

PA Supreme Court Restricts General Assembly's Right to Spend Oil & Gas Royalty Money

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The Pennsylvania Supreme Court continues to expand the reach of the Environmental Rights Amendment to the state Constitution. Adopted in 1971, the Environmental Rights Amendment recognizes that the people have a right to clean air and water, that natural resources are the common property of the people, and that the Commonwealth must act as trustee to conserve and maintain our natural resources.

In 2013, the Supreme Court relied upon the Environmental Rights Amendment to invalidate certain sections of Act 13, a law adopted to regulate the development of gas from the Marcellus Shale. Robinson Twp. v. Commonwealth, 83 A.3d 901 (Pa. 2013). For example, the Court struck down Chapter 33, which preempted local zoning regulation of oil and gas operations so as to achieve statewide uniformity of zoning ordinances affecting oil and gas development. The Court interpreted the Environmental Rights Amendment to empower municipalities to use their zoning powers to protect the environment.

On June 20, 2017, the Supreme Court issued its decision in Pennsylvania Env. Def. Foundation v. Commonwealth. The case arose from the leasing of Commonwealth forest and park lands for Marcellus Shale development, and concerned the spending of lease proceeds. In the 61 years from 1947 to 2008, the Commonwealth received oil and gas lease revenue totaling \$165 million. In 2009 alone, the Commonwealth received oil and gas lease revenue totaling \$167 million. The question in the PEDF case was whether the Governor and General Assembly were free to spend these monies on any public purpose. The Court said No.

The Supreme Court read the Environmental Rights Amendment to create a *private* trust, with Pennsylvania's natural resources as the corpus and the people as beneficiaries. The Court held that revenues derived from the sale of the corpus assets, such as oil and gas, may not be diverted to purposes other than those specified in the Environmental Rights Amendment, *i.e.*, conserving and maintaining natural resources. Thus the Governor and General Assembly may not appropriate funds derived from Marcellus leases to unrelated purposes.

In dissent, Justice Baer noted the potential for absurd results, namely that the Department of Conservation and Natural Resources will end up holding millions of dollars in lease income that can only be spent for conserving and maintaining natural resources, while education, infrastructure and other public works lack funding. Justice Baer would interpret the Environmental Rights Amendment according to the legal concept of *public* trust, such that oil and gas revenues could be appropriated for any valid public purpose.

The Supreme Court has applied the Environmental Rights Amendment to limit the prerogatives of the political branches, directing the governor, legislators and municipal officials to serve as fiduciaries in protecting the natural environment.

A copy of the Supreme Court's PEDF majority decision is available here:

<http://www.pacourts.us/assets/opinions/Supreme/out/J-35-2016mo%20-%2010314240919600966.pdf?cb=1>

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