DEMANDING AND DEFENDING YOUR RIGHTS TO CLEAN WATER, CLEAN AIR & A HEALTHY ENVIRONMENT

Our rights to free speech, to a free press, to religious freedom, and property rights are among the many fundamental rights guaranteed by our federal and state constitutions. However, across the nation our rights to pure water, clean air, and healthy environments, are not recognized or protected — even though they are essential to our health and our lives.

Some state constitutions reference varying levels of environmental entitlement, but only two states — Pennsylvania and Montana — clearly identify the rights to a clean and healthy environment as fundamental, inalienable, and individual rights that must be protected by the government to the same degree we protect these other fundamental rights.

Article 1, Section 27 of the Pennsylvania Constitution promises:

"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."

Until 2013, despite over 40 years of having a Green Amendment (i.e. an Environmental Rights Amendment in the bill of rights section of a constitution) in the Pennsylvania Constitution, government officials and the courts did not give constitutional recognition or protection to the fundamental right to pure water, clean air and a healthy environment in the state. That changed as the result of a legal action brought by the Delaware Riverkeeper Network and seven towns challenging a very pro-fracking piece of Legislation.

In the case, titled *Robinson Township, Delaware Riverkeeper Network, et al. v. the Commonwealth of Pennsylvania*, the Pennsylvania Supreme Court declared constitutional recognition and protection for the rights of all Pennsylvanians to pure water, clean air and a healthy environment. The court made clear that by virtue of Pennsylvania's constitutional provision there is a duty on all government officials to engage in informed decisionmaking with regards to the environment, to "refrain from unduly infringing upon or violating the right" to a healthy environment, and that there is a duty on government "to prevent and remedy the degradation, diminution, or depletion of our public natural resources" (with public natural resources being more broadly defined than just those owned by the state). A plurality of the court made clear that our environmental rights are not granted to us by law, but are in fact inherent and indefeasible rights. And the plurality of the court said that these environmental rights belong not just to present generations, but they are rights that must be protected for the future generations yet to come.

WHY IS ALL OF THIS IMPORTANT?

Because, every day, local, state, and federal governments are granting permission to industries to pollute, deforest, denigrate, and despoil our environments, which is having serious effects on our planet and our bodies.

Often, the permission to pollute is defended by the assertion that it will create jobs, or that the near-term gain of a new energy source overshadows the need to consider environmental degradation and its harmful impacts. These kinds of excuses do not justify the harms that polluting industries create. After all, what good is a job if you don't have the health needed to take advantage of it, or if you have to sacrifice your parent, child, friend, or neighbor in order to have it?

The truth is that most goals can be achieved in a way that protects the environment, communities, jobs and economies at the same time. For example:

- Instead of drilling and fracking, which irreparably pollutes our water, air, and lands, we could shift to meeting our energy needs through clean energy technologies, such as wind, water, solar, and geothermal (achievable by 2050). The clean energy approach will meet our energy needs while at the same time creating good paying and enduring energy jobs and simultaneously avoiding the devastating pollution and climate changing impacts of drilling and fracking for gas or pursuing other dirty fossil fuel options.

- Instead of developing land by cutting down all of the trees, which creates floods, pollution, and erosion of our public and private lands, developers could use building practices that protect trees, protect the absorbency of the soils and capture rainfall in a way that allows the water to soak into the ground. Such development practices restore natural and human water supplies and do not create or exacerbate devastating floods and damaging pollution. At the same time, such strategies save on development and infrastructure costs and often increase the marketability and market value of the newly constructed buildings.

Other states offer varying environmental recognitions in their constitutions, but they are written in such a way that they can be easily ignored: they talk about environmental protection and rights as good public policy, or that should be protected by state legislatures through laws, policies, and funding, but they do not recognize them as self-executing inalienable rights that must be protected on par with other fundamental freedoms like the rights to free speech and freedom religion. And there are many states whose constitutions don't talk about the environment or environmental protection in any meaningful way at all, just as our federal constitution fails to include clear recognition and protection of environmental rights.

By contrast, two states – Pennsylvania and Montana – do provide the highest level of protection; in constitutional language, placement and through court decisionmaking.

The time has come for communities across the nation to demand that their environmental rights be recognized and protected at the highest level under the law; in the declaration of rights section of our state and federal constitutions. It's time for us all to embrace the truth stated by Pennsylvania's Supreme Court Chief Justice, that we as people have an inherent and indefeasible right to pure water, clean air, and healthy environments and that these are rights which must be protected for those of us here today and the generations yet to come.

www.ForTheGenerations.org
Facebook: **For The Generations**
Phone: **215.369.1188**

c/o **Delaware Riverkeeper Network**
925 Canal Street Suite 3701
Bristol, Pennsylvania 19007

GREEN AMENDMENT CHECKLIST

Essential Elements of an Effective Environmental Rights Amendment

Every state across the nation needs a Green Amendment … a constitutional provision that recognizes and protects each person's right to clean water, clean air and a healthy environment as an inalienable right on par with other fundamental freedoms we hold dear like the rights to free speech, freedom of religion and private property rights.

And when the people are ready and the time is right, the United States also needs a Green Amendment added to our federal constitution.

Only two states currently have Green Amendments as defined by the For The Generation's Green Amendment movement: Pennsylvania and Montana. While other states talk about the environment in their constitution's, they do not protect the right to clean water, clean air and a healthy environment as an inalienable right giving it the highest level of legal recognition and protection; instead they talk about them as good policy or in need of state legislation. Some states don't mention the environment at all.

This checklist will help your state create a true Green Amendment. For further assistance in crafting the perfect Green Amendment for your state email ForTheGenerations@delawareriverkeeper.org or phone 215-369-1188.

✔ The provision should be placed in the Declaration of Rights/Bill of Rights section of the constitution and make clear that the rights enumerated are reserved rights that are inherent and indefeasible and belong to the people, e.g. are "rights reserved to the people".

✔ The provision should clearly be grounded in response to environmental degradation that has occurred in the state. Clear legislative history about the origins of the amendment will help guide future legislative efforts and judicial interpretation.

✔ The provision should mention specific environmental values to be protected such as pure water, clean air, ecologically healthy habitats, stable climate, etc.

✔ The provision should include a broad holistic perspective on the values of protecting a healthy environment.

✔ The provision must be self-executing so it does not require passage of laws in order for it to take effect and for the environmental rights of the people to be vindicated.

✔ The provision should be generational in focus (i.e. it should explicitly acknowledge that the environmental rights belong to both present and future generations and therefore must be protected for all generations.)

✔ The provision should recognize that environmental rights are inherent, indefeasible, and inalienable rights of all people.

✔ The rights provision should be drafted so that it is on equal footing with other political rights such as property rights and freedom of speech. Placing environmental rights protections in the Declaration of Rights/Bill of Rights section of a Constitution helps achieves this goal.

✔ The provision should serve as a limitation on government action or inaction that would otherwise infringe on these rights.

✔ The provision should identify environmental rights as being rights of every individual, not just collective rights of the state as a whole.

✔ The provision should recognize the government's public trust duties, broadly defining the body of the trust to include public natural resources and environmental values and not simply publicly-owned land, navigational waters, and/or tideland resources.

✔ The responsibilities to protect the environmental values, including trustee obligations, should clearly apply to all branches and all levels of government.

✔ The language should specifically use the word "trustee" to solidify the relationship between the government and the citizenry – the government is not the proprietor of the environment, but is the trustee. Using trustee language implicates traditional trustee duties such as loyalty, prudence, impartiality, and providing the necessity for an accounting of the trust.

✔ The provision should include both affirmative duties to protect the environment and prohibitory duties (i.e., governmental actors have an obligation to refrain from legislative enactments, executive action, permitting or otherwise encouraging the degradation, diminution, or depletion of public natural resources that would occur through direct government action or indirectly, because of the government's failure to restrain the actions of others).

