



**Widener School of Law Environmental & Natural Resources Law Clinic's
Citizens Guide
to Strategic Lawsuits against Public Participation (SLAPP) in Pennsylvania**

SUMMARY

Citizens concerned about environmental problems have certain legal protections under Pennsylvania law when they communicate with government officials. Declaring that “it is contrary to the public interest to allow lawsuits, known as Strategic Lawsuits Against Public Participation (SLAPP), to be brought primarily to chill the valid exercise by citizens of their constitutional right to freedom of speech and to petition the government for the redress of grievances,” 27 Pa. C.S.A. § 8301, the Participation in Environmental Law or Regulation Act provides immunity to any person who files a lawsuit/appeal or makes an oral or written communication to a government entity relating to the enforcement or implementation of an environmental law or regulation. Thus, to claim immunity under the Act, the citizen’s lawsuit/appeal or communications must be:

- directed at government officials
- related to the enforcement or implementation of an environmental law or regulation
- aimed at procuring favorable government action

The Participation in Environmental Law or Regulation Act does not apply (and therefore does not protect the citizen) if the citizen’s lawsuit/appeal, actions, or communications are one of the following:

- knowingly false, deliberately misleading, or made with malicious and reckless disregard for the truth or falsity (for example, claiming the property was contaminated when knowing it was not)
- made in “bad faith” for the sole purpose of interfering with existing or proposed business relationships
- is a wrongful use or abuse of process (like filing an appeal after the time for appeal has expired)

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MORE-DETAILED GENERAL DESCRIPTION OF THE LAW

As concerned citizens, you have the constitutional right to participate in your local government. To assure citizens of this right, the Pennsylvania General Assembly passed the Participation in Environmental Law or Regulation Act. The policy and purpose of the Act, found at 27 Pa.C.S.A. §8301-8305, was described as follows:

“The General Assembly finds and declares as follows: (1) It is contrary to the public interest to allow lawsuits, known as Strategic Lawsuits Against Public Participation (SLAPP), to be brought primarily to chill the valid exercise by citizens of their constitutional right to freedom of speech and to petition the government for the redress of grievances. (2) It is in the public interest to empower citizens to bring a swift end to retaliatory lawsuits seeking to undermine their participation in the establishment of State and local environmental policy and in the implementation and enforcement of environmental law and regulations.”

EXTENT OF IMMUNITY

The Act provides immunity for any person who (1) either files a lawsuit/appeal or (2) makes an oral or written communication to a government entity relating to the enforcement or implementation of an environmental law or regulation. This immunity extends to civil liability for legal proceedings seeking damages, as long as their actions were “aimed at procuring favorable governmental action.” Therefore, for a citizen to be immune from liability, their actions or communications must be (1) directed at government officials, (2) related to the enforcement or implementation of an environmental law or regulation, (3) aimed at procuring favorable governmental action.

Although the Act allows a certain level of immunity, three exceptions are contained in §8302. ***First***, if the allegation in the action or communication is knowingly false, deliberately misleading or made with malicious and reckless disregard for its truth or falsity, the citizen’s actions are not immune. For example, in Penllyn Greene Associates, L.P. v. Clouser, citizens made comments to the media stating that the proposed development site was contaminated with various pollutants; in reality, the state Department of Environmental Protection had already declared the property as clean, therefore rendering the statements either false or made with reckless disregard for falsity. The court therefore did not extend immunity to citizen’s actions under this exception.

Second, if the allegation in the action or communication is made in bad faith – for example, made for the sole purpose of interfering with existing or proposed business relationships, the citizen’s actions are not immune. How far this exception extends is not clear. In Pennsbury Village Associates, LLC v. McIntyre, for example, the citizen was a party to a stipulation allowing several easements to the developer, and the developer therefore argued that the citizen’s actions were only aimed at interfering with the provisions of this stipulation. The court sided with the citizen in this case, claiming that the motives behind his actions were irrelevant as long as his communications were related to an environmental law or regulation and were aimed at procuring favorable governmental action.

Third, if the oral or written communication to a government agency relating to enforcement or implementation of an environmental law or regulation is later determined to be a wrongful use or an abuse of process, the citizen's actions are not immune. This exception effectively denied immunity to the citizen in Pennllyn, primarily due to untimely zoning appeals nearly nineteen months after initial approval (an appeal usually must be filed within 30 days of the decision). Moreover, although the appeal was untimely, appellants were granted a hearing date and continuances, but withdrew only three hours before the scheduled hearing. This was ultimately seen as "an instance of using the legal process solely as a weapon to harass."

Finally, in order for a court to apply any one of these exceptions to immunity for a citizen, it must ALSO find that the action or communication is not relevant to the enforcement or implementation of an environmental law or regulation. This prerequisite has left courts open to determination and application of the immunity clause from case to case, as discussed below.

ENVIRONMENTAL LAW OR REGULATION

In order for communications to be immune under the Act, they must relate to the enforcement or implementation of an "environmental law or regulation." There is some uncertainty as to how far PA courts will extend the Act's immunity when the underlying regulations relate to land use and zoning.

Pennllyn Greene Associates, L.P. v. Clouser, decided in 2005, is a narrow interpretation of "environmental law." The citizens in this case filed both land use and zoning appeals and charged that the approvals were arbitrary and in opposition to the township and municipal planning code. Here the court determined that citizen's appeals, although having a somewhat attenuated link to an environmental issue, were not protected under the Act as related to enforcement or implementation of environmental law.

Pennsbury Village Associates, LLC v. McIntyre, decided in 2008, broadened the definition of "environmental law or regulation." In that case, the citizen made comments to public officials urging them to forgo approval of land development in Chester County. As in Pennllyn, the comments were made in opposition to a land use approval and had an attenuated link to an environmental regulation (specifically, open space requirements under the township ordinance), but here the court extended immunity to the citizens under the Act. In allowing immunity, the court defined environmental as "of, relating to, or associated with the environment, OR relating to or being concerned with the ecological impact of altering the environment."

CONCLUSION

The right to participate in government is a fundamental right of citizens. The Participation in Environmental Law or Regulation Act seeks to ensure citizen immunity for communications made to the government in good faith and seeking favorable action on matters of environmental law or regulations. It is important for the citizen to realize that not all actions will be considered immune under the Act and that three exceptions to the rule exist. Further, both interpretations of the meaning of "environmental law" are still valid in PA. To determine if particular actions or communications fall with the Act's protections, you should contact an attorney and seek legal advice.