



Delaware's Green Amendment Protecting Environmental Rights for Present & Future Generations Frequently Asked Questions & Answers

What is a Green Amendment?

A Green Amendment is a self-executing provision placed in the Bill of Rights section of a constitution that recognize and protect the inalienable rights of all people, including future generations, to clean water, clean air, a stable climate and healthy environments. Green Amendments serve as a check on government authority, and make clear government's duties, as trustee, to protect the environment for the benefit of all the people of the state, including future generations.

How is a Constitutional Amendment Better Than Legislation for Environmental Protection?

Our state and federal constitutions provide the overarching legal structure, principles and obligations to which all branches of government must conform. All government action, including the passage of laws, regulations, policies and programs are done in service to advancing their constitutional obligations – government officials cannot change or violate the constitution, they must honor and implement it. Passage of a Delaware Green Amendment will ensure that every government official in the state will work to advance environmental protection at every level of the decisionmaking process, rather than wait until the end of the process when the focus is necessarily on acceptance and management through permitting rather than prevention.

Having a Green Amendment will help ensure that existing environmental laws and regulations are implemented to their full potential; will provide a basis for advancing new needed protections (e.g. through legislation, regulation or government action); will provide a basis to secure protective government action when a gap in the law is identified (such as the case with PFAS contamination); and will strengthen the ability of communities to gain access to courts (e.g. demonstrate standing or bring a constitutionally-based challenge) when their rights have been infringed upon by government action, inaction and/or activities.

Does a Green Amendment Expand Government Power?

A properly crafted Green Amendment placed within the Bill of Rights will be a limitation on government authority, not a grant or expansion of authority. A DE Green Amendment will protect environmental rights by limiting/preventing government actions or activities that – whether through direct government action or the action of others, or through government inaction – inflicts constitutional-level harm on protected environmental rights.

Why is a Green Amendment beneficial for environmental justice protection?

By recognizing environmental rights as individual rights that belong to all people, it becomes clear that government decisions and actions must protect these rights for all people and that government is not entitled to undermine/sacrifice/minimize the rights of one beneficiary community in order to enhance/protect the rights of another beneficiary community.

Including a trust obligation in the Green Amendment ensures that all government officials have a clear fiduciary duty to act with prudence, loyalty and impartiality for the benefit of all beneficiaries, including future generations. The trust obligation ensures a duty of equitable treatment owed to all communities, and creates a constitutional obligation to consider cumulative impacts that includes how the new decision, when added to existing conditions, will affect the environmental rights of those impacted. Given that the fiduciary obligation is owed to all beneficiaries it also prevents the government from justifying harms to one community in order to benefit another.

If a Violation Is Found What Will Be The Remedy?

Violations of the DE Green Amendment will be addressed through equitable remedies/relief meaning the government will be required to undertake action, or refrain from action, that is causing the constitutional violation. For example, provisions of a law declared to be unconstitutional cannot go into force and effect; a permit issued that will cause an unconstitutional violation is declared invalid/void; a law that requires clean up of a toxic site by responsible parties must be enforced.

How Will a DE Green Amendment Affect Government Decisionmaking and Activities?

A DE Green Amendment will provide broad guidance that ensures government decisionmaking - substantively and procedurally - considers environmental impacts early in the process when prevention of pollution, degradation and environmental harm is most possible; requires equitable protection of all communities strengthening environmental justice; considers the protection of present and future generations; and considers science, facts and impacts as part of the decisionmaking process in order to fulfill the government's trust obligations. When all else fails, a DE Green Amendment will provide a backstop that can be used by community, public, government and business interests to provide a check on government authority that overreaches and fails to protect environmental rights. In addition, because it is self-executing, a DE Green Amendment can help address community harms that have not been addressed by existing legislation, regulation or government action. In addition, A DE Green Amendment will encourage sustainable, environmentally protective, and innovative development, industry, and business growth.

Will the Delaware Green Amendment Harm Economic Development in the state?

Overall, a DE Green Amendment will enhance economic development, not harm it, by encouraging sustainable, environmentally protective, and innovative development, industry, and business growth that both supports jobs and economic growth but at the same time avoids the economic, health and safety harms that result from environmental pollution and degradation, and associated human health and safety consequences.

How can legislators be responsible for protecting the right to clean water and air or a stable climate when these are not entirely within the control of any one state?

Rights enumerated in the Bill of Rights are inalienable rights that the people reserve unto themselves to be protected from government infringement. Just as with other rights in the Bill of Rights, government has a duty to take what actions it can to protect these rights within its jurisdiction and to ensure that its own actions do not induce, garner or allow for infringement. But just as government officials in one state do not have the power to prevent acts or activities outside the boundaries of their jurisdiction that might overreach and affect constitutional rights in another jurisdiction, the same holds true for environmental rights. Each state is bound to take what action it can to respect and protect the environmental rights of the people within its jurisdiction, to ensure that its actions or activities do not result in infringement, but they are not duty bound to take or prevent actions outside of their jurisdictional boundaries (e.g. state borders) in order to address/prevent infringement in other jurisdictions (e.g. states).

What states have Green Amendments currently?

Pennsylvania, Montana, and New York have constitutional language that fulfill the definition of a Green Amendment. (See the Green Amendment checklist at: https://www.forthegenerations.org/wp-content/uploads/2020/04/FTG_Checklist-2020-04.pdf). Cases that have interpreted and applied existing Green Amendments can be found at the resources tab of the www.DEGreenAmendment.org website.

Does a Green Amendment mean government can never infringe on constitutional environmental rights?

As explained by the Montana Supreme Court, when a fundamental right articulated in the Bill of Rights/Declaration of Rights is at issue, court review requires strict scrutiny, meaning that any demonstrated infringement can only withstand constitutional challenge if “the State establishes a compelling state interest and that its action is closely tailored to effectuate that interest and is the least onerous path that can be taken to achieve the State's objective.” (Montana Env'tl. Info. Ctr. v. Department of Env'tl. Quality, 1999 MT 248 (1999).)

How Are Green Amendments Affecting Environmental Protection in Pennsylvania, Montana and New York?

Green Amendments have been used by residents, township officials, administrative agencies, elected officials and organizations to: protect state government from enforcing well-testing that could contaminate an entire town's drinking water supply with cancer causing toxins; prevent permitting for dangerous industrial gold mining operations that would decimate critical natural resources and contaminate highly prized river systems recreationally and economically important, including resources important to Yellowstone National Park; ensure agency action to secure responsible industries cleanup a highly contaminated site with a spreading toxic pollution plume; prevent legislative overreach that usurped town zoning authority, infringed on residential homeowner expectations and rights, and put in place automatic waivers of environmental standards in the context of fracking operations; to support attorney general environmental enforcement actions; to support town council decisionmaking.

More info & Resources at: www.DEGreenAmendment.org