

PA Constitution Article 1, Section 27, Environmental Rights Amendment (ERA) (1971)

Article One: Declaration of Rights

§ 27. Natural resources and the public estate.

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.

Pennsylvania's public natural resources are the common property of all the people, including generations yet to come.

As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

(May 18, 1971, P.L.769, J.R.3)

U

“It is not a historical accident....” Excerpt from Robinson Twp v. PA Public Utility Commission 83 A.3d 901, 960-63 (PA Supreme Court 2013)

1. It is not a historical accident that the Pennsylvania Constitution now places citizens' environmental rights on par with their political rights. Approximately three and a half centuries ago, white pine, Eastern hemlock, and mixed hardwood forests covered about 90 percent of the Commonwealth's surface of over 20 million acres. The Pennsylvania Lumber Museum, History, online at www.lumbermuseum.org/history.php (last accessed on May 23, 2013).

2. Two centuries later, the state experienced a lumber harvesting industry boom that, by 1920, had left much of Pennsylvania barren. “Loggers moved to West Virginia and to the lake states, leaving behind thousands of devastated treeless acres,” abandoning sawmills and sounding the death knell for once vibrant towns. Regeneration of our forests (less the diversity of species) has taken decades. See *id.*; accord Pa. Dep't of Env'tl. Protection, Pennsylvania Forestry, online at www.portal.state.pa.us/portal/server.pt?open=514&objID=588459&mode=2 (last accessed on May 23, 2013).

3. Similarly, by 1890, “game” wildlife had dwindled “as a result of deforestation, pollution and unregulated hunting and trapping.” Pa. Game Comm'n, About the

Pennsylvania Game Commission, online at www.portal.state.pa.us/portal/server.pt?open=514&objID=983474&mode=2 (last accessed on May 23, 2013). As conservationist John M. Phillips wrote, "In 1890, the game had practically disappeared from our state.... We had but few game laws and those were supposed to be enforced by township constables, most of whom were politicians willing to trade with their friends the lives of our beasts and birds in exchange for votes." Explore Pa. History, First State Game Lands Historical Marker, online at <http://explorepa.history.com/hmarker.php?markerId=1-A-140> (last accessed on May 23, 2013).

4. In 1895, the General Assembly created the Pennsylvania Game Commission and, two years later, adopted a package of new game laws to protect endangered populations of deer, elk, waterfowl, and other game birds. Over the following decades, the Game Commission sought to restore populations of wildlife, by managing and restocking species endangered or extinct in Pennsylvania, establishing game preserves in state forests, and purchasing state game lands. Sustained efforts of the Game Commission over more than a century (coupled with restoration of Pennsylvania's forests) returned a bounty of wildlife to the Commonwealth. See *id.*; see also Pa. Game Comm'n, Wildlife Conservation History (1643 to Present), online at www.portal.state.pa.us/portal/server.pt?open=514&objID=683433&mode=2 (last accessed on May 23, 2013).

5. The third environmental event of great note was the industrial exploitation of Pennsylvania's coalfields from the middle of the nineteenth well into the twentieth century. During that time, the coal industry and the steel industry it powered were the keystone of Pennsylvania's increasingly industrialized economy. See Pa. Dep't of Env'tl. Protection, Operation Scarlift: The After Effects of Over 100 Years of Coal Mining in Pennsylvania and Current Programs to Combat Them (1967), online at www.portal.state.pa.us/portal/server.pt/community/mine_reclamation_operation_scarlift (last accessed on May 23, 2013).

6. The two industries provided employment for large numbers of people and delivered tremendous opportunities for small and large investors. "[W]hen coal was a reigning monarch," the industry operated "virtually unrestricted" by either the state or federal government. The result, in the opinion of many, was devastating to the natural environment of the coal-rich regions of the

Commonwealth, with long-lasting effects on human health and safety, and on the esthetic beauty of nature.

7. These negative effects include banks of burning or non-burning soft sooty coal and refuse; underground mine fires; pollution of waters from acid mine drainage; subsidence of the soil; and landscapes scarred with strip mining pits and acid water impoundments. See *id.* In the mid-1960s, the Commonwealth began a massive undertaking to reclaim over 250,000 acres of abandoned surface mines and about 2,400 miles of streams contaminated with acid mine drainage, which did not meet water quality standards. See Pa. Dep't of Env'tl. Protection, Pennsylvania's Comprehensive Plan for Abandoned Mine Reclamation (1998), online at www.portal.state.pa.us/portal/server.pt?open=514&objID=588910&mode=2 (last accessed on May 23, 2013).

8. The cost of projects to date has been in the hundreds of millions of dollars, and the Department of Environmental Protection has predicted that an estimated 15 billion dollars is in fact necessary to resolve the problem of abandoned mine reclamation alone. *Id.*

9. The overwhelming tasks of reclamation and regeneration of the Commonwealth's natural resources, along with localized environmental incidents (such as the 1948 Donora smog tragedy in which twenty persons died of asphyxiation and 7,000 persons were hospitalized because of corrosive industrial smoke; the 1959 Knox Mine disaster in which the Susquehanna River disappeared into the Pittston Coal Vein; the 1961 Glen Alden mine water discharge that killed more than 300,000 fish; and the Centralia mine fire that started in 1962, is still burning, and led to the relocation of all residents in 1984) has led to the gradual enactment of statutes protecting our environment.

