PENNSYLVANIA SUPREME COURT ISSUES TRANSFORMATIVE DECISION IN ENVIRONMENTAL RIGHTS AMENDMENT CASE

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Oil, Gas & ResourcesAlert

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The Pennsylvania Supreme Court recently issued a landmark decision regarding Article I, Section 27 of the Pennsylvania Constitution, also known as the "Environmental Rights Amendment." This amendment holds significance to industries throughout Pennsylvania because it bears upon all state and local permitting decisions that could impact the natural environment.

In *Pennsylvania Environmental Defense Foundation v. Commonwealth*, No. 10 MAP 2015 (June 20, 2017) ("*PEDF*"), the Pennsylvania Supreme Court nullified the three-part, judicially created "*Payne v. Kassab*" test that lower Pennsylvania tribunals had applied for over 40 years to determine if government actions violated the Environmental Rights Amendment. The court likewise illuminated some of the Commonwealth's duties under the "public trust" clauses in the Environmental Rights Amendment. It concluded that, under those clauses, funds that the Commonwealth derives from Pennsylvania's public natural resources must be reinvested into the conservation and maintenance of those resources and cannot be used to support other public programs.

As discussed below, however, the court has yet to resolve a number of other issues that arise out of the Environmental Rights Amendment. Agencies' and courts' analyses of and decisions on these issues will have a material influence on how the Environmental Rights Amendment impacts a wide range of business operations in the future.

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