Received 1/13/2022 10:48:42 PM Supreme Court Middle District

Filed 1/13/2022 10:48:00 PM Supreme Court Middle District
78 MAP 2021

IN THE SUPREME COURT OF PENNSYLVANIA

No. 78 MAP 2021 (Consolidated with 79 MAP 2021)

GIBRALTAR ROCK, INC,

v.

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,

APPEAL OF: NEW HANOVER TOWNSHIP, PARADISE WATCHDOGS/BAN THE QUARRY AND JOHN C. AUMAN,

---

BRIEF OF *AMICI CURIAE* WIDENER UNIVERSITY COMMONWEALTH LAW SCHOOL ENVIRONMENTAL LAW AND SUSTAINABILITY CENTER, CITIZENS FOR PENNSYLVANIA'S FUTURE, DELAWARE RIVERKEEPER NETWORK, GREEN AMENDMENTS FOR THE GENERATIONS, AND CLEAN AIR COUNCIL IN SUPPORT OF APPELLANTS

Appeal from the final Order of the Commonwealth Court of Pennsylvania entered June 30, 2021 under No. 500 C.D. 2020, Reversing the Order by the Environmental Hearing Board entered April 24, 2020 under EHB Docket No. 208-072-L (Consolidated with 2018-075-L) and Remanding

---

John C. Dernbach
(Pa. I.D. No. 33897)
Commonwealth Professor of
Environmental Law and
Sustainability, Senior Director of
Environmental Law and Sustainability
Center, Widener University
Commonwealth Law School
3800 Vartan Way
Harrisburg, PA 17110
717-541-1933
jcdernbach@widener.edu

Counsel for Amicus Curiae *Widener University Commonwealth Law School Environmental Law and Sustainability Center*

Jessica R. O'Neill
(Pa. I.D. No. 205934)
Senior Attorney
Emma H. Bast
(Pa. I.D. No. 330854)
Staff Attorney
Citizens for Pennsylvania's Future
1429 Walnut Street, Suite 400
Philadelphia, PA 19102
215-545-9694
oneill@pennfuture.org
bast@pennfuture.org

Counsel for Amicus Curiae *Citizens for Pennsylvania's Future*

Kacy C. Manahan
(Pa. I.D. No. 329031)
Senior Attorney
Delaware Riverkeeper Network
Canal Street, Suite 3701
Bristol, PA 19007
215-369-1188 x115
kacy@delawareriverkeeper.org

Counsel for Amici Curiae *Delaware Riverkeeper Network and Green Amendments For the Generations*

Joseph Otis Minott
(Pa. I.D. No. 36463)
Executive Director and Chief Counsel
Clean Air Council
135 South 19th Street, Suite 300
Philadelphia, PA 19103
215-567-4004
jminott@cleanair.org

Counsel for Amicus Curiae *Clean Air Council*

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iii

STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE 1

STATEMENT OF THE ISSUES ADDRESSED BY AMICI CURIAE 4

STATEMENT OF THE CASE..5

SUMMARY OF ARGUMENT 9

ARGUMENT 11

I. The Department's issuance of the permits violated the ERA's procedural requirement that the Department obtain and consider all information relevant to a proposed action's environmental effects. 11

A. The ERA requires the Department to holistically consider the environmental implications of issuing a permit...11

B. The EHB properly found that the Department failed to holistically consider the environmental implications of issuing the permit. 18

1. The EHB properly held that the Department failed to consider the effects of the permit on contaminated groundwater associated with the Hoff VC Site. 18

2. The EHB properly held that the Department incorrectly concluded that the additional adverse environmental impact caused by the quarry would not result in unreasonable degradation of the environment.........................20

3. The EHB properly held that the Department failed to satisfy its trustee duties to act with prudence and impartiality. 21

II. The Commonwealth Court failed to analyze the ERA violation as an independent basis for rescinding the permits, and the Commonwealth Court's one-paragraph discussion of the ERA is fundamentally inconsistent with this Court's precedent and the facts of this case. 23

A. The Commonwealth Court's statutory analysis does not address, and cannot possibly resolve, the constitutional issue under the ERA. 24

B. The Commonwealth Court's one-paragraph discussion of the ERA is inconsistent with this Court's precedent and relies on a misstatement of the facts. 25

C. The Commonwealth Court improperly elevated Gibraltar's purported property rights over the constitutionally protected rights of others....................27

CONCLUSION 31

CERTIFICATE OF COMPLIANCE WITH LENGTH LIMITATIONS 33

CERTIFICATE OF COMPLIANCE....................33

CERTIFICATE OF SERVICE 34

TABLE OF AUTHORITIES

Cases

City of Philadelphia, Bd. of License & Inspection Rev. v. 2600 Lewis, Inc., 661 A.2d 20 (Pa. Commw. Ct. 1995) 27

Gibraltar Rock, Inc. v. Pa. Dep't of Envtl. Prot., 258 A.3d 572 (Pa. Commw. Ct. 2021) .... *passim*

Commw. v. Monsanto Co., No. 668 M.D. 2020, 2021 Pa. Commw. LEXIS 591 (Dec. 30, 2021)....................11

EQT Prod. Co. v. Dep't of Env't Prot., 193 A.3d 1137 (Pa. Commw. Ct. 2018) 18

Frederick v. Allegheny Twp. Zoning Hrg. Bd., 196 A.3d 677 (Pa. Commw. Ct. 2018) 19

Haveman v. Bureau of Prof'l & Occupational Affairs, 238 A.3d 567 (Pa. Commw. Ct. 2020) 29

In re Appeal of Broad Mt. Dev. Co., LLC, 17 A.3d 434 (Pa. Commw. Ct. 2011) 30

In re Estate of McAleer, 248 A.3d 416 (Pa. 2021)....................14

Maple St. A.M.E. Zion Church v. City of Williamsport, 7 A.3d 319 (Pa. Commw. Ct. 2010) 28

Marcellus Shale Coal. v. Dep't Env't Prot., 193 A.3d 447 (Pa. Commw. Ct. 2018) 12, 16

New Hanover Twp. v. DEP, 2014 EHB 834.................... 6, 28, 29

New Hanover Twp. v. DEP, 2020 EHB 124.................... *passim*

Pa. Envt'l Def. Found. v. Commw. (*PEDF II*), 161 A.3d 911 (Pa. 2017).................... *passim*

