

Environmental Rights Amendment a Powerful Tool to Challenge DEP Permit Approvals

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Just because the Pennsylvania Department of Environmental Protection might issue your business a permit, that doesn't mean it was correct to do so.

The Pennsylvania Environmental Hearing Board proved that again this month when it [overturned a DEP permit issuance in Montgomery County](#) after a citizens group and New Hanover Township claimed the DEP erred issuing the permit. The hearing board's action demonstrates that Pennsylvania's Environmental Rights Amendment can be a powerful tool to challenge DEP actions, including permit approvals.

The mining permit issued was for a quarry that intended to pump out groundwater the citizens group claimed would spread groundwater contamination from a neighboring hazardous waste site. Overturning the permit likely caused the quarry business tens of thousands of dollars in loss of work, engineering fees and legal fees.

The recent issue the hearing board addressed was whether the pumping of groundwater necessary for quarry operations would spread groundwater contamination from a neighboring hazardous waste site. The hearing board found that there was little to no consultation between the relevant DEP programs before the department issued the mining permit. The hearing board stated that despite "the myriad uncertainties in place, and without any apparent regard for the potential environmental effects of its action," the DEP nonetheless issued the permit.

The opposition to the permit cited the Environmental Rights Amendment, which calls on the state to be a trustee for Pennsylvania's natural resources and to protect the right of its residents to a clean environment. These public natural resources include air, surface water, and groundwater. The amendment can be used by parties challenging actions by the DEP, such as the issuance of permits, to challenge and overturn these actions. In the April 24 decision on the quarry's mining permit, the board rescinded the permit based in part on the amendment. The board ruled DEP did not fulfill its constitutional obligations to act with prudence, loyalty and impartiality.

While it may be sometimes counterintuitive, parties seeking permits or other approvals from DEP should not avoid a full and credible review of potential environmental impacts. To avoid delays and added costs associated with a rescission of a permit, entities seeking permits should work with DEP to ensure the department fulfills its obligations under the ERA in a credible and defensible manner. With everything a business is going to have to worry about in this new environment, having to reapply for a DEP permit should be the least of its concerns.

The can work with If your business or organization is seeking permits from DEP, please [contact me](#) or any member of the [Barley Snyder Environment & Energy Practice Group](#) to expedite permit reviews and to minimize the chances that a DEP approval will be overturned.

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