

# Pennsylvania's Environmental Rights Amendment

By Franklin L. Kury

*As a member of the Pennsylvania House of Representatives, Kury drafted and introduced the legislation that led to the establishment of Article 1, Section 27 of the Pennsylvania Constitution, known as the Environmental Rights Amendment.*

On May 18, 1971, Pennsylvania's voters by a four-to-one margin ratified what is now Article I, Section 27 of the state constitution—the Environmental Rights Amendment:

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.

Anyone born and raised in Pennsylvania since 1971 has come of age in a state that is politically and—to a large extent—economically committed to protecting our natural environment. Governors of both parties, legislators on both sides of the aisle, and corporations of all types pride themselves on their contribution to environmental conservation. Our state has major statutes protecting the air, land, and water from degradation. There are numerous nonprofit organizations throughout the commonwealth dedicated to some aspect of environmental protection. In short, the protectors and advocates for our state's environment are many and they are strong.

But it has been like this for only a brief portion of our state's history. I recall—as a child—visiting my grandparent's home near a culm bank in Shenandoah and wondering why the creek in front of the house was so foul. And I recall wandering along Shamokin Creek near its entrance into the Susquehanna below Sunbury. The nickname for the creek was "Black Creek." The joke was that, if you fell into Black Creek, you need not worry about drowning. You would dissolve first.

I later learned that the state didn't require sewage treatment on Shamokin Creek because it was believed that the sewage would be neutralized by the acid mine drainage from the abandoned mines in the watershed. Later yet, as an attorney searching a title to a property near Kulpmont, I found a deed in which the Pottsville and Reading Railroad Company reserved to itself the right to discharge the waste from its mining operations into Shamokin Creek.

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As an adult reading Pennsylvania history, the dark side of Pennsylvania's environmental history — which my prior personal experiences only touched in a small way — was painfully revealed. Pennsylvania, from the time of the Civil War through World War II, became the steel-, railroad-, and coal-producing colossus of the world. But the environmental price paid for that economic achievement was that we became the state with the most miles of stream polluted by acid mine drainage and landscape scarred by culm banks.

In that period, environmental regulation only occurred in reaction to a disaster, such as the typhoid fever outbreak in 1905. The typhoid fever resulted from raw sewage discharges and brought about the first of the clean-streams laws. Coal companies were specifically exempted from the 1905 law. Coal companies were also exempted or given favorable treatment under three later clean-streams laws enacted in 1923, 1937, and 1945. They were not brought fully under the law until 1965.

At the time the coal companies were finally brought under the law in 1965—just 36 years ago—the only “environmental” agencies in state government were the Department of Forests and Waters, the Sanitary Water Board, and the Fish and Game commissions. The only statewide “environmental” organization was the Pennsylvania Federation of Sportsmens Clubs.

For a century Pennsylvania state government had, in effect, made a Faustian bargain—it had exchanged its environment for the economic prosperity that was built on exploiting our natural resources.

The bargain was not destined to endure. By the mid-twentieth century television was commonplace. People saw in their living rooms the dramatic scenes of environmental disasters like the oil spill at Santa Barbara. As our knowledge of the environment expanded, the public became painfully aware of the damage inflicted upon our environment by unregulated and under-regulated use of our natural resources. Beginning in 1965, with the law bringing the coal companies under the clean streams laws, Pennsylvania's legislature took a series of strong actions to nullify the Faustian bargain that had so long prevailed. Like a sleeping giant suddenly aroused in righteous anger, the next three legislative sessions enacted sweeping environmental laws on clean streams, surface mining, air pollution, mine land reclamation, solid-waste management, and creating a Department of Environmental Resources.

As part of this effort, the legislature twice approved and the people ratified by a four to one margin on May 18, 1971, what is now Article I, Section 27 of our state constitution.

Under the title “Natural Resources and the Public Estate,” this amendment clearly articulated and recast the role of Pennsylvania’s government towards the environment. The first sentence declares that every Pennsylvanian has a right to a decent environment. The next two sentences were—in the historical context—even more stunning. They said that, from now on, state government would be the trustee of our natural resources for future generations, rather than a silent accomplice to their exploitation. Thus, I believe, for all time to come, the power of government would be used to protect and preserve our environment.

The amendment—during its thirty years—has had a salutary effect. Its principles have been incorporated into the permit and operational programs of all the state agencies that relate to the environment. Municipalities are obligated to implement it. And everyone elected to any public office in Pennsylvania swears to uphold the amendment when he or she takes the oath of office. The amendment has forced developers and others who have an adverse impact on the environment to plan their project so as to minimize negative environmental impact. This in itself is revolutionary when considered against Pennsylvania’s history.

We cannot predict what the final impact of the amendment will be. The significant interpretations of the federal Bill of Rights did not occur until long after they were adopted in 1791. But of this I am certain; the amendment contains sound principles for protecting our environment in the strongest legal context, our state constitution. Success in legislation—like success in love or war—has a lot to do with being in the right place at the right time and taking advantage of the opportunities presented. As I look back at the enactment of Article I, Section 27, I feel quite fortunate to have been in the House of Representatives during the floodtide of the environmental revolution, to have written and offered the proposal and to have seen it through to adoption. I feel really good about it.