Pa. Envt'l Def. Found. v. Commw. (*PEDF IV*), 255 A.3d 289 (Pa. 2021).................... 14, 15

Payne v. Kassab, 312 A.2d 86 (Pa. Commw. Ct. 1973) 23

Robinson Township v. Commonwealth,
83 A.3d 901 (Pa. 2013) .... *passim*
Tire Jockey Serv. v. Dep't of Env't Prot.,
915 A.2d 1165 (Pa. 2007) 18

Statutes

52 P.S. § 3308(a) 8, 17
52 P.S. § 3308(a)(1) 8
52 P.S. § 3307(a) 6
Noncoal Surface Mining and Reclamation Act (the "Noncoal Act"),
52 P.S. §§ 3301–3326 6

Other Authorities

1970 Pa. Legislative Journal–House 2269, 2272 (April 14, 1970) 13
George T. Bogert, Trusts § 93 (6th ed. 1987) 14
John C. Dernbach & Edmund J. Sonnenberg, *A Legislative History of Article 1, Section 27 of the Constitution of the Commonwealth of Pennsylvania*, 24 Widener L.J. 181 (2015) 1
John C. Dernbach & Edmund J. Sonnenberg, *A Legislative History of Article 1, Section 27 of the Constitution of the Commonwealth of Pennsylvania, Showing Source Documents*, (2014),
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2474660 .... 1, 13
John C. Dernbach, *Natural Resources and the Public Estate*, in The Pennsylvania Constitution: A Treatise on Rights and Liberties 793 (Geo. T. Bisel Co., Ken Gormley & Joy G. McNally eds. (2d ed. 2020)) 1
John C. Dernbach, *The Role of Trust Law Principles in Defining Public Trust Duties for Natural Resources*, 54 U. Mich. J.L. Ref. 77 (2020) 2
John C. Dernbach, *Thinking Anew About the Environmental Rights Amendment: An Analysis of Recent Commonwealth Court Decisions*, 30 Widener Commonwealth L. Rev. 147 (2021) 2

Rules

Pa. R.A.P. 531 1
Pa. R.A.P. 531(b)(2) 3

Regulations

25 Pa. Code § 77.126(a)(1) 8
25 Pa. Code § 77.126(a)(3) 8
25 Pa. Code § 77.128(b) 6
25 Pa. Code § 77.457(a) 17
25 Pa. Code § 77.521 .... 8, 17
25 Pa. Code §§ 77.126(a) 17

Constitutional Provisions

Pa. Const. Art. I, § 27 .... *passim*

STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

Widener University Commonwealth Law School Environmental Law and Sustainability Center, Citizens for Pennsylvania's Future ("PennFuture"), Delaware Riverkeeper Network, Green Amendments for the Generations, and Clean Air Council (collectively, "Amici") jointly file this brief pursuant to Pa. R.A.P. 531, which provides that anyone interested in questions in any matter pending in an appellate court may file an amicus curiae brief during merits briefing.

Widener University Commonwealth Law School Environmental Law and Sustainability Center's Director, Professor John Dernbach, has written widely on Article I, Section 27 of the Pennsylvania Constitution (the "Environmental Rights Amendment," "ERA," or "Section 27"). Professor Dernbach has authored the chapter on Section 27 for both editions of a treatise on Article I of the state constitution and helped assemble the legislative history of Section 27.[1] Professor Dernbach has also authored or coauthored numerous articles on the ERA and public

---

[1] *See* John C. Dernbach & Edmund J. Sonnenberg, *A Legislative History of Article 1, Section 27 of the Constitution of the Commonwealth of Pennsylvania*, 24 Widener L.J. 181 (2015); *see also* John C. Dernbach & Edmund J. Sonnenberg, *A Legislative History of Article 1, Section 27 of the Constitution of the Commonwealth of Pennsylvania, Showing Source Documents*, (2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2474660 (hereinafter "Legislative History"); John C. Dernbach, *Natural Resources and the Public Estate*, in The Pennsylvania Constitution: A Treatise on Rights and Liberties 793 (Geo. T. Bisel Co., Ken Gormley & Joy G. McNally eds. (2d ed. 2020)).

trust law.[2] This Court has previously cited Professor Dernbach's scholarship on this issue in its landmark decisions in *Robinson Township v. Commonwealth*, 83 A.3d 901 (Pa. 2013), and *Pennsylvania Environmental Defense Foundation v. Commonwealth*, 161 A.3d 911 (Pa. 2017) (hereinafter *PEDF II*). Widener University Commonwealth Law School's Environmental Law and Sustainability Center explores these issues and other ways that the law can be used to protect land, air, and water for future generations, and helps educate the next generation of lawyers.

PennFuture is Pennsylvania non-profit organization whose mission includes protecting our air, water, and land, and empowering citizens to build sustainable communities for future generations. Members of PennFuture regularly use and enjoy the natural, scenic, and esthetic attributes of Pennsylvania's environment.

Delaware Riverkeeper Network is a nonprofit organization established in 1988 to protect, preserve and enhance the Delaware River, its tributaries, and habitats. Delaware Riverkeeper Network has over 25,000 members, who live, work, and recreate within the Delaware River Basin.

Green Amendments For The Generations is Delaware Riverkeeper Network's sister organization. It is a nonprofit whose mission is to pursue and secure

---

[2] *See, e.g.*, John C. Dernbach, *Thinking Anew About the Environmental Rights Amendment: An Analysis of Recent Commonwealth Court Decisions*, 30 Widener Commonwealth L. Rev. 147 (2021); John C. Dernbach, *The Role of Trust Law Principles in Defining Public Trust Duties for Natural Resources*, 54 U. Mich. J.L. Ref. 77 (2020).

constitutional protection of environmental rights in states across the nation and ultimately at the federal level.

Clean Air Council is a member-supported, non-profit environmental organization dedicated to protecting everyone's right to a healthy environment. The Council works through public education, community advocacy, and government oversight to ensure enforcement of environmental laws.

Amici focus this brief on the Environmental Rights Amendment and urge this Court to reject the Commonwealth Court's misinterpretation of the rights guaranteed by the ERA. Amici have a long-standing interest in the health and wellbeing of Pennsylvania residents and are committed to preserving and protecting Pennsylvania's natural resources. Amici have a specific interest in ensuring that the ERA be interpreted in a manner that vindicates the constitutional environmental rights of Pennsylvania residents and preserves the constitutional trust protecting Pennsylvania's natural resources. In compliance with Pa. R.A.P. 531(b)(2), no other person or entity other than amici or their counsel paid for or authored this brief.

