PA EHB Upholds Drill Permits; Rejects Riverkeeper's Environmental Rights Claims

May 14, 2018

Categories:

Publications

On May 11, 2018, the Pennsylvania Environmental Hearing Board ("Board") issued an Adjudication of first impression interpreting the 2012 Oil and Gas Act, 58 Pa. C.S.A. § 3201, *et seq*. (the "Oil and Gas Act") and Article I, Section 27 of the Pennsylvania Constitution (the "Environmental Rights Amendment" or "ERA"). The Board held that the Pennsylvania Department of Environmental Protection ("Department") did not violate either the Oil and Gas Act or the ERA by issuing unconventional oil and gas drill permits to R.E. Gas Development, LLC ("REX") for its Geyer well site, located in Middlesex Township, Butler County. The Adjudication is significant because it confirms the applicable standard for ERA challenges to drill permits, it evaluates the body of literature purporting to link gas development to adverse health effects, it confirms that the Department may rely on applicable laws, regulations and permittee contingency plans, and expected compliance therewith, and it confirms that an appellant's expert must offer opinions based on site-specific data or criteria to satisfy their burden of proof, especially when opposed by experts applying site-specific data.

Appellants, The Delaware Riverkeeper Network, the Clean Air Council and individual area residents, argued that the Department should have denied the permit applications, alleging that the wells are too close to schools and residential neighborhoods, pose a substantial risk of groundwater contamination, create a public nuisance, and generate air emissions that adversely affect public health, safety, welfare and/or the environment.

The Board concluded that Appellants failed to satisfy their burden of proving that the Department's decision to approve the Geyer well permits "*was likely to cause or did in fact cause unreasonable environmental impacts* and/or was contrary to the right of citizens to clean air and pure water, and to the preservation of natural, scenic, historic or esthetic values of the environment." (Emphasis added.)

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

Citing the Pennsylvania Supreme Court's decision in *Pa Envtl. Def. Found. v. Commonwealth*, 161 A.3d 911 (Pa. 2017) ("PEDF") and recent Board adjudications interpreting the ERA in other contexts, the Board applied the following standard to evaluate claims that Commonwealth actions violate the ERA: "We first must determine whether the Department has *considered* the environmental effects of its action and whether the Department correctly determined that its action will *not result in the unreasonable degradation, diminution, depletion or deterioration of the environment*. Next, we must determine whether the Department has *satisfied its trustee duties* by acting with prudence, loyalty and impartiality with respect to the beneficiaries of the natural resources impacted by the Department decision." (Emphasis added.)

The Board made the following significant findings as to the evidence regarding the alleged health and environmental effects of unconventional gas development:

- "Having heard the testimony regarding the studies reviewed by [Appellants' expert] Dr. Paulson, as well as the criticisms of the studies, we find that the studies are *inconclusive in proving an association between unconventional natural gas activities and public health issues* as asserted by Delaware Riverkeeper. Further, the studies *clearly do not prove causation* between natural gas development activities and the alleged health impacts." (Emphasis added.)
- Appellants' health expert articulated general concerns with unconventional natural gas extraction, but did not adequately address the particular situation at the Geyer well site. He also admitted that proximity is inadequate to determine other important information to assess potential health impacts, such as dose, length of exposure, or exposure to other sources.
- Appellants' geology expert's theory regarding the risk of groundwater contamination was "speculative at best" and Appellants presented no testimony that REX's drilling, completion, or production activities "resulted in actual contamination" of the groundwater or surface water.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

- The Department is entitled to rely on existing laws and regulations, permittee contingency plans, and the permittee's expected compliance with the same, to satisfy the Department's obligations under the Oil and Gas Act and the ERA.

The Board also offered helpful guidance when evaluating and balancing competing testimony from credible experts, and the problems that arise when experts rely on purportedly scientific studies of others without understanding the scope and nature of activities that were taking place in conjunction with the studies upon which they relied. Most important, the Board emphasized the need for Appellants to present credible expert testimony to address the specific conditions and alleged harms at the site at issue, rather than general concerns with the operational activity being challenged.

The Board's Adjudication can be found here. Note that the Board is an administrative body that adjudicates appeals from Department actions. The Adjudication is not a court opinion, but may be appealed to the Commonwealth Court.

For questions regarding this Adjudication, challenges under the ERA/PEDF standard, or overall questions regarding Commonwealth permitting or regulatory programs and decisions, please do not hesitate to contact Kevin L. Barley or Kevin L. Colosimo.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons