

PA Environment Digest

An Update On Environmental Issues In PA

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PA Supreme Court Rejects Act 13 Court Decision Reconsideration Motion

The PA Supreme Court Friday rejected the Corbett Administration's request for reconsideration of the [Court's landmark decision](#) in December which [declared unconstitutional provisions](#) of the Act 13 Marcellus Shale drilling law relating to local regulation of drilling operations.

The Court also invalidated provisions of the law establishing setbacks from rivers and streams, the requirement for DEP to evaluate the impacts to public resources and restrictions on the right of municipalities to appeal DEP permit decisions.

The Court also directed Commonwealth Court to re-hear complaints by municipalities that Act 13 prevents doctors from telling patients of the health impacts of chemicals used in natural gas well fracking operations.

The significance of the ruling is not that it declared several provisions of Act 13 unconstitutional, but in the legal basis for the opinion-- Article I, Section 27 of Pennsylvania's Constitution, the [Environmental Rights Amendment](#)-- even though technically this basis it is not considered a legal precedent because three rather than four justices agreement with this argument.

[The reconsideration](#) was opposed by the original challengers to Act 13 on the grounds the state, the Public Utilities Commission and the Department of Environmental Protection failed to provide any "compelling reasons" for the extraordinary legal relief.

"The Corbett Administration wanted a do-over. The Supreme Court said no," said Jordan Yeager, one of the lead attorneys on the case. "Act 13 violated our fundamental Constitutional rights. The Court's landmark ruling stands and we are all safer as a result."

"The State has heard the final word on Act 13 from the highest authority. Once again the primary rights of clean air, water, and a healthy environment for the people of the Commonwealth have been reiterated," said Maya van Rossum, the Delaware Riverkeeper and one of the original petitioners in the case. "We hope the Governor and his administration can now finally accept that they were wrong in their attempt to undo the Court's deliberations. The Governor should listen to what the Court has said and realize that the Court's thoughtful, extensive set of opinions instructs all levels of government to

fully adhere to their ruling. This is a great day for Pennsylvania.”

DEP Chief Counsel Dennis [Whitaker told the DEP Citizens Advisory Council](#) in January the Department’s first priority in responding to the Court decision was reviewing the changes that might need to the proposed Chapter 78 regulations and Oil and Gas Program procedures since the Court’s decision dealt specifically with that program.

He noted the stream and other setback provisions the Court struck down in Act 13 would likely remain in force because the Department has sufficient authority under the Clean Streams Law and other statutes to establish setbacks.

He also said Gov. [Corbett called on drillers](#) to meet waterway setbacks even though they were struck down by the Court.

More broadly, Whitaker said his office has started a review of all DEP programs to determine whether the previous harms and benefits tests programs have incorporated into regulations and permit reviews over the years as a result of previous Environmental Rights Amendment court decisions would need to be changed as a result of the decision.

At his budget hearing in the Senate Tuesday, DEP Secretary Chris Abruzzo also said other statutory authority exists to enforce waterway setbacks. He added the requirements of the Environmental Rights Amendment are already included in many of DEP’s permit programs, but they are working through the issues.

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