✔ The provision should necessitate a pre-action analysis that ensures actions taken and decisions made do not infringe upon environmental rights.

✔ The provision should be written in such a way that the court can use the plain language of the provision for its interpretation and application – this means clear language that can be easily interpreted and applied without reference to other rules of statutory construction.

For the Generations

Our right to pure water, clean air and a healthy environment are inherent, indefeasible and fundamental rights retained by the people of all Generations. There can be no life, liberty or happiness without a healthy environment.

www.forthegenerations.org
Facebook: For The Generations Phone: 215.369.1188

c/o Delaware Riverkeeper Network
925 Canal Street Suite 3701
Bristol, Pennsylvania 19007

HOW TO IMPLEMENT AND APPLY A GREEN AMENDMENT

An effective Green Amendment should be placed in the Bill of Rights/ Declaration of Rights section of a Constitution, should include language that recognizes and protects both individual as well as community rights to a clean and healthy environment, and should advance an anti-degradation approach to environmental protection without relying on other state or federal legislation. The language should include both an individual rights clause and a public trust clause. This approach will provide courts with the necessary guidance for understanding how to ensure proper implementation of environmental rights, based on existing case law.

INCLUDING AN ANTI-DEGRADATION STANDARD

Anti-degradation is a long-used, effective and well understood approach to pursuing and achieving environmental protection in both state and federal law.

There is nothing radical or unfamiliar about ensuring that an activity will not lead to degradation. Such a standard does not mean "no activity." Rather, anti-degradation allows for sustainable development/operations/activities, that is, development/operations/activities that do not harm the quality and quantity of the water, air, fish, or other aspects of the local environment both in the short-term and long-term. It means governmental entities cannot permit an activity when they lack information on specific site operations, local environmental conditions, and potential environmental consequences. Further, they cannot rely on assumptions instead of data, and cannot reject or ignore available science and data demonstrating degradation is likely.

An anti- or non-degradation standard focuses on what level of impact a particular natural resource can withstand, scientifically, without being degraded or depleted. Anti/non-degradation standards are currently used for surface water standards under the Clean Water Act and state water protection laws. In some states, the standard applies to groundwater in addition to surface waters. Under these existing statutory frameworks, the anti-degradation standard mandates the use of science to identify when a pollution discharge to a stream will lower the water quality below its current condition. Science and data are used to identify the current condition of the streams, the numerous other activities impacting the streams, and to what extent a new proposed discharge will affect the current water quality condition of the stream when accounting for these two existing factors. This approach to water protection has been applied effectively and successfully for over forty years.

HOW TO APPLY AN ANTI-DEGRADATION STANDARD

What does anti-degradation mean when it comes to protecting the environment more broadly? What if anti-degradation applied to more than just water? What if it applied to the other public natural resources we rely on, such as air, soil, scenic vistas, and other aspects of the local environment?

When applied to other areas of the environment, an anti-degradation analysis will require understanding what pollutants or levels of degradation are already affecting a public natural resource, whether it be air, water, soil, or natural habitats such as forests or wetlands; how much of those pollutants or that degradation are present; and the ability of the air, water, soil, forest, wetland, or environment to assimilate – or deal with – the pollutants/degradation. It also requires determining a baseline of what level of air, water, soil, forest, wetland or environmental quality is necessary for healthy humans and wildlife to ensure that human activities do not degrade or deplete the natural resources to our detriment.

A Green Amendment provides a means to establish a constitutional anti-degradation standard that applies regardless of state regulatory protections because a science- and data-driven pre-action analysis is necessary to determine if a government action may potentially tread on protected rights, whether under the Green Amendment's individual environmental rights protections or under the public trust protections.

HOW THE COURTS INTERPRET/ASSESS/REVIEW COMPLIANCE WITH THE ANTI-DEGRADATION STANDARD

Implementing an antidegradation standard plays out similarly, although with different analyses, under both the individual environmental rights and trust components of a Green Amendment. An individual environmental rights component refers to protections of each person's inherent right to a clean and healthy environment in which to live. The trust component establishes that the government, at all levels and throughout all branches of government, is a trustee of public natural resources and must conserve and maintain (i.e. prevent degradation and depletion) of those resources for the benefit of both present and future generations.