STATEMENT OF THE ISSUES ADDRESSED BY AMICI CURIAE

I. Whether the permit in this case violates the Pennsylvania Constitution Article 1 section 27? (Issue 3 in the Allocatur Grant at 441 MAL 2021)

   Answered in the affirmative.

II. Did the Commonwealth Court contradict Supreme Court decisions regarding the department's duties under Article I, Section 27 of the Pennsylvania Constitution? (Issue 3 in the Allocatur Grant at 442 MAL 2021)

   Answered in the affirmative.

STATEMENT OF THE CASE

With the expectation that the parties will provide this Court with comprehensive recitations of the facts, Amici highlight some background particularly relevant to the issues addressed in this brief. This case concerns permits issued for a proposed quarry sited adjacent to a hazardous site containing a host of contaminants in the soil and groundwater that are dangerous to human and environmental health (the "Hoff VC Site"). The quarry and the Hoff VC Site both sit on fractured layered bedrock. Groundwater preferentially flows through these underground fractures, which connect the Hoff VC Site and the area of the proposed quarry. The bedrock layers sit at an angle, called the "strike." As a general rule, groundwater pumping typically has the most influence when aligned with the direction of the geological strike. EHB Op. at 32, 33. Here, the proposed quarry sits directly aligned downstrike from the Hoff VC Site, and even without quarry pumping operations, contaminated groundwater is already flowing from the Hoff VC Site towards the proposed quarry. *Id.* Any quarry pumping would strongly influence, and potentially accelerate, the flow of contaminated groundwater from the Hoff VC Site towards the quarry. *Id.*

The mining permit was originally issued by the Department of Environmental Protection (the "Department") to Gibraltar Rock Inc. ("Gibraltar") in 2005. EHB Op. at 5. Under the Noncoal Surface Mining and Reclamation Act (the "Noncoal

Act”), 52 P.S. §§ 3301–3326, operating a surface mine or allowing discharge from a surface mine is prohibited unless a permit is obtained from the Department and the permittee is in compliance with all conditions in the permit. *Id.* at § 3307(a). A mining permit “will terminate if the permittee has not begun the noncoal mining activities covered by the permit within 3 years of the issuance of the permit.” 25 Pa. Code § 77.128(b).

After Gibraltar failed to obtain zoning approval from New Hanover Township (the “Township”), Gibraltar requested and received from the Department multiple extensions of the April 15, 2008 mining permit activation deadline, and ultimately received approval for a temporary cessation of mining activities. EHB Op. at 56. The Township appealed the Department’s temporary cessation approval to the Environmental Hearing Board (“EHB”). In 2014, the EHB found that the Department had abused its discretion by approving extensions for over nine years and provided Gibraltar the opportunity to seek renewal of its permit. *New Hanover Twp. v. DEP*, 2014 EHB 834.

Gibraltar applied for renewal in January 2015, and included updated information related to contamination at the adjacent Hoff VC Site. EHB Op. at 7–8. The Department then required more information from Gibraltar to “adequately address” the possibility that contaminants from the Hoff VC Site would migrate via surface or groundwater flow into Gibraltar’s permit area. EHB Op. at 9. Meanwhile,

the Township informed the Department's Hazardous Sites Cleanup Act ("HSCA") program about its concerns with the quarry's potential effects on the spread of contamination from the Hoff VC Site. *Id.*

The Department's mining office also required Gibraltar to conduct a "Fate and Transport Analysis" to evaluate potential groundwater migration of contaminants from the Hoff VC Site. EHB Op. at 19. Gibraltar's report concluded that "contaminant capture due to quarry pumping was unlikely." *Id*. The Department issued the mining permit, NPDES permit, and authorization to mine to Gibraltar in July 2018. *Id*. at 20.

The Township, local group Paradise Watchdogs/Ban the Quarry, and John C. Auman appealed the 2018 permits to the EHB. The EHB rescinded Gibraltar's permits without prejudice. *Id*. at 78–79. It found that the information upon which the DEP relied was fatally flawed in multiple ways. *Id*. at 36–38. However, even under the flawed analysis, the EHB found that the quarry pumping would cause contamination of groundwater that was not previously contaminated. *Id*. at 39. During the hearing, the Department's mining program permits chief "testified that he would not have issued the permits if he knew then what he knows now." *Id*. at 43; *see also id.* at 76–77 (quoting testimony).

The EHB rescinded Gibraltar's permits on two independent grounds: (1) Gibraltar failed to comply with the statutory and regulatory requirements of the

Noncoal Act;[3] and (2) the Department unconstitutionally issued the permits in violation of the ERA. *See id*. at 79–82. On the second ground, the EHB found that the Department violated the ERA for three separate reasons: the Department did not make an informed decision about whether the permit issuance would result in unreasonable degradation of the environment; the Department incorrectly concluded that the additional adverse environmental impact caused by the quarry would not result in unreasonable degradation of the environment; and the Department failed to satisfy its trustee duties of prudence and impartiality. Then, because it had already determined that the ERA was violated on those grounds, the EHB determined that it did not need to rule on whether "the Department's issuance of the permits to

---

[3] The EHB concluded that: (i) "The spread of multiple hazardous contaminants in the groundwater that would result from Gibraltar's quarry pumping constitutes presumptive evidence of potential pollution that cannot be permitted consistent with the Noncoal Act. 52 P.S. § 3308(a); 25 Pa. Code § 77.126(a)(3);" (ii) "Gibraltar has not shown that the quarry can be operated without disturbance to the prevailing hydrologic balance, without deleterious changes in groundwater quality, and without causing water pollution in violation of 25 Pa. Code § 77.521 and 52 P.S. § 3308(a)"; and (iii) "The Noncoal Act and the noncoal regulations require that a permit application must be accurate and complete. 52 P.S. § 3308(a)(1); 25 Pa. Code § 77.126(a)(1) . . . Gibraltar's application is not complete because it does not describe how a discharge potentially containing hazardous substances will be treated." EHB Op. at 80–82. Gibraltar's permit application was deficient because it failed to address the new contamination that would result from Gibraltar's proposed pumping, which constitutes "presumptive evidence of potential pollution" in violation of the Noncoal Act. *Id*. at 49, 80.

Gibraltar violated Article I, Section 27 because it would result in unreasonable degradation of the waters of the Commonwealth." *Id*. at 68.

