Environmental Law - Standing

Carla J. Vrsansky

Follow this and additional works at: https://dsc.duq.edu/dlr

Part of the Law Commons

Recommended Citation
Available at: https://dsc.duq.edu/dlr/vol28/iss2/8

This Recent Decision is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Duquesne Law Review by an authorized editor of Duquesne Scholarship Collection.
ENVIRONMENTAL LAW—STANDING—The Pennsylvania Supreme Court has held that the Pennsylvania Game Commission has standing to raise violations of the Dam Safety and Encroachments Act in order to challenge the issuance of a solid waste permit granted to a landfill operator who wishes to construct a landfill adjacent to wetlands maintained as a waterfowl refuge.


Ganzer Sand & Gravel, Inc. (Ganzer) applied for a solid waste permit in order to establish and operate a solid waste landfill\(^1\) for the purpose of providing a disposal site for residual waste produced by the Hammermill Paper Company.\(^2\) The Department of Environmental Resources (DER) granted the issuance of the permit\(^3\) in accordance with the provisions of the Solid Waste Management Act.\(^4\) The Pennsylvania Game Commission (Commission) raised various environmental objections\(^5\) to the proposed landfill and subsequently challenged the issuance of the permit by taking an appeal to the Environmental Hearing Board (Board).\(^6\) The

---

1. _Pennsylvania Game Commission v. Pennsylvania, Department of Environmental Resources, Ganzer Sand & Gravel, Inc. and Hammermill Paper Company, _—._ Pa. —., 555 A.2d 812 (1989)_[hereinafter Ganzer]. The landfill is to be located on a 40-acre tract in Erie County, adjacent to a 1,343-acre tract of wetlands (known as Siegel Marsh) maintained by the Pennsylvania Game Commission as a waterfowl refuge. _