



Green Amendment Victories
How Green Amendments Are
Recognizing & Protecting
Environmental Rights



GREEN AMENDMENTS
FOR THE GENERATIONS
Pure Water. Clean Air. Healthy Environment.

Pennsylvania, Montana, New York, are the only three states in the U.S. that currently promise, protect and respect constitutional environmental rights protected on par with other fundamental human, civil and political rights we hold as inviolate, inherent, inalienable and inalienable rights protected from government infringement and transgression. In this series we share the varied ways that constitutional recognition is providing meaningful and transformative protection in the states where they exist, thereby making the case for constitutional Green Amendments in states across our nation and ultimately at the federal level.

**Pennsylvania Issues PFAS Drinking Water Standards
To Help Implement PA Green Amendment, Article 1 Section 27**

Communities across Pennsylvania, as in other states nationwide, have been subjected to PFAS contamination in their environment and drinking water supplies. In Pennsylvania’s Bucks and Montgomery Counties alone, more than eighty-five thousand people have been exposed to PFAS chemicals. Also like states across our nation, for years Pennsylvania had failed to put forth standards to protect people’s drinking water and environment from contamination by numerous chemicals in the PFAS family.

Under the PA Safe Drinking Water Act (SDWA), the General Assembly recognized that “an adequate supply of safe, pure drinking water is essential to the public health, safety and welfare and that such a supply is an important natural resource in the economic development of the Commonwealth.”¹ The SDWA also recognizes that the act was passed to further the intent of the Pennsylvania Constitution’s

¹ 35 Pa. Stat. § 721.2(a)(1).

Article 1 Section 27 recognizing the environmental rights, including the right to pure water, of the people of the Commonwealth.²

The SDWA created a state program to establish drinking water standards and to implement and enforce those standards to ensure the supply of safe drinking water to the public.³ The Commonwealth was also required to develop a process for implementing plans to provide safe drinking water in times of emergencies and to provide public notice of potentially hazardous conditions that may exist in the water supply.⁴ This statutory and constitutional responsibility is the foundation for the PFAS regulatory action ultimately proposed and taken by Pennsylvania.

PFOA and PFOS are two of a family of perfluorinated compounds known as “forever chemicals” because they never break down in the environment. Miniscule doses of these forever chemicals build up in the human body and are linked to disease and adverse health effects, including developmental effects in the fetus and young children, cardiovascular disease, ulcerative colitis and cancers, including testicular and kidney cancer.⁵

Scientists, health and toxicology professionals, and agencies are extensively studying PFAS compounds since they are persistent in the environment, bioaccumulative in organisms, and toxic at low levels.⁶

The Pennsylvania Constitution recognizes that, among other environmental rights, the people of the Commonwealth have a constitutional right to pure water and requires the state government to ensure the preservation of the state’s natural resources. Article I Section 27 of the Pennsylvania Constitution states:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

In response to the high levels of PFAS in Pennsylvania’s environments and the drinking water of multiple communities, and recognizing the constitutional and legal obligations of the state, in 2017 the Delaware Riverkeeper Network filed a petition with Pennsylvania’s Environmental Quality Board seeking a determination that the state was required to put in place drinking water protections. The DRN petition was later complemented by legal action demanding that Pennsylvania put in place enforceable drinking water protections from PFOA. Among DRN’s assertions: that the state is required to act under state environmental statutes, and that Pennsylvania’s constitution, Article 1, Section 27, obligates the state to protect the people’s right to pure water and a healthy environment

Before securing a final litigation outcome, and just a year after the DRN 2017 petition was filed with the state Environmental Quality Board, PA Governor Tom Wolf

² 35 Pa. Stat. § 721.2(b).

³ 35 Pa. Stat. § 721.2(b)(1).

⁴ 35 Pa. Stat. § 721.2(b)(2) and (b)(3).

⁵ <http://www.c8sciencepanel.org/newsletter10.html>

⁶ <https://www.dep.pa.gov/About/Regional/SoutheastRegion/Community%20Information/Pages/Neshaminy-Creek-Fish-Advisory.aspx>; <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-and-polyfluoroalkyl-substances-pfas>

signed an executive order creating a PFAS action team, with the very first clause of the order citing the Pennsylvania Green Amendment as foundational to the effort.⁷ To ensure protective actions continued to advance and resulted in enforceable standards, the Delaware Riverkeeper Network continued our advocacy and pursued our legal challenge. But ultimately the legal challenge was discontinued, recognizing that the state had, responding to both its constitutional and legal obligations, begun to act. In early 2022 the Pennsylvania DEP recommended new maximum contaminant levels for two PFAS compounds—PFOA and PFOS. The rulemaking proposed an MCL of 14 parts per trillion (ppt) for PFOA and 18 ppt for PFOS. The final rule was publicly noticed on January 14, 2023.⁸

DRN advocacy and litigation, combined with the power of the Pennsylvania Constitution, forced the state take action and begin to address the right of all Pennsylvanians to pure water and a healthy environment in an enforceable, meaningful and protective way.

⁷ Executive Order: 2018-08 – Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Action Team
<https://www.governor.pa.gov/newsroom/executive-order-2018-08-perfluoroalkyl-and-polyfluoroalkyl-substances-pfas-action-team/>

⁸ <https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol53/53-2/46.html>