

The PA Supreme Court opinion IS IN

On May 18, 2022, our appeal and that of New Hanover Township, was heard in Old City, Philadelphia, before the PA Supreme Court / Middle District. We were appealing the ruling of the lower court (Commonwealth Court) because they disagreed with the decision of the Environmental Hearing Board (EHB) to "rescind" Gibraltar Rock's mining permits, rather than "remand" the permits. "Rescind" means to invalidate or cancel. "Remand" means the mining permits would be sent back to the DEP for further evaluation and oversight. In 2020, the Environmental Hearing Board had several good reasons to order the rescinding of the permits.

It has been a long time coming, but on Dec 21, 2022, the PA Supreme Court made their decision. Our attorney, who participated at the hearing in Philadelphia, says: "This is a major victory"!

The Supreme Court "vacated" the Commonwealth Court ruling of June 2021 . . . and ordered that the case be sent back to Commonwealth Court, requiring them to reconsider the issues in the appeal filed by Gibraltar Rock. The PA Supreme Court has now ruled that the Commonwealth Court exceeded its authority by addressing issues that were not raised on appeal.

A few of the Supreme Court findings:

- This court listed the failings of the PA-DEP and their multiple mistaken assumptions, their lack of attention to the many grounds for refusal to renew the mining permits, the lousy studies the DEP had done, etc.
- The court noted the requirement of the regulations that Gibraltar reveal how to ensure the protection of quality / quantity of surface water and groundwater. *This is nearly impossible, unless and until the DEP totally remediates the Hoff VC site.*
- In their opinion, this court stated that the DEP issued the permits prematurely in light of the unanswered questions regarding the Hoff VC site.

The Supreme Court statement:

"Having determined that the Commonwealth Court erred in resolving the appeal based on its independent consideration and analysis of constitutional and statutory issues, the order of the Commonwealth Court is hereby vacated (*cancelled*), and the matter is remanded (*sent back*) to the Commonwealth Court."

This Supreme Court opinion means that we start over with: Gibraltar Rock's appeal to the Commonwealth Court, our joining in that appeal along with our Township and the PA Dept. of Environmental Protection. The PA-DEP is now working with us in opposing Gibraltar Rock's appeal to the Commonwealth Court.

Our attorney believes we will hear something by the end of Spring. Even so, this will further delay the opportunity for Gibraltar Rock to apply for new mining permits. And then there is the requirement that the Hoff VC site must first be remediated. Another factor - several of the chemicals have migrated onto Gibraltar Rock land, and the DEP studies have shown that the chemicals are at the edge of where the quarry pit would be excavated.

We will keep you informed of any updates.