On appeal, the Commonwealth Court failed to analyze the EHB's constitutional grounds for rescinding the permits. Instead, the Commonwealth Court focused solely on a perceived issue with the EHB's statutory and regulatory analysis. *See* Commw. Ct. Op. at 15–18.

SUMMARY OF ARGUMENT

The Pennsylvania Constitution's Environmental Rights Amendment ("ERA"), Article I, Section 27, was ratified in 1971 amid a broader cultural acknowledgement that the basic underpinnings of a thriving society were threatened by environmental exploitation. Pennsylvania's life-sustaining and irreplaceable natural resources had been consumed and depleted with abandon, often for the benefit of private interests at the expense of the public as a whole.[4] Critical to the new approach embodied in the ERA is the principle that the Commonwealth be well-informed of the environmental effects of its actions in advance, and use that knowledge to prevent blind infringement of the rights protected. The requirement to consider environmental impacts in advance is both common sense and deeply rooted in this Court's jurisprudence.

[4] See *Robinson Twp*., 83 A.3d at 976 ("The lessons learned from that history led directly to the Environmental Rights Amendment.").

By relying unquestioningly on the applicant's analysis of the proposed quarry's environmental effects, and by failing to consult with its own hazardous sites program, the Department completely overlooked that Gibraltar's quarrying would exacerbate groundwater contamination. In essence, the permits were issued without regard to the risk of groundwater pollution, and thus without regard for the Department's constitutional duties under the ERA. The EHB correctly rescinded Gibraltar's permits without prejudice on this basis.

On appeal, the Commonwealth Court failed to address the EHB's detailed findings of fact and analysis that the Department had violated the ERA in issuing the permit to Gibraltar. Instead, the Commonwealth Court concluded that rescission of the mining permit would be appropriate only if Gibraltar's application was deficient or if its conduct under the permit was unlawful under the Noncoal Act, regardless of the permit's environmental effects and constitutionality under the ERA. In so doing, it effectively disregarded the independent constitutional status of the ERA.

This Court should affirm the EHB's constitutional analysis that the Department is required by the ERA and its trustee obligations thereunder to consider in advance the full environmental effects of its action.

ARGUMENT

I. The Department's issuance of the permits violated the ERA's procedural requirement that the Department obtain and consider all information relevant to a proposed action's environmental effects.

The EHB correctly determined that the Department's issuance of Gibraltar's permits was unconstitutional because the Department failed in its duty to fully consider and understand the environmental effects of permitting the Gibraltar quarry next to the Hoff VC Site. The EHB also correctly concluded that the Department's failure to act with prudence and impartiality as a trustee of Pennsylvania's public natural resources rendered the issuance of the permits unconstitutional.

A. The ERA requires the Department to holistically consider the environmental implications of issuing a permit.

As this Court well knows, the ERA declares certain rights to the people of the Commonwealth, and the state's power to act contrary to these rights is limited. As part of this limitation, the Commonwealth has a public trust duty under Section 27 to conserve and maintain public natural resources for the benefit of present and future generations. The Department is unquestionably a trustee under the ERA. *See Robinson Twp.*, 161 A.3d at 931 n.23 (explaining that "all agencies and entities of the Commonwealth government, both statewide and local" are trustees); *see also Commw. v. Monsanto Co.*, No. 668 M.D. 2020, 2021 Pa. Commw. LEXIS 591, at *39 (Pa. Commw. Ct. Dec. 30, 2021) (concluding that "DEP has trustee standing under the ERA") (citing *Robinson Twp.*). Surface and groundwater are public natural

resources. *See Marcellus Shale Coal. v. Dep't Env't Prot.*, 193 A.3d 447, 470 (Pa. Commw. Ct. 2018) ("the constitutional concept of 'public natural resources' includes . . . 'surface and ground water'") (quoting *Robinson Twp.*, 83 A.3d at 955). Thus, the Department has a duty as trustee to "refrain from permitting or encouraging the degradation, diminution, or depletion of public natural resources [including surface and groundwater], whether such degradation, diminution, or depletion would occur through direct state action or indirectly, *e.g.*, because of the state's failure to restrain the actions of private parties." *Robinson Twp.*, 83 A.3d at 957; *PEDF II*, 161 A.3d at 933.

The Department's inability to act contrary to the rights enumerated implies a corollary responsibility intended to ensure that these rights are actually protected: the responsibility to consider impacts on those rights and values prior to making a decision. *Robinson Twp.*, 83 A.3d at 952. This understanding has been part of the ERA from the outset. Before the ERA's adoption, then-Representative Kury explained it as a logical consequence of adopting Article I, Section 27:

> Those who propose to disturb the environment or impair natural resources would in effect have to prove in advance that the proposed action is in the public interest. This will mean that the public interest in natural resources and the environment will be fully weighed against the interest of those who would detract from or diminish them before—not after—action is taken.

1970 Pa. Legislative Journal–House 2269, 2272 (April 14, 1970).[5]

This Court made this requirement clear in *PEDF II*, when it faulted the General Assembly's adoption of the Fiscal Code amendments allocating public trust proceeds to the general fund without considering the impact of this decision on the trust corpus: "there is no indication that the General Assembly *considered the purposes of the public trust* . . . consistent with its Section 27 trustee duties." 161 A.3d at 938.

For the public trust clause of the ERA, this duty grows out of the fiduciary duties of prudence, loyalty, and impartiality, which this Court has held should be used to interpret Section 27's public trust clause. This duty of the trustee to consider impacts on public natural resources before making a decision also derives from classic expressions of the public trust doctrine. *Robinson Twp.*, 83 A.3d at 958

---

[5] *See also* Question and Answer Sheet on Joint Resolution:

> Q. Will the amendment make any real difference in the fight to save the environment?
>
> A. Yes, once Joint Resolution 3 is passed and the citizens have a legal right to a decent environment under the State Constitution, every governmental agency or private entity, which by its actions may have an adverse effect on the environment, must consider the people's rights before it acts. If the public's rights are not considered, the public could seek protection of its legal rights in the environment by an appropriate law suit.

Dernbach & Sonnenberg, Legislative History, at 66. The Question and Answer Sheet was cited with approval in *Robinson Township*, 83 A.3d at 954.

