

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA ENVIRONMENTAL	:	
DEFENSE FOUNDATION,	:	
	:	
Petitioner,	:	No. 228 M.D. 2012
	:	
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
<i>et al.</i> ,	:	
	:	
Respondents.	:	

JOINT APPLICATION OF RESPONDENTS TO STAY FOR SIX (6) MONTHS THEIR OBLIGATION TO RESPOND TO PETITIONER’S MOTION FOR SUMMARY JUDGMENT SO AS TO ALLOW TIME FOR ADDITIONAL DISCOVERY

Respondents, the Commonwealth of Pennsylvania and Governor Thomas W. Corbett, Jr., through their counsel, respectfully request a stay for six (6) months of their obligation to respond to Petitioner’s motion for summary judgment, so as to allow additional time for discovery. In support of their request, Respondents aver as follows:

A. Procedural Background

1. Petitioner, the Pennsylvania Environmental Defense Foundation, challenges the constitutionality of various legislative and executive actions relating to rents and royalties from the extraction of natural gas in state parks and state forests, the power of the Legislature and the Governor to make policy and fiscal decisions affecting the operation and maintenance of state parks and state forests which differ from the recommendations of the Department of Conservation and Natural Resources (“DCNR”), and the annual implementation of the budget (as enacted by the Legislature and approved by the Governor) for the operation of the Commonwealth government.

2. On April 30, 2012, Petitioner filed an amended petition for review, seeking declaratory relief against the Commonwealth of Pennsylvania and the Governor.

3. Respondents filed preliminary objections to the amended petition for review on July 24, 2012.

4. This Court on January 22, 2013, issued a memorandum opinion and order overruling Respondents’ preliminary objections. *See* 2013 Pa. Commw. Unpub. LEXIS 67.

5. With leave of Court, Respondents filed an answer with new matter to the amended petition for review on March 21, 2013.

6. On June 13, 2013, the Republican Caucuses of the House and Senate filed a petition to intervene in this action. By order dated August 15, 2013, the petition to intervene was granted in part.

7. On September 3, 2013, Petitioner filed a motion for partial summary judgment relating to standing.

8. On October 28, 2013, Respondents filed a response in opposition to this motion. Respondents objected, in part, to the motion as being premature since Respondents had not had the opportunity to conduct discovery.

9. On November 4, 2013, this Court denied Petitioner's motion for partial summary judgment without prejudice.

10. On December 30, 2013, this Court granted Petitioner's request to file a second amended petition for review.

11. On February 12, 2014, Respondents (by stipulation of the parties and approval of the Court) filed an answer to the second amended petition for review.

12. On February 20, 2014, Petitioner filed a motion to add an addendum to the second amended petition for review. On March 18, 2014, this Court granted the motion.

13. On April 16, 2014, Respondents filed a joint answer with new matter to the addendum to the second amended petition for review.

14. On April 21, 2014 – five days after Respondents filed their response to Petitioner’s latest addition to its pleadings – Petitioner filed a motion for summary judgment.

B. Reasons for Granting a Stay to Allow Further Discovery

15. Petitioner’s motion for summary judgment is 53 pages in length. In addition to the motion itself, Petitioner has filed a brief in support of its motion for summary judgment that is 133 pages long and contains 18 separate argument headings.

16. Petitioner also has submitted 48 separate documents in support of its motion for summary judgment. Included among these documents are affidavits from fifteen separate individuals who, individually or as part of a larger organization, allegedly are affected by the governmental actions that Petitioner contends violate Pa. Const. art. I, § 27.

17. Respondents believe that it would need to take the depositions of at least some – and possibly all – of Petitioner’s affiants to defend against Petitioner’s claims. Respondents believe that an additional six months is needed to permit them to serve interrogatories and requests for production of documents as well as to conduct the necessary depositions.

18. The extensive scope and complexity of Petitioner’s claims supports Respondents’ need for discovery in this case.

19. Furthermore, as the case raises questions regarding the constitutionality of the Commonwealth's policies relating to the operation and maintenance of state parks and state forests and the annual enactment of the Commonwealth's operating budget, it is in the public interest to allow the Commonwealth and the Governor the opportunity to obtain discovery so as to fully develop the record and properly defend this case.

20. Although the original petition for review was filed on March 6, 2012, Petitioner's multiple amendments to the petition, the petition to intervene by members of the Legislature, the disposition of Respondents' preliminary objections, Petitioner's motion for partial summary judgment (filed September 3, 2013), and personnel changes in the Office of Attorney General and the Office of General Counsel have resulted in this case not moving forward more expeditiously.

21. As the docket demonstrates, Petitioner was allowed to file an addendum to its second amended petition less than six weeks ago (March 18, 2014). Respondents filed an answer to this latest pleading on April 16, 2014 – less than one week before Petitioner filed for summary judgment.

22. The Court in this case has not issued a scheduling order, nor has it established deadlines for completing discovery or filing motions for summary judgment. While Pennsylvania Rule of Civil Procedure No. 1035.2 allows for the filing of a motion for summary judgment at any time after the relevant pleadings

are closed, Petitioner should not be allowed to effectively curtail discovery by filing for summary judgment at the earliest possible moment. This is particularly true where Respondents have not violated any established court deadlines and there is no evidence that they have acted in bad faith.

23. Separate and apart from the need for discovery, Respondents always have intended to file their own motion for summary judgment or summary relief at the appropriate time. However, given the number of separate claims being raised by Petitioner, it would be extremely difficult in the next 30 days to meet with the appropriate officials within DCNR, the Office of the Budget, and other Commonwealth agencies to identify the necessary information and documents so as to properly defend against each of the constitutional claims raised by Petitioner.

24. Respondents' task is made more difficult by the fact that most of the claims that Petitioner makes have their origins in, and are related to, actions taken by former Governor Rendell and his advisors (including DCNR) and/or the General Assembly before Governor Corbett took office and long before Petitioner filed its suit.

25. Respondents' response to Petitioner's motion for summary judgment is due on May 21, 2014. However, for the reasons outlined above, Respondents are requesting that their obligation to respond to Petitioner's motion for summary be stayed for six months – until October 21, 2014.

26. During the requested six-month time period, all parties would be permitted to pursue discovery. Also, if Respondents wish to file a cross-motion for summary judgment (along with supporting evidentiary materials and supporting brief), they would be required to file it on or before October 21, 2014.

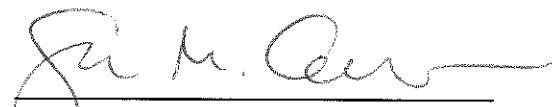
27. Respondents' request would not unfairly prejudice Petitioner and furthers the public interest in having constitutional claims adjudicated based on a full record.

WHEREFORE, Respondents respectfully request that this Court grant a stay (for six months) of their obligation to respond to Petitioner's motion for summary judgment – until October 21, 2014 – so that Respondents might have a reasonable opportunity to conduct discovery and prepare and file a cross-motion for summary judgment (if appropriate).

Respectfully submitted,

Date: April 28, 2014

By:



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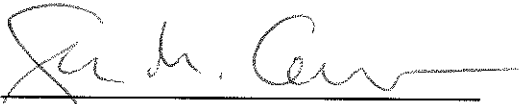
CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused a true and correct copy of the foregoing **Joint Application of Respondents to Stay for Six (6) Months their Obligation to Respond to Petitioner's Motion for Summary Judgment so as to Allow Time for Additional Discovery**, to be served upon the following persons through the Court's electronic filing system and via first class mail, postage prepaid:

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