 of Act 13 of 2012 unconstitutional under Article I, Sections 1 and 27 of the Pennsylvania Constitution. When asked to reconsider this decision the Pennsylvania Supreme Court refused the opportunity to do so. Because the Pennsylvania Supreme Court is the highest court in the Commonwealth and because it was ruling on the subject of state law there is no court which can overturn the decisions rendered.

Section 3303 attempted to have state and federal environmental laws supersede municipal regulations. Section 3304 established a one-size-fits-all zoning framework that mandated every municipality to require industrial gas development in every zoning district in the Commonwealth. By finding these provisions unconstitutional, the Supreme Court reinforced that municipalities can validly zone oil and gas operations like any other industrial use. This was not the first case to reach this conclusion. Prior cases such as Huntley & Huntley, Inc. v. Borough Council of the Borough of Oakmont, 964 A.2d 855 (2009); Range Res. Appalachia, LLC v. Salem Twp., 964 A.2d 869 (2009); and Penneco Oil Company, Inc. v. County of Fayette, 4 A.3d 722, 726 (Pa. Commw. Ct. 2010), cert. denied (Pa. 2012), each affirmed that municipalities can zone oil and gas development just like other industrial development.

It is beyond dispute that the Court’s decision is final. On December 19, 2013, the Court issued its decision finding Sections 3303 and 3304 unconstitutional, and enjoining them. Robinson Twp., 83 A.3d at 1000. On February 21, 2014, the Supreme Court reaffirmed its decision, denying the Commonwealth’s request for reconsideration and their request to have the case reargued. February 21, 2014 Order of the Pennsylvania Supreme Court (Docket Nos. 63, 64, 72, and 73 MAP 2012). The Court remanded other issues to the Commonwealth Court that are separate from its final decision on Sections 3303 and 3304 of Act 13. Robinson Twp., Delaware Riverkeeper Network, et al., 83 A.3d at 1000; March 13, 2014 Memorandum and Order of P.J.Pellegrini (Docket No. 284 MD 2012). Sections 3303 and 3304 remain enjoined as unconstitutional.

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Disclaimer: This information is intended to assist you in learning more about these important issues. Each situation is unique and the law is frequently changing, so you should consult with an attorney concerning your particular situation before taking any action or making any decisions.

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