

Township of Marple and the Scope of Agency Environmental Review Under the Environmental Rights Amendment

By David G. Mandelbaum | **March 12, 2026** | The Legal Intelligencer

In a closely watched case involving a natural gas “reliability station,” the Pennsylvania Commonwealth Court recently reiterated quite plainly that court’s narrow view of the Pennsylvania Environmental Rights Amendment, Article I, Section 27, of the Pennsylvania Constitution. See *Township of Marple v. Pennsylvania Public Utilities Commission*, No. 1385 C.D. 2024 (Pa. Commw. Ct. Feb. 2, 2026) (*Marple II*). The case had been to the Commonwealth Court already and the court had decided that a regulatory agency may not make a permitting decision without conducting some level of environmental review. See *Township of Marple v. Pennsylvania Public Utilities Commission*, 294 A.3d 965, 973-74 (Pa. Commw. Ct. 2023) (*Marple I*). However, *Marple II* read that constitutional obligation to be limited to the environmental impacts of the specific project without consideration of consequences of the project. Further, the court held that regulatory agencies implementing the Environmental Rights Amendment should stay in their own lanes and should defer to regulatory determinations of agencies charged with environmental protection.

The *Marple* litigation involves a natural gas “reliability station” planned to assure adequate natural gas supply to consumers in extreme weather events. It would not be a very big facility, intended to be located on the site of a former gasoline service station. The facility will contain certain small air pollution sources, but they are small enough that they do not require plan approvals (that is, permits to construct) under the Pennsylvania Air Pollution Control Act. A backup generator that would only run in an emergency would require a plan approval.

However, the use of natural gas generally in the planned reliability station’s service area would not result in an unambiguously small air emission. The natural gas whose distribution the station would facilitate would either be leaked or burned, in either case an emission of greenhouse gases that would exacerbate climate change.

Construction of the two new buildings and a fence that constituted the reliability station would ordinarily be regulated by the local zoning ordinance and the local subdivision and land development ordinance, each authorized by the Municipalities Planning Code (MPC). However, Section 619 of the MPC exempts from regulation under the MPC “any ... building ... used or to be used by a public utility corporation” if the PUC decides after a public hearing “that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.” See 53 Pa. Stat. Ann. Section 10619.

The PUC made the required finding. The township and others sought judicial review. The court remanded the initial PUC decision in *Marple I*. The PUC conducted a narrow environmental review and again issued the section 619 finding. The township and others again appealed.

When a commonwealth agency takes an action, the agency must comply with the constitution, including the ERA. The ERA imposes two obligations on the agency. First, it must not act unreasonably to impair or allow a private person to impair the right to clean air, pure water, or the values of the environment enumerated in the first sentence of the ERA. Second, the agency must act a trustee of the public natural resources in Pennsylvania.

The Commonwealth Court is less than clear on whether the obligation to conduct an environmental review derives from the first sentence obligation, the second sentence trust, or both. In any event, the agency must assess and take into account the environmental effects of its decision.

Marple II addresses the procedure required by the constitution. The PUC was not required to prepare an environmental impact statement or to conduct any form of environmental assessment on the model of the National Environmental Policy Act. The court reasoned that the legislature has not adopted a NEPA-like statute and therefore the constitution should not be read to require that level of inquiry. Instead, because Section 619 of the MPC requires a hearing, the court held in *Marple I* and reiterated in *Marple II* that the constitution requires the PUC to admit evidence in that hearing of the environmental effects of the buildings proposed to be exempted from local land use regulation. That is the extent of the procedure required by the ERA, according to *Marple II*.

Marple II also addresses the scope of the inquiry required by the constitution. Initially, opponents of the reliability station had sought to prove that explosion risk, noise, and local air emissions would have a sufficient immediate effect on neighbors to run afoul of the ERA. However, they later asserted that the station represented a critical component of the natural gas distribution network, and that natural gas use would have a deleterious impact on climate.

The court held that the PUC was only obligated to conduct an inquiry into the direct environmental impacts of the specific buildings subject to Section 619 of the MPC. Even if the reliability station were a necessary cause of methane or carbon dioxide emissions from other sources, those downstream emissions were not within the scope of the inquiry that the ERA required in the Section 619 proceeding. An agency can only consider those issues that it is authorized to consider by the underlying statute, according to the court. Here, Section 619 required the PUC to consider the buildings at the reliability station site, not other emissions or facilities.

Moreover, the PUC had to stay in its lane. It was not authorized to assess climate effects of natural gas use generally and whether if permitted they would violate the ERA. “Whether the use of natural gas ‘is wise or whether it is the best means to achieve the desired result are matters left to the legislature, and not the courts.’” See *Marple II*, slip op. at 22 (citing *Frederick v. Allegheny Township Zoning Hearing Board*, 196 A.3d 677, 701 (Pa. Commw. Ct. 2018)).

The federal government has substantially retreated from any attention to climate change, most recently by rescinding the endangerment finding under Section 202 of the Clean Air Act. 91 Fed. Reg. 7686 (Feb. 18, 2026). Some have thought that state constitutional provisions like the ERA might provide a way to force or to enable state governments to regulate in the federal government’s stead. See, e.g., *Held v. Montana*, 560 P.3d 1235 (Mont. 2024).

If the Commonwealth Court’s view of the ERA prevails—and the Pennsylvania Supreme Court may not entirely share that view—the ERA only authorizes an agency to take an action that its authorizing statute permits it to take. It cannot consider issues delegated to another agency or retained by the legislature but must instead defer. That would mean that litigation directed to system- or economy-wide greenhouse gas regulation must be directed to agencies authorized to adopt that sort of regulation. Cases against individual projects would fail unless the project itself had that kind of broad impact.

But watch the demand for action, submitted to the Environmental Quality Board on Feb. 5 by a number of prominent environmental lawyers and academics under a previously accepted request for rulemaking. See Demand for Action to Adopt the “SAVER” Rule, posted at <https://drive.google.com/file/d/1xVsA-MEJB5nbpQYcjfGwRcpNQJk6Zcn/view>. The demand calls for adoption of an economywide cap-and-

invest regulation in part on the theory that greenhouse gas regulation is constitutionally required. If the EQB acts on that demand, there will be an interesting test of whether even the EQB has authority to consider economy-wide greenhouse gas regulation under the ERA, or whether that is a lane exclusively occupied by the legislature. As always, stay tuned.

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