(citing *Nat'l Audubon Soc'y v. Sup. Ct.*, 658 P.2d 709, 728 (Cal. 1983)); *see also PEDF II*, 161 A.3 at 945 (Baer, J., concurring). "The plain meaning of the terms conserve and maintain implicates a duty to prevent and remedy the degradation, diminution, or depletion of our public natural resources. As a fiduciary, the Commonwealth has a duty to act toward the corpus of the trust—the public natural resources—with prudence, loyalty, and impartiality." *PEDF II*, 161 A.3d at 932 (quoting *Robinson Twp.*, 83 A.3d at 956–57).[6]

The duty of prudence, this Court said, involves "considering the purposes" of the trust and exercising "reasonable care, skill, and caution" in managing the trust corpus. *Id*. at 938 (citing 20 Pa. Cons. Stat. § 7780). It is impossible for a trustee to be prudent without carrying out some advance investigation of the effect of its decisions.[7]

---

[6] See also *Pa. Envt'l Def. Found. v. Commw.* (*PEDF IV*), 255 A.3d 289, 317 (Pa. 2021) (Baer, J., dissenting) (maintaining that the ERA's language is "more befitting general trust concepts, such as prudence, loyalty, and impartiality, rather than the intricate aspects of private trust law and precedent.").

[7] George T. Bogert, Trusts § 93 (6th ed. 1987). *See also In re Estate of McAleer,* 248 A.3d 416, 445 (Pa. 2021) (Donohue, J., concurring) ("In navigating the potentially complex legal landscape of trust administration, a trustee should seek competent [professional advice] not only for guidance on what will best serve the trust's purpose, but also to determine the potential risks that a trustee is subject to when making these difficult decisions in the course of trust administration."); *PEDF II*, 161 A.3d at 932 n.24 ("[T]he duty to administer with prudence involves 'considering the purposes, provisions, distributional requirements and other circumstances of the trust and . . . exercising reasonable care, skill and caution.")

The duty of loyalty requires the trustee to manage the trust corpus "so as to accomplish the trust's purposes for the benefit of the trust's beneficiaries." As this Court made clear in *PEDF IV*, trustees such as the Department have a duty to consider both present and future generations at the same time. Thus, the trustee cannot be "shortsighted" and must instead "*consider* an incredibly long timeline." *PEDF IV*, 255 A.3d at 310 (emphasis added) (quoting *Robinson Twp.*, 83 A.3d at 959). The duty to consider a long timeline necessarily requires advance consideration of impacts of Department decisions. Finally, the duty of impartiality requires the Commonwealth to manage "the trust so as to give all of the beneficiaries due regard for their respective interests in light of the purposes of the trust." *PEDF II*, 161 A.3d at 932. The Department cannot give any beneficiaries "due regard" without considering in advance the impact of its permitting decisions on those beneficiaries.

A pre-decision environmental evaluation is necessary to protect Section 27 rights and resources. First, by requiring Commonwealth entities to consider protected resources and values in advance, the ERA ensures that the trustees understand the likely effect of their decisions and gives them the opportunity to be more protective. It provides a more accurate understanding of whether a permittee such as Gibraltar can operate without causing pollution. "Without this information," the Commonwealth Court has explained, "the Department's ability to consider the

potential impacts to public resources would be severely hampered." *Marcellus Shale Coal.*, 193 A.3d at 466. This understanding has particular relevance to long-term and cumulative impacts of the kind implicated in this case. *See* EHB Op. at 65 (describing the Department's actions as "gambling with the future").

Second, pre-decision environmental evaluation reduces the likelihood of adverse environmental impacts. During the permit application process, the identification of potential impacts gives the Department, the applicant, and interested citizens and municipalities the opportunity to determine ways to prevent or reduce them.

Third, preventing environmental pollution and degradation is much more effective than trying to clean it up afterwards. This is particularly true of groundwater pollution, where cleanup costs can be very high and a site is rarely if ever returned to its pre-contamination state. *See Robinson Twp.*, 83 A.3d at 961 (discussing "[t]he overwhelming tasks of reclamation and regeneration of the Commonwealth's natural resources").

Fourth, a pre-decision evaluation creates a record that permits a reviewing court to assess whether the decision-making body even considered these impacts. This record, of course, makes it easier for a reviewing tribunal to decide whether the Commonwealth complied with its constitutional duties.

The Noncoal Act and its attendant regulations prohibit noncoal mining without a permit and require permit applicants to provide information to the Department about the likely environmental impacts of mining. *See, e.g.,* 52 P.S. § 3308(a), 25 Pa. Code §§ 77.126(a), 77.457(a), 77.521. These statutory and regulatory requirements provide the Department with much of the information it needs under the ERA. Because the obligation to consider impacts on rights and resources is constitutional in nature, however, it exists independent of these statutory and regulatory requirements, and cannot be limited by them. Thus, while a permit applicant such as Gibraltar is required by statute and regulation to provide information on its proposed mining operation, these requirements do not absolve the Commonwealth's responsibility under the ERA to ensure it has considered—and that it understands—all necessary information prior to making a decision. *Cf.* EHB Op. at 64 (explaining that here, "the Department has authorized a life-size experiment in the field with real world consequences with virtually no understanding of the risks involved or how those risks will be managed").

This point is particularly important when a permit application implicates two or more regulatory programs, and the Department has not considered the effect of a proposed permit on another program. The ERA plays a gap-filling function when statutes and regulations are insufficient or when government decision making is fragmented among different programs. Where authority concerning the values

protected by the ERA is divided, that division cannot be used to frustrate the protection of environmental rights. The fragmentation of governmental decision-making and the existence of statutory gaps do not provide legal defenses to governmental action that are destructive of the principles stated in the ERA.

B. The EHB properly found that the Department failed to holistically consider the environmental implications of issuing the permit.

The EHB supported these legal conclusions with detailed findings of fact, supported by substantial evidence.[8] Each of these reasons justifies the EHB's decision. Rescission was an appropriate remedy because a permit issued in violation of the Constitution cannot stand.

Significantly, the Commonwealth Court's one-paragraph analysis of the ERA (discussed *infra*, Section II) issue does not address any of these reasons.

1. The EHB properly held that the Department failed to consider the effects of the permit on contaminated groundwater associated with the Hoff VC Site.

