



**For Immediate Release:**

January 9, 2019

**Contact:**

Maya van Rossum, the Delaware Riverkeeper, Delaware Riverkeeper Network, 215-369-1188 x 102  
Aaron Stemplewicz, Senior Attorney, Delaware Riverkeeper Network, 215-369-1188 x 115

**Petition for U.S. Supreme Court Review  
of Atlantic Sunrise Decision  
*Will Set Precedent If Accepted, Including For PennEast***

**Washington, D.C.** – January 9, 2019, the Delaware Riverkeeper Network (DRN) filed a Writ of Certiorari with the United States Supreme Court on behalf of themselves and Lancaster Against Pipelines asking the Court to review a U.S. Court of Appeals for the Third Circuit decision that infringes on rights of Pennsylvanians to appeal the issuance of state water quality certifications for natural gas pipeline projects. The U.S. Court of Appeals for the Third Circuit denied on September 4, 2018 Delaware Riverkeeper Network’s petition to allow the Pennsylvania Environmental Hearing Board to review the Pennsylvania Clean Water Act Water Quality Certification awarded to Transcontinental Gas Pipe Line Co. for the Atlantic Sunrise pipeline Project by the Pennsylvania Department of Environmental Protection (PADEP).

In the ruling, the Third Circuit rejected Delaware Riverkeeper Network’s arguments that the Third Circuit’s review of the water quality certification for the Atlantic Sunrise pipeline project was premature. DRN argued that Pennsylvania’s Environmental Hearing Board (EHB) should have had jurisdiction first over the certification challenge, and not the Third Circuit, because the certification is not “final” until the EHB is able to review and rule on it. The Third Circuit ruled that the Natural Gas Act preempted Pennsylvania’s administrative review process at the EHB for the water quality certificate. Currently, there is a circuit split as to whether the Natural Gas Act preempts state administrative review processes. DRN is hoping that by bringing this case, it will resolve this conflict, allowing for proper review of state water quality permits issued for projects under the Natural Gas Act.

**Explained Maya van Rossum, the Delaware Riverkeeper,** “The ability of communities to protect themselves and their environment from the damaging impacts of fracked gas pipelines is undermined at every turn. The Federal Energy Regulatory Commission abuses its authority by prematurely giving companies the power of eminent domain to take property rights in order to advance projects that are not yet fully approved, it uses a legal loophole to delay legal challenges until they are too late to be meaningful, and it renders decisions that undermine the ability of states to give thorough and meaningful review. When people reach out to Congress to urge hearings to investigate and consider legislative reforms, Congress ignores us; we get nice platitudes at our meetings but no meaningful action. And when we turn to the courts, they too seem to allow our constitutional due process rights to be undermined by preventing us from establishing a meaningful record for review. With this case we are not going to address all of those problems, but at least maybe we can get a straight answer as to whether or not the states have a meaningful role in reviewing appeals of their approvals. While the Atlantic Sunrise Project has largely been constructed, this case has significant implications for how and where appeals of future pipeline projects take place, including the state issued permits for the PennEast Pipeline Project.”

In the petition, DRN states that the Third Circuit ignored Pennsylvania’s definition of finality with regard to a state issued permit, instead substituting a federal standard that deprived individuals the opportunity to have the permit reviewed. Such a process infringes on the rights guaranteed to the states through the Clean Water Act. DRN also argues that the Third Circuit’s ruling violates the Tenth Amendment by ignoring state established procedures and laws, violating state’s rights and Pennsylvania’s administrative process. The petition states:

“In usurping Pennsylvania law, the Third Circuit is, effectively, forcing the Commonwealth to legislate its administrative scheme to conform with the structure preferred by the Third Circuit. If the Commonwealth wants its preferred scheme for review of Department actions and its definition of finality to be respected, the Commonwealth will be required to dissolve the Board and move its functions back within the Department. This is unconstitutional.”

DRN also points out in the petition that the Third Circuit’s decision is at odds with other Court decisions, one of which (*Township of Bordentown, New Jersey v. Federal Energy Regulatory Commission*, 903 F.3d 234) upheld the administrative review process in New Jersey. The petition reads: “In finding this, the *Bordentown* panel closely analyzed the language of the Natural Gas Act and held that a state’s administrative proceedings are not “civil actions” over which the Third Circuit has exclusive jurisdiction...”

“Currently, we have a circuit court split on the issue of whether the federal government through the Natural Gas Act can run roughshod over the rights of states, and their citizens, when it comes to environmental

protection. Through our petition we hope to fight back, and restore the due process rights of the citizens of the Commonwealth and beyond,” **said Aaron Stemplewicz, Senior Attorney at the Delaware Riverkeeper Network.**

DRN is committed to defending people’s rights to a meaningful opportunity to challenge pipelines that threaten their communities. This legal action has implications beyond Pennsylvania, with the petition stating, “...the questions to be resolved by the Court have industry wide import, as the Court’s resolution will determine the preemption or preservation of state administrative review processes for all appeals taken pursuant to Section 717r(d)(1) of the Natural Gas Act in every state.”

DRN’s petition to the Supreme Court asking that they take the case can be viewed at <http://www.delawariverkeeper.org/sites/default/files/Delaware%20Riverkeeper%20PFC.pdf>.

###

*Delaware Riverkeeper Network (DRN) is a nonprofit membership organization working throughout the four states of the Delaware River Watershed including Pennsylvania, New Jersey, Delaware and New York. DRN provides effective environmental advocacy, volunteer monitoring programs, stream restoration projects, public education, and legal enforcement of environmental protection laws.*