Under the Green Amendment's individual environmental rights protections, the courts will use what is known as strict scrutiny review. A strict scrutiny review means that: 1) any intrusion on an individual's right to a healthy environment must serve a compelling government interest (this purpose cannot simply be an economic development goal); 2) the proposed action uses the least restrictive means, i.e. inflicts the least detrimental impact on the environment, which includes analyzing whether the means chosen actually achieve the identified purpose of the action; and 3) the compelling government interest is deemed consistent with the purposes of the Green Amendment, i.e. nondegradation and equity in terms of impact on communities.

Under the first step of the analysis, the government will fail to meet its constitutional obligation if there is environmental degradation with no compelling government interest for the action proposed/taken. Because the environment right is being given the highest legal level of recognition and protection, on par with other rights such as property rights, this means that government cannot permit or pursue an activity merely to serve an economic interest or because it is in keeping with the historic environmental abuses already imposed on a community. Rather, the government will need to show that the activity serves a compelling government interest, e.g. public health or safety concerns.

The second step of the analysis requires that the government show it used the least restrictive means possible to achieve the compelling government interest in question, e.g. when considering implementing the proposed action, did government choose the route that provided the least degradation. Additional considerations during this component of the analysis include whether the government will actually achieve its identified purpose (including through the means chosen) and whether the means used are overbroad or under-inclusive.

Lastly, step 3 of the analysis will require that the government demonstrate the compelling government interest it seeks to achieve is consistent with the purposes behind the Green Amendment e.g. it will prohibit degradation and ensure equitable access to a clean environment. While some will argue that this bars economic development, that is simply not true. In fact, many forms of economic development, and/or approaches to economic development, do not lead to degradation or equity concerns.

It is important to note that from a constitutional rights perspective, the courts do not recognize economic development generally (including claims of job creation) as a "compelling government interest" because the point of having individual rights protections is to elevate the rights of individuals – whether it be property ownership or environmental rights – above other interests, such as economic development. For instance, taking land for private purposes via eminent domain is not allowed in many states, even if the taking would spur economic development. The same idea applies to environmental rights. Treating economic development as a compelling government interest would let it trump environmental rights, contrary to the purpose of elevating environmental rights in the first place. To the extent there is conflict between the use and enjoyment of property thru some form of development and environmental rights, state courts have ways of giving room for each, but not in a way that diminishes one set of rights over another.

In addition to the individual environmental rights protections, a Green Amendment should also offer protections for individuals by establishing a public trust for current and future generations to the public natural resources of the state/nation. To uphold this requirement, courts will require government entities to prevent and remedy degradation to public natural resources and ensure that every individual has access to a clean and healthful environment. Under such a trust obligation, government must comply with fiduciary duties, which include the duties of prudence, loyalty, and impartiality. Such duties will mandate that actions taken with the potential to have environmental effects, occur in an informed and cautious way, creating a burden on government officials similar to the protections offered by the individual environmental rights analysis. Government also must account for the rights of all residents, present and future, and thus address whether an action will result in some communities bearing heavier environmental burdens than others. The trust protection also provides a means for government to act proactively to both protect the environment and to correct past actions that have caused heavier burdens on individuals or communities within the state. These protections will work to undo past decisions that have led to environmental injustices and protect future generations from bearing disproportionate environmental consequences.

Therefore, the Green Amendment in the courts will operate within existing standards of individual environmental rights protections and trust duties to prevent government actors from allowing activities when government lacks crucial information on likely degradation or that will likely lead to unconstitutional environmental degradation. In addition, an effective Green Amendment will create a duty to undo the wrongs of the past. Green Amendments will ensure that both present and future generations are provided with the inherent right to a healthy environment.