The EHB's opinion describes in detail the Department's failure to consider these effects. EHB Op. at 68–71. "[W]hen government acts, the action must, on

[8] On appellate review, the EHB's material findings of fact are upheld if supported by substantial evidence, and "[r]esolution of evidentiary conflict, witness credibility, and evidentiary weight are matters committed to the discretion of the Board." *EQT Prod. Co. v. Dep't of Env't Prot.*, 193 A.3d 1137, 1148 (Pa. Commw. Ct. 2018) (citing 2 Pa. C.S. § 704, *Kiskadden v. Pa. Dep't of Env't Prot.*, 149 A.3d 380, 387 (Pa. Commw. Ct. 2016)); *Tire Jockey Serv. v. Dep't of Env't Prot.*, 915 A.2d 1165, 1185 (Pa. 2007) (setting forth the substantial evidence standard).

balance, reasonably account for the environmental features of the affected locale . . . if it is to pass constitutional muster." *Robinson Twp.*, 83 A.3d at 953; *Frederick v. Allegheny Twp. Zoning Hrg. Bd.*, 196 A.3d 677, 694–95 (Pa. Commw. Ct. 2018). Thus, DEP's decisionmaking must be tailored to the specific environmental rights and public natural resources that would be affected by the action. Because the Gibraltar noncoal permit and the cleanup on the Hoff VC site are "inextricably intertwined," the EHB reasoned, the Department was required to consider how each would affect the other. EHB Op. at 68. After reviewing the record, the EHB decried the Department's failure to "give the issue any serious thought." *Id.* at 71.

The EHB found that the Department's mining program failed to consult with its HSCA program to determine "whether permitting active pumping of the contaminated aquifer associated with the Hoff VC Site would complicate remediation of that site." *Id*. at 68.[9] The gravity of this procedural misstep is made clear by the EHB:

> It would seem that one of the first and most important objectives of any site cleanup is to contain the problem.

[9] The EHB found "no evidence that the Department's mining program asked its HSCA program personnel whether quarry pumping would complicate or increase the cost of HSCA activities at the Hoff VC Site." EHB Op. at 27. The EHB also explicitly found that "[n]o one at the Department has evaluated the potential interaction between any recovery wells and quarry pumping with respect to the containment and remediation of groundwater contamination emanating from the Hoff VC HSCA Site." *Id*. at 41.

> Yet quarry pumping will have exactly the opposite effect…which seems entirely at odds with how we would expect remediation . . . should be responsibly managed, both fiscally and with the best interests of the environment in mind.

Id. at 71.

In addition, as the EHB concluded, the Department's grant of the permit was premised "from the very beginning" by "unduly, if not exclusively" focusing on whether the quarry would pollute *surface* waters. *Id*. at 47. The Department failed to integrate its analysis of surface and groundwater pollution or consider the other geographic and hydrogeological factors present here. Thus, the EHB correctly concluded that "the Department did not uphold its constitutional duty to fully consider and understand the environmental effects of permitting the Gibraltar quarry next to the Hoff VC site." *Id*. at 81.

2. The EHB properly held that the Department incorrectly concluded that the additional adverse environmental impact caused by the quarry would not result in unreasonable degradation of the environment.

The Department's failure to consider these impacts, the EHB concluded, also means that quarrying operations would likely make contamination worse. *See id*. at 39 ("quarry pumping will spread the contaminant plumes and will result in contamination of groundwater in areas that are not currently contaminated"); *see also id*. at 49 ("the record clearly supports a finding that quarrying pursuant to the permits is likely to intercept the contamination plumes emanating from the Hoff VC

Site and contaminate previously uncontaminated or less contaminated groundwater, a scenario that is not meaningfully accounted for in the permits"). The Department "issued the permits based on the belief (which turned out to be mistaken) that contamination from the Hoff VC Site would likely never reach the quarry." *Id*. at 32. The EHB found that the Department's narrow focus on pollution of surface waters via Gibraltar's NPDES permit and failure to coordinate with the HSCA program resulted in a failure to appreciate the fact that groundwater would be affected; "preventing new contamination matters." *Id*. at 48.

3. The EHB properly held that the Department failed to satisfy its trustee duties to act with prudence and impartiality.

As explained above, the Department has duties of prudence and impartiality under the ERA. The EHB found that "[p]ermitting a source of active groundwater migration immediately adjacent to the [Hoff VC] site without a full scientific understanding of the consequences of that migration and how to deal with those consequences is not prudent environmental management" and is a failure to comply with the fiduciary duties of a trustee. *Id*. at 72, 81.

The EHB also held that the Department failed to act with impartiality to other beneficiaries of the trust, including future generations. Issuance of the permit:

> exhibits partiality to one party, Gibraltar, at the as yet unknown expense of other interested parties . . . We do not mean to suggest that the Department has deliberately favored Gibraltar at the purposeful expense of other beneficiaries. Rather, we simply find that the

> Department did not give the matter any thought. This does not represent compliance with the Department's fiduciary responsibilities.

Id. at 72.[10]

The Department's issuance of the permit violates its duty of impartiality in other ways as well. By accepting the risk of increased contamination for the benefit of Gibraltar's operations, the Department burdened the public and future generations with a risk that was not fully appreciated.[11] Thus, the Department was unduly partial to Gibraltar at the expense of the beneficiaries who live, work, and recreate in the vicinity of the Gibraltar property and Hoff VC Site.

The Department's public trust duties extend simultaneously to present and future generations. The Department attempted to resolve the issue of groundwater contamination by promising future enforcement against Gibraltar. *Id*. at 48–49. By permitting an action that would damage the trust corpus in unknown ways without a clear and enforceable plan to remedy that damage, the Department favored Gibraltar

---

[10] Language referring to the financial interests of potentially responsible parties in the context of beneficiary interests has been omitted due to Amici's reservations about whether these interests are protected by the ERA.

[11] "In performing its permit review, the Department acknowledged the risk of allowing a quarry to pump groundwater next to an active HSCA site with contaminated groundwater and continuing sources of contamination. The Department ultimately determined, however, that the risk was tolerable based upon several findings and assumptions. The record shows that virtually all of those findings and assumptions were wrong. Therefore, the permits cannot remain in place, at least until the risk is better understood and perhaps more manageable." EHB Op. at 78.

over future generations, who are also beneficiaries of the trust. For example, pollution of groundwater may affect future generations in ways not yet foreseeable, although it is eminently foreseeable that future generations will rely on that water to meet their needs. *Id*. at 12, 25. The Department therefore failed to comply with its fiduciary duties as trustee. *Id.* at 72, 81.

