



March 3, 2014

To: The Pennsylvania General Assembly

From: Maya K. van Rossum, the Delaware Riverkeeper, Delaware Riverkeeper Network & Jordan B. Yeager, Attorney, Curtin & Heefner LLP

Re: Proposed Legislation Violating the Pennsylvania Constitution and Your Obligations as Legislators

Dear General Assembly,

On September 27, 2013, Representative Seth Grove crafted a sweeping piece of legislation designed to remove zoning authority from municipal governments, and to displace and revoke their ability to pass ordinances and render decisions designed to protect their communities and environments. Rather than recognize the recently issued PA Supreme Court decision Robinson Township, Delaware Riverkeeper Network, et.al. v. Commonwealth (Dec. 19, 2013) that makes clear that such a legislative attempt to revoke local zoning and decisionmaking authority is a violation of the Pennsylvania Constitution, this legislation was put forth for sponsorship support via a January 29, 2014 memo.

[\(memo and link to draft legislation can be found at:](#)

<http://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20130&cosponId=14008> )

Efforts by the Pennsylvania General Assembly to displace municipal authority for environmental and community protection is legally and constitutionally invalid. As such, we encourage you to take a public and vocal stance against this legislative proposal.

As a lead litigant and attorney on the Robinson Township, Delaware Riverkeeper Network, et.al. v. Commonwealth decision, we felt an obligation to highlight the illegality of this legislative proposal.

- ☞ The proposed preemption legislation is violative of Article 1, Section 27 of the Pennsylvania Constitution as interpreted and applied by the Pennsylvania Supreme Court.
- ☞ The proposed legislation also conflicts with the Federal Clean Water Act and Pennsylvania State laws such as Act 167 and Act 537 to the extent they rely upon and even mandate local municipalities craft and implement plans, programs and ordinances to address issues associated with stormwater, wastewater, flooding and water quality.

The Robinson Township decision reinforces that state and local governments share environmental protection obligations under Section 27 and provides a framework for cooperative environmental protection between state and local government entities. Additionally, the decision is very clear, all governmental entities in Pennsylvania, so long as they exist, have Section 27 obligations, and the General Assembly cannot remove these constitutional obligations from a municipality.

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As written, this legislation not only dismisses the legal and moral obligations of municipal officials to protect their communities by protecting their environment, but it discounts entirely the importance of local environmental and community considerations in decisionmaking and fails to recognize that consideration of local conditions is not just good practice but is actually mandated by the Pennsylvania Constitution as interpreted and applied by the State Supreme Court.

The implications of this proposed piece of legislation are not just a matter for academic discussion, it has very real implications for our Pennsylvania communities. As a result of this proposed legislation:

- ✗ a manufacturing facility that obtained a DEP air permit would be exempt from any local land use regulation governing construction, setbacks, and location in a municipality. The legislation would leave completely unaddressed considerations such as road safety, fire and explosion hazards, light, noise – all to the detriment of local citizens and of public natural resources that state and local governments are constitutionally charged with protecting;
- ✗ a wastewater treatment facility that obtained a DEP discharge permit would be exempt from hours of operation limitations, buffering, and fencing requirements;
- ✗ a shopping mall that obtained an erosion and sedimentation permit from DEP would be exempt from zoning districts, stream buffer protections, impervious surface regulations, and historic district protections. Also unaddressed would be traffic considerations, aesthetics, community plans and development goals, and impacts on natural resources;
- ✗ a shale gas well with a five-acre water impoundment with oil and gas permits from DEP could operate anywhere, regardless of local protections for aquifers, homes, schools, businesses, historic districts, parks, or other natural resources;
- ✗ a natural gas compressor station that obtained an air permit would be exempt from zoning districts, setbacks, landscape buffer and other aesthetic requirements;
- ✗ a quarry or coal strip-mine with a mining permit could expand into zoning districts of a municipality previously off-limits, including into sensitive resource protection zones, threatening a community's groundwater supply;
- ✗ a residential subdivision that obtains a small-flow treatment facility permit would be exempt from local zoning districts, protections for agricultural soils, stream buffer and forest protections, steep slope restrictions, and critical recharge zone restrictions.

In sum, the proposed legislation violates the very basic premise of Section 27, that government at every level – state, regional, local -- has an obligation to protect pure water, clean air and a healthy environment for the benefit of all communities, present and future, and that the General Assembly cannot rob communities of these constitutional rights through legislative pronouncement. The law also fails to acknowledge the legislative mandates included in federal and state law that require and depend upon local planning, permitting and decisionmaking. Mr. Grove's legislation will harm the health, safety, vitality and economic sanctity of our Pennsylvania communities and violates the law. We urge you to oppose it.

Respectfully,



Maya K. van Rossum  
the Delaware Riverkeeper



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