A CONSTITUTIONAL RIGHT TO AN ENVIRONMENTAL PUBLIC TRUST

Protections Offered by Incorporating Trust Language in a State's Green Amendment

The incorporation of trust language in a Green Amendment will create a different dynamic when it comes to all actions concerning the environment by mandating the government work proactively to prohibit degradation and ensure that all residents have equitable access to a healthy environment.

The incorporation of trust language in a Green Amendment is not the same thing as simply incorporating the public trust doctrine. As defined, the Public Trust Doctrine embodies "the principle that certain natural and cultural resources are preserved for public use, and that the government owns and must protect and maintain these resources for the public's use." [1] But, for the most part, the public trust doctrine has been legally interpreted and applied as being more limited in scope, e.g. as applying to tidal and submerged lands, and/or navigable waterways. By directly using trust language, rather than simply referencing the public trust doctrine, Green Amendments more explicitly confirm an obligation to protect and maintain all public natural resources (not just submerged lands and identified water resources) for the benefit of all the people, and brings with it well understood legal mandates and guidelines regarding the obligations of the trustee (i.e. government officials) as pertains to the beneficiaries of the trust (i.e. every member of the public.) Establishing all residents of a state as beneficiaries implicitly includes future generations because trustees are under certain legal obligations to prevent waste as to the trust corpus. However, the express inclusion of future generations is advisable to ensure cross-generational protections.

A TRUST FOR PUBLIC NATURAL RESOURCES

In law, a trust is a collection of assets (also called a corpus or body of the trust) entrusted to an individual or group to manage for the benefit of others. The individual who is charged with watching over the assets is a trustee and those who enjoy the benefit are known as beneficiaries. In taking care of the assets, a trustee's duty is to ensure that, through proper management of the assets, beneficiaries receive the most benefit from those assets, in both the short and long term. Under trust law, trustees have fiduciary duties that limit their authority and discretion in order to protect the beneficiaries' interests and ensure that the trustee abides by the terms of the trust. Examples of fiduciary duties include that a trustee must act with prudence, loyalty, and impartiality in making decisions concerned with the trust.

- Prudence mandates that the trustee act in an informed and cautious way.
- Loyalty requires that the trustee administer the trust solely in the interest of the beneficiaries.
- Impartiality mandates that the trustee treat all beneficiaries equitably.

Use of trust language in the context of Green Amendments establishes a trust in which the government is the trustee, the public are the beneficiaries, and the assets are the environment. By using trust language, governmental entities, as trustee, must abide by the fiduciary duties of prudence, loyalty, and impartiality, when carrying out their obligation to conserve and maintain public natural resources for the benefit of current and future generations.

1 https://www.law.cornell.edu/wex/public_trust_doctrine

A GREEN AMENDMENT INCORPORATING TRUST RIGHTS

Placing trust language in a Green Amendment will make trust obligations a constitutional duty of governmental actors that cannot simply be brushed aside in decision-making. Such obligations will require that governmental entities prohibit and remedy degradation, whether it is perpetrated through the government or a private actor, and act affirmatively to protect the environment from further degradation through legislative or other action. The trust language will mandate that government ensure that it acts for the benefit of current and future generations, which helps guarantee that all residents have equitable access to a healthy environment. These obligations will not be vested in any single branch of government, but rather, command all branches of government at all levels, including local government, to conserve and maintain public natural resources.

Implications of public trust obligations are many. Two examples include implications flowing from the fiduciary duties of prudence and impartiality.

• First, both of these duties require a scientific, data-driven pre-action analysis to determine a proposed action's impact on the local environment. This pre-action analysis requires that decisions occur only after governmental entities have determined (among other factors) the current environmental conditions of a locality, and effects a proposed action will have on residents. This pre-action analysis must account for all current local environmental impacts to understand how and to what extent the proposed project/action will increase existing pollution/degradation and thus harm to the air, water, and other public natural resources. This pre-action analysis ensures that individual environmental impacts will not amount to unknown or unaccounted for environmental degradation in the aggregate.