II. The Commonwealth Court failed to analyze the ERA violation as an independent basis for rescinding the permits, and the Commonwealth Court's one-paragraph discussion of the ERA is fundamentally inconsistent with this Court's precedent and the facts of this case.

On appeal, the Commonwealth Court essentially reverted to its *Payne v. Kassab* framework for analyzing the ERA, although in a different form, focusing on the EHB's statutory and regulatory analysis and ignoring the EHB's ERA analysis. *See* 312 A.2d 86, 94 (Pa. Commw. Ct. 1973) (generally limiting the court's ERA analysis to whether there was "compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth's public natural resources"). In that way, the *Payne* framework treated statutes and regulations as a substitute for Article I, Section 27. Because this Court has overruled that framework, the Commonwealth Court's statutory analysis fails to resolve the ERA issue in this case. *See PEDF II*, 161 A.3d at 930 ("[W]e reject the [*Payne*] test developed by the Commonwealth Court as the appropriate standard for deciding Article I, Section 27 challenges."). When the Commonwealth Court actually turned to a discussion of the

ERA, the court's one-paragraph "analysis" relied on a misstatement of the facts and arrived at a conclusion that is untethered from this Court's ERA precedent.

A. The Commonwealth Court's statutory analysis does not address, and cannot possibly resolve, the constitutional issue under the ERA.

The Commonwealth Court's statutory analysis rested on its perception that the EHB "did not rescind Gibraltar's permit because . . . Gibraltar failed to comply or intended not to comply with the Noncoal Surface Mining Conservation and Reclamation Act and the applicable regulations. Rather, the Board based its rescission decision on the Department's conduct at the Hoff VC site." Commw. Ct. Op. at 15. Because the Department's conduct at the Hoff VC Site was statutorily regulated under HSCA, the Commonwealth Court determined that "[b]y rescinding Gibraltar's mining permits on the basis of the Department action, or inaction, under another statute relating to another property, the Board exceeded its authority and abused its discretion." Commw. Ct. Op. at 16.

Even if the Commonwealth Court's statutory analysis here were correct—to be clear, it is not[12]—it would establish only that the EHB erred in finding a basis to rescind the permits under the Noncoal Act. *See* Commw. Ct. Op. at 20. Such analysis cannot, as a matter of law, resolve the constitutional issue under the ERA. As this

[12] Fundamentally, the EHB's rescission was not tied to the Department's action or inaction at the Hoff VC site. *See supra* n.3.

Court has recognized, reducing the ERA to a matter of statutory compliance "strips the constitutional provision of its meaning." *PEDF II*, 161 A.3d at 930.

Here, the Commonwealth Court erred by engaging in no analysis of whether the Department's actions transgressed the constitutional limitations imposed by the ERA, or whether such actions provided a basis to rescind the permits.

B. The Commonwealth Court's one-paragraph discussion of the ERA is inconsistent with this Court's precedent and relies on a misstatement of the facts.

Before the Commonwealth Court engaged in its one-paragraph ERA discussion, it stated that "Gibraltar has agreed, in principle, to remediate groundwater pollution that it did not create." Commw. Ct. Op. at 19. This statement, which forms the basis of the Commonwealth Court's subsequent ERA discussion, is simply wrong as a matter of fact.[13] Moreover, as explained above in Section I.B.2, the EHB found that Gibraltar's proposed quarry pumping would create *new* groundwater pollution. *See*, *e.g.*, EHB Op. at 39, 49.

Starting from this misstatement, the Commonwealth Court reasoned that "[g]iven Gibraltar's response, the Board's adjudication is not consonant with" the ERA. Commw. Ct. Op. at 19. The Commonwealth Court concluded that because

---

[13] The EHB expressly found that "Gibraltar's permits do not specify any obligation on Gibraltar's part to clean up contaminated groundwater emanating from the Hoff VC Site, regardless of whether quarry pumping has caused the active migration of contaminants in the groundwater." EHB Op. at 41.

“[m]igration of contaminants is already occurring . . . without any quarrying,” and because Gibraltar made unspecified promises to remediate the pollution that it would exacerbate, “[l]osing Gibraltar’s participation in the cleanup of contaminated groundwater itself may work a harm on the environment, *i.e.*, a violation of Article I, Section 27 of the Pennsylvania Constitution.” Commw. Ct. Op. at 19.

That conclusion is fundamentally inconsistent with the facts and this Court’s precedent. On the facts, the Commonwealth Court appears to have either assumed or speculated (contrary to the evidence in the record) that Gibraltar’s activities pursuant to the permits would somehow improve environmental quality. *Compare* EHB Op. at 74 (“We are not aware of any other instance where the Department issued a discharge permit with no idea of how those limits would be met or no permit requirements regarding the treatment to be used.”). Thus, it is unclear whether the Commonwealth Court’s ERA “conclusion” is a holding or simply dicta premised on speculation about what the evidence might show on remand. *See* Commw. Ct. Op. at 19 (“Losing Gibraltar’s participation in the cleanup of contaminated groundwater itself *may* work a harm on the environment.”) (emphasis added).

Moreover, even if the facts were that Gibraltar could reliably engage in some remediation, the Commonwealth Court did not explain whether “losing Gibraltar’s participation” would violate the individual rights or the public trust provisions of the ERA. Either way, the Commonwealth Court cited no precedent—and to be clear,

there is none—that supports the Commonwealth Court's suggestion that the ERA grants an individual property owner the right to damage the corpus of the trust as long as the property owner makes some promise to remediate the damage at some time in the future.

C. The Commonwealth Court improperly elevated Gibraltar's purported property rights over the constitutionally protected rights of others.

This Court has made clear that the rights of the people recognized in Article I, Section 27 are equal in status and enforceability to any other rights in Article I, including property rights. *Robinson Twp.*, 83 A.3d at 953–54. While the Department's action violated constitutional environmental rights, there is no plausible basis for concluding that Gibraltar was deprived of constitutional property rights. Even if there was, property claims do not automatically override constitutional environmental claims or the property rights of others.

The Commonwealth Court improperly found that the EHB's rescission of Gibraltar's mining permits interfered with Gibraltar's property interests and due process. The Commonwealth Court's authority, *City of Philadelphia, Board of License & Inspection Review v. 2600 Lewis, Inc.*, 661 A.2d 20 (Pa. Commw. Ct. 1995), stands only for the proposition that before a license or permit is revoked, the permittee must be afforded due process. Gibraltar has gone through the proper

permit process. However, the reviewing body—the EHB—found that Gibraltar's permit *was improperly issued* as a matter of law and fact.

