

PA Environment Digest

An Update On Environmental Issues In PA

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Corbett Administration Files For Reconsideration Of Act 13 Drilling Law Opinion

The Corbett Administration Thursday filed for reconsideration of the December 19 PA Supreme Court [opinion declaring unconstitutional provisions](#) of the Act 13 Marcellus Shale Drilling law related to preempting local regulation of drilling operations.

James D. Schultz, General Counsel to the Governor, released the following statement on the motion for reconsideration--

"Today, lawyers representing Commonwealth agencies and officials in the Robinson Township matter have sought reconsideration of the Supreme Court's December 19, 2013, Opinions and Order. In the Robinson Township decision, the Court declared key provisions of Act 13 of 2012 (the Commonwealth's oil and gas law) to be unconstitutional.

"In announcing a never-before-employed balancing test against which the constitutional validity of the law is to be judged, the Pennsylvania Supreme Court made its own sweeping factual findings regarding the impact of Act 13, none of which finds any support in the sparse and uneven factual record that was made before Commonwealth Court. The Supreme Court's decision is a stunning departure from the historical practice of that Court, and an unrestrained venture into a fact-finding role that the Court always has insisted is not its proper place in the judicial system.

"Accordingly, today's request for reconsideration seeks to give Act 13 its fair day in court, as every law of this Commonwealth deserves when challenged. We are asking the Supreme Court to follow its own established precedent and remand the case to Commonwealth Court for the development of an evidentiary record (through a fair and thorough process in which all parties have a real and equal opportunity to participate), application of the Court's newly-pronounced standards to the facts as found by the Commonwealth Court (with legal briefs from all parties), and finally a fair and final determination as to whether Act 13 violates Article I, Section 27 based on a full record and formal findings.

"In addition, the Department of Environmental Protection is asking the Supreme Court to reconsider a decision that certain provisions of Act 13 that involve the agency's responsibility to protect public resources (such as public parks) cannot stand separately from provisions that the Court has

determined are unconstitutional.

“The Department contends that the Supreme Court misunderstood how the statutory provisions work separately from each other and asks the Court to direct Commonwealth Court to study that question as part of the other matters it must examine on remand.”

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