A defensible pre-action analysis must ensure that short-term and long-term cumulative impacts are analyzed in order to understand whether an action may disproportionately impact overburdened communities now and/or in the future. Such an analysis will ensure the compounding effects of projects will not lead to unaccounted-for pollution and/or more detrimental effects for current and/or future generations.

• Second, these obligations will ensure decisions on whether to allow a proposed action are equitable and based on facts. As a result, in making decisions, no longer can a lack of evidence be used to say that something is safe, and no longer can future impacts simply be ignored in favor of short-term benefits. In addition, government cannot ignore unfavorable information in an effort to allow an action or decision to advance regardless of the impacts. Furthermore, additional pollution or degradation in a community cannot be excused by that community's history of environmental degradation or for economic reasons. This is because each resident has a right to a clean environment, and the trustee must treat all beneficiaries equitably.

These obligations thus require that government officials understand the impacts of proposed actions or activities, and provides a means to hold government accountable for continuing to burden certain communities with environmental harm.

Other obligations flowing from the public trust involve protections on the usage of funds gained from any exploitation or activity utilizing state natural resources. Often, public natural resources are seen as an easy way to address budgetary shortfalls. However, a Green Amendment with public trust language prevents such diversions, and requires that funds gained from the exploitation of public natural resources are put towards protection and conservation of those resources. Such a mandate ensures that government priorities are to protect the rights of the public to a clean and healthy environment, rather than merely prioritizing the plans of private and public actors to exploit these resources for their own gain and/or to pad the government budget.

Therefore, adding trust language to a Green Amendment will make real the right to a clean and healthy environment for all people in all parts of the government's jurisdiction, no matter their economic status, the environmental history of where they live, their skin color, their mental or physical capabilities, or their education level. It will mandate that government work proactively to prohibit and remedy degradation and ensure that all residents have equitable access to a healthy local environment.

www.ForTheGenerations.org Facebook: **For The Generations** Phone: **215.369.1188**
c/o **Delaware Riverkeeper Network 925 Canal Street Suite 3701 Bristol, Pennsylvania 19007**

A GREEN AMENDMENT: Making Environmental Justice A Real Obligation of Government

A Green Amendment provides a way to embed in a state Constitution principles that ensure environmental justice is a substantive obligation of government, not merely an aspirational goal, an obligation focused primarily on process, or an inequity only corrected through policy initiatives. A Green Amendment will create a constitutional mandate that each person, regardless of who they are or where they live, has a right to clean water, clean air, and a clean and healthy environment.

An effective Green Amendment should be placed in the Bill of Rights/Declaration of Rights section of a Constitution and should include both an individual rights clause and a public trust clause thereby ensuring protection of individual as well as community rights, and ensuring government has a legal obligation to treat all people and communities equitably when it comes to protecting their rights to a clean and healthy environment.

THE IMPORTANCE OF THE ENVIRONMENTAL JUSTICE MOVEMENT

Practices such as housing discrimination, redlining, zoning focused on repeatedly locating polluting operations in the same communities, and institutional racism have resulted in minority and/or low-income communities being situated in highly-polluted areas with decaying infrastructure and toxic sites, such as landfills, superfund sites, industrial operations and major roadways. Additionally, communities that depend on a limited set of industries for jobs such as mining or factory work, suffer environmentally and economically when the operations close down, leaving behind high levels of environmental damage and a lack of other economic opportunities until some new industry comes to town. In addition to the role of government in advancing unjust environmental decisionmaking, polluting industries often target minority and low-income communities under the guise of jobs, attempting to get residents to rationalize detrimental impacts to their health and their community for short-term economic payoffs. Such practices have led to wide-spread, disproportionate environmental inequities, resulting in some communities being seen as expendable so that others may live in clean and healthy environments. The environmental justice movement has been a response to these tremendous environmental, health, and safety inequities.

HOW CAN A GREEN AMENDMENT ADVANCE ENVIRONMENTAL JUSTICE?

Wherever there are disproportionate environmental burdens, a Green Amendment can provide a way to push back against further degradation as well as focus efforts on needed restoration. Embedding environmental rights in a state Constitution will provide a powerful tool to focus government decision-makers directly on the immense health and environmental burdens that many communities face and to hold governmental officials accountable when they continue actions, activities, and decisions that increase that burden. Green Amendments will help to *prevent* potentially-vulnerable areas from taking the brunt of adverse environmental impacts. Green Amendments also focus government on the need to restore healthy environments in order to ensure equitable access to, and enjoyment of, healthy environments and environmental rights.

Two central elements of a Green Amendment establish a government's obligation to ensure environmental justice:

1) the constitutional right of each resident to a clean and healthy environment; and
2) government's fiduciary duty as a trustee of public natural resources to treat all beneficiaries – including both present and future generations, as well as communities across their jurisdiction – equitably.

Equity is thus inherent in each component of a Green Amendment.

WHAT DOES IT MEAN TO TREAT PEOPLE "EQUITABLY"?

"Equitably" is concerned with what is fair and just. This is different from treating people "equally," which means treating each person the same, regardless of circumstance.

- *Equitable* treatment requires that government look at the different environmental and public health burdens borne by some residents versus others and account for and address that inequity.
- *Equitable* treatment may require different methods and courses of action in different communities.
- *Equitable* treatment may involve differing levels of effort in different areas, including enhanced efforts needed to remedy past damage.
- To be equitable, environmental protection must be balanced fairly and justly, across all communities, and with other rights enshrined in the Constitution.
- Equitable treatment seeks to ensure that some communities aren't simply shouldering all the pollution burden under the guise of "jobs."
- Environmental justice and equity say that residents have a right to live in a healthy place while also having the means to feed their children.
- Equitable treatment seeks to prevent current generations from passing the buck to later generations.

In order to ensure equitable treatment and fulfillment of the constitutional obligation to protect environmental rights, a Green Amendment requires a pre-action analysis considering the current status of residents' environment and environmental rights, as well as the impacts of a proposed action or activity on their local environment. This analysis necessarily requires data and science. It is not simply a process-focused inquiry.

Government must take the results of the pre-action analysis, including the consideration of impacts, seriously and may not allow proposed projects to proceed if they would violate residents' right to a healthy environment. This science-based, fact-based assessment (the pre-action analysis including the impacts analysis) helps to ensure that some communities do not simply shoulder all the pollution burden under the guise of "jobs" or convenience so that other communities may enjoy the benefits of clean water and air, and healthy environments.

From an environmental justice perspective, advance consideration of the environmental impacts from a proposed action or activity on individuals' environmental rights necessarily must address *what is already in the community* and adversely affecting residents. This is necessary both to: 1) understand how much more government would interfere with individuals' environmental rights if it were to permit a particular operation or advance a particular decision; and 2) comply with the government's trustee duties. A governmental entity cannot just look at an operation, action, or decision in isolation. It must understand what pollution, industrial, and environmental burdens a community already bears. It must also look into the future to consider the impact that adding another pollution burden has on the affected community and on future generations. It must address cumulative impacts – both immediate and long-term – in the analysis and the final outcome decided upon and advanced.

A Green Amendment provides a way to make environmental justice more than just a buzzword or a hot topic. It provides a means for making it real for communities across the country that have borne the weight of pollution and environmental degradation for too long. This will greatly enhance the tools available to communities to remedy current degradation and push back against further devastation, to make real a fundamental human right that no person should suffer disproportionate environmental, health and quality of life burdens because of who they are, their income, or where they live.

BENEFITS OF A CONSTITUTIONAL PROVISION PROTECTING ENVIRONMENTAL RIGHTS

BENEFITS OF AND BEYOND VICTORY

- Environmental protection given the **highest level of protection under the law**.
- People and politicians receive and must embrace the concept that environmental rights are **inherent and indefeasible and on par with other political rights** (free speech, religion, property, etc.).
- Public and political messaging that embraces environmental rights. People and politicians learn to embrace the concept that environmental rights are inherent and indefeasible and on par with other political rights (free speech, religion, property, etc.)
- Government Officials learn the importance of protecting our water, air, natural resources and environment for present and future generations while seeking to achieve other community goals. Environmental protection is given the highest level of protection under the law.