A defective permit is *void ab initio* when it fundamentally fails to fulfill statutory requirements. *See Maple St. A.M.E. Zion Church v. City of Williamsport*, 7 A.3d 319, 324 (Pa. Commw. Ct. 2010). Here, the EHB found that based on the record, Gibraltar failed to demonstrate that there was not presumptive evidence of pollution, and that the Noncoal Act's terms were therefore violated. EHB Op. at 73. In fact, the Department's officials testified that they would not issue the permit based on what they now know. *Id.* at 43. Stated more precisely: Gibraltar's permit was invalid from the point of its issuance because it did not—and based on the water situation in and on the ground, could not—meet the requirements of the Mining Act.

The Commonwealth Court's implication that Gibraltar has been denied an opportunity to correct its permits fails, because the validity of the 2005 permit has already been adjudicated. In the 2014 EHB adjudication preceding the instant case, the EHB found the Department "abused its discretion by approving extensions that continued the permit for over nine years," and that the extensions were therefore invalid. *New Hanover Twp. v. DEP*, 2014 EHB 834; *see also* EHB Op. at 6. However, the EHB in 2014 was unwilling to "simply revoke and terminate the Permit issued to Gibraltar Rock without providing Gibraltar Rock with the opportunity to file an application . . . consistent with applicable regulatory

requirements and this Adjudication." *New Hanover Twp. v. DEP*, 2014 EHB at 889. The EHB noted that, absent this opportunity to apply for renewal, the permit would simply terminate because Gibraltar failed to activate the mining permit within three years. *Id* at 889, 893. The Commonwealth Court acknowledges this proceeding but implies that the basic "cooperation" of Gibraltar with the administrative process should ensure that Gibraltar is issued a permit now. Commw. Ct. Op. at 17. Mere submission of an application is not a guarantee it will be granted; it must meet all of the applicable statutory requirements. Gibraltar's did not.

Moreover, the Commonwealth Court's interpretation could set a dangerous precedent.[14] While government issuance of a license does create a property right related to the ability of a person to pursue a livelihood, that property right does not exist to the detriment of the constitutional rights of its neighbors and of Pennsylvania residents at large. Although the right to engage in a licensed profession is an important right, it is *not* a fundamental right. *Haveman v. Bureau of Prof'l & Occupational Affairs*, 238 A.3d 567, 573 (Pa. Commw. Ct. 2020) (*citing Nixon v. Dep't of Pub. Welfare*, 576 Pa. 385 (Pa. 2003)). The right of Pennsylvanians to clean air and pure water, however, is recognized in the Pennsylvania Constitution. To uphold the Commonwealth Court's decision here would be to make constitutionally-

---

[14] As set out in the Department's petition for review before this Court, the Commonwealth Court addressed these issues *sua sponte*, and this Court can reverse the decision below on that basis. Dep't Pet. for Review at 17–21.

guaranteed rights subservient to not only to statutes and administrative regulations, but to the mere economic interests of an entity that undertook a business risk that did not pan out. *Cf. In re Appeal of Broad Mt. Dev. Co., LLC*, 17 A.3d 434, 444 (Pa. Commw. Ct. 2011) (explaining the general rule that "a municipal permit issued illegally or in violation of the law, or under a mistake of fact, confers no vested right or privilege on the person to whom the permit has been issued, and it may be revoked notwithstanding that the person may have acted upon the permit").

CONCLUSION

For the reasons set forth herein, amici curiae respectfully request that this Court reverse the decision of the Commonwealth Court and reinstate the opinion and order of the EHB in this matter.

Respectfully submitted,

/s/ John C. Dernbach
JOHN C. DERNBACH
(Pa. I.D. No. 33897)
Commonwealth Professor of Environmental Law and Sustainability, Senior Director of Environmental Law and Sustainability Center, Widener University Commonwealth Law School
3800 Vartan Way
Harrisburg, PA 17110
717-541-1933
jcdernbach@widener.edu

Counsel for Amicus Curiae *Widener University Commonwealth Law School Environmental Law and Sustainability Center*

/s/ Jessica R. O'Neill
JESSICA R. O'NEILL
(Pa. I.D. No. 205934)
Senior Attorney
EMMA H. BAST
(Pa. I.D. No. 330854)
Staff Attorney
Citizens for Pennsylvania's Future
1429 Walnut Street, Suite 400
Philadelphia, PA 19102
215-545-96924
oneill@pennfuture.org
bast@pennfuture.org

Counsel for Amicus Curiae *Citizens for Pennsylvania's Future*

/s/ Kacy C. Manahan
KACY C. MANAHAN
(Pa. I.D. No. 329031)
Senior Attorney
Delaware Riverkeeper Network
Canal Street, Suite 3701
Bristol, PA 19007
215-369-1188 x115
kacy@delawareriverkeeper.org

Counsel for Amici Curiae *Delaware Riverkeeper Network and Green Amendments for the Generations*

/s/ Joseph Otis Minott
JOSEPH OTIS MINOTT
(Pa. I.D. No. 36463)
Executive Director and Chief Counsel
Clean Air Council
135 South 19th Street, Suite 300
Philadelphia, PA 19103
215-567-4004
jminott@cleanair.org

Counsel for Amicus Curiae *Clean Air Council*

CERTIFICATE OF COMPLIANCE WITH LENGTH LIMITATIONS

In accordance with Pa. R.A. P. 2135(d), I, Jessica R. O'Neill, hereby certify that this brief complies with length limitation in Pa. R.A.P. 531(b)(3) in that it contains fewer than 7,000 words, excluding the supplementary matter exempted by Pa. R.A.P. 2135(b), as determined by the word counting function in the word processing system used to prepare the brief, Microsoft Word.

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: January 13, 2022

/s/ Jessica R. O'Neill
Jessica R. O'Neill (Pa. I.D. No. 205934)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Brief of *Amici Curiae*, Citizens for Pennsylvania's Future, was filed electronically using the PACFile system. Service will be made on the persons and in the manner set forth on the Proof of Service generated by the PACFile system, which service satisfies the requirements of Pa. R.A.P. 121. The Proof of Service generated by the PACFile system will follow this Certificate of Service in the paper copy of this brief filed with the Court.

Dated: January 13, 2022

/s/ Jessica R. O'Neill
Jessica R. O'Neill (Pa. I.D. No. 205934)