10. The drafters of the Environmental Rights Amendment recognized and acknowledged the shocks to our environment and quality of life:

We seared and scarred our once green and pleasant land with mining operations. We polluted our rivers

and our streams with acid mine drainage, with industrial waste, with sewage. We poisoned our 'delicate,

pleasant and wholesome' air with the smoke of steel mills and coke ovens and with the fumes of millions of automobiles. We smashed our highways through fertile fields and thriving city neighborhoods. We cut down our trees and erected eyesores along our roads. We uglified our land and we called it progress.

1970 Pa. Legislative Journal—House at 2270 (quoting anonymous 1698 description of Penn's Woods air).

11. With these events in the recent collective memory of the General Assembly, the proposed Environmental Rights Amendment received the unanimous assent of both chambers during both the 1969–1970 and 1971–1972 legislative sessions. See Joint Resolution No. 4 of 1970, H.B. No. 958 & Joint Resolution No. 3 of 1971, H.B. No. 31 (enacted); see also Pa. Const. art. XI, § 1 (Proposal of amendments by the General Assembly and their adoption).

12. Pennsylvania voters ratified the proposed amendment of the citizens' Declaration of Rights on May 18, 1971, with a margin of nearly four to one, receiving 1,021,342 votes in favor and 259,979 opposed. Dernbach, 103 Dickinson L.Rev. at 695 n.2 (citing Franklin L. Kury, *The Environmental Amendment to the Pennsylvania Constitution: Twenty Years Later and Largely Untested*, 1 Vill. Envtl. L.J. 123, 123 (1990)); see also Gettysburg, 311 A.2d at 596 n. 1 (Jones, C.J., dissenting) (amendment received more affirmative votes than any candidate seeking election to statewide office that same day).

13. The decision to affirm the people's environmental rights in a Declaration or Bill of Rights, alongside political rights, is relatively rare in American constitutional law. In addition to Pennsylvania, Montana and Rhode Island are the only other states of the Union to do so. See Pa. Const. art. I, § 27 (1971); Mt. Const. art. II, § 3 (1889); R.I. Const. art. I, § 17 (1970). Three other states—Hawaii, Illinois, and Massachusetts—articulate and protect their citizens' environmental rights in separate articles of their charters. See Hi. Const. art. XI, §§ 1, 9 (1978); Ill. Const. art. XI, §§ 1, 2 (1971–72); Ma. Const. amend. 49 (1972). Of these three states, Hawaii and Illinois, unlike Pennsylvania, expressly require further legislative action to vindicate the rights of the people. By comparison, other state charters articulate a “public policy” and attendant directions to the state legislatures to pass laws for the conservation or protection of either all or enumerated natural resources. See,

e.g., Ak. Const. art. VIII, §§ 1–18 (1959); Colo. Const. art. XXVII, § 1 (1993); La. Const. art. IX, § 1 (1974); N.M. Const. art. XX, § 21 (1971); N.Y. Const. art. XIV, §§ 1–5 (1941); Tx. Const. art. XVI, § 59 (1917); Va. Const. art. XI, §§ 1–4 (1971).

14. Some charters address the people's rights to fish and hunt, often qualified by the government's right to regulate these activities for the purposes of conservation. See, e.g., Ky. Const. § 255A (2012); Vt. Const. Ch. II, § 67 (1777); Wi. Const. art. I, § 26 (2003). Still other state constitutions simply authorize the expenditure of public money for the purposes of targeted conservation efforts. See, e.g., Or. Const. art. IX–H, §§ 1–6 (1970); W.V. Const. art. VI, §§ 55, 56 (1996). Finally, many of the remaining states do not address natural resources in their organic charters at all. See, e.g., Nv. Const. art. I, § 1et seq.

15. That Pennsylvania deliberately chose a course different from virtually all of its sister states speaks to the Commonwealth's experience of having the benefit of vast natural resources whose virtually unrestrained exploitation, while initially a boon to investors, industry, and citizens, led to destructive and lasting consequences not only for the environment but also for the citizens' quality of life. Later generations paid and continue to pay a tribute to early uncontrolled and unsustainable development financially, in health and quality of life consequences, and with the relegation to history books of valuable natural and esthetic aspects of our environmental inheritance.

16. The drafters and the citizens of the Commonwealth who ratified the Environmental Rights Amendment, aware of this history, articulated the people's rights and the government's duties to the people in broad and flexible terms that would permit not only reactive but also anticipatory protection of the environment for the benefit of current and future generations. Moreover, public trustee duties were delegated concomitantly to all branches and levels of government in recognition that the quality of the environment is a task with both local and statewide implications, and to ensure that all government neither infringed upon the people's rights nor failed to act for the benefit of the people in this area crucial to the well-being of all Pennsylvanians.

Robinson Twp. v. Pa. Pub. Util. Comm'n, 83 A.3d 901, 960-63 (Pa. 2013)