HOW A STRONG ENVIRONMENTAL RIGHTS AMENDMENT PROVIDES GREATER ENVIRONMENTAL PROTECTIONS

Environmental Rights are Recognized as Inherent & Indefeasible

"The Declaration of Rights assumes that the rights of the people ... are inherent in man's nature and preserved rather than created by the Pennsylvania Constitution." [1]

Environmental Rights are On Par with Political Rights

"It is not a historical accident that the Pennsylvania Constitution now places citizens' environmental rights on par with their political rights." [1]

Government Has A Duty to Refrain from Violating Environmental Rights

"The corollary of the people's Section 27 reservation of right to an environment of quality is an obligation on the government's behalf to refrain from unduly infringing upon or violating the right, including by legislative enactment or executive action." [1]

A Limit on Governmental Authority

"....sections of the Declaration of Rights represent specific limits on governmental power." [1]

Environmental Protection is the Responsibility of Every Government Official

..."public trustee duties were delegated concomitantly to all branches and levels of government in recognition that the quality of the environment is a task with both local and statewide implications, and to ensure that all government neither infringed upon the people's rights nor failed to act for the benefit of the people in this area crucial to the well-being of all Pennsylvanians." [1]

A Duty to Act on State

"[T]he Environmental Rights Amendment places an affirmative duty on the Commonwealth to 'prevent and remedy the degradation, diminution, or depletion of our public natural resources'—i.e., to conserve and maintain..." [2]

All Levels of Government, Including Local Officials, have an Obligation to Protect Constitutional Environmental Rights

- "The protection of environmental and esthetic interests is...a key part of local government's role." [1]
- ..."public trustee duties were delegated concomitantly to all branches and levels of government in recognition that the quality of the environment is a task with both local and statewide implications, and to ensure that all government neither infringed upon the people's rights nor failed to act for the benefit of the people in this area crucial to the well-being of all Pennsylvanians." [1]

A Duty to Refrain from Permitting Environmental Degradation

"As trustee, the Commonwealth has a duty to refrain from permitting or encouraging the degradation, diminution, or depletion of public natural resources, whether such degradation, diminution, or depletion would occur through direct state action or indirectly, e.g., because of the state's failure to restrain the actions of private parties." [1]

A Thumb on the Scale of Environmental Protection

"If anything, when environmental concerns of development are juxtaposed with economic benefits of development, the Environmental Rights Amendment is a thumb on the scale, giving greater weight to the environmental concerns in the decision-making process." [2]

Science-Based Decision Making

As a trustee, government must consider before acting whether the proposed action (such as legislation or permitting) would cause "actual or likely" "degradation, diminution, or depletion" of the people's public natural resources either now, or in the future. [1]

Individual and Cumulative Impacts Must be Considered; Must Protect Environmental Quality for Future Generations

"Moreover, the constitutional provision directs the 'preservation' of broadly defined values of the environment, a construct that necessarily emphasizes the importance of each value separately, but also implicates a holistic analytical approach to ensure both the protection from harm or damage and to ensure the maintenance and perpetuation of an environment of quality for the benefit of future generations." [1]

A Duty to Restore

"[T]he Environmental Rights Amendment places an affirmative duty on the Commonwealth to 'prevent and remedy the degradation, diminution, or depletion of our public natural resources'—i.e., to conserve and maintain . . . ." [2]

Citizens Can Enforce Their Environmental Rights

"The Commonwealth's obligations as trustee to conserve and maintain the public natural resources for the benefit of the people, including generations yet to come, create a right in the people to seek to enforce the obligations." [1]

1 Robinson Township, Delaware Riverkeeper Network, et al v. Commonwealth, 83 A.3d 901 (Pa., Dec. 19, 2013).
2 Pennsylvania Envtl. Def. Found. v. Commonwealth, 108 A.3d 140 (Pa. Commw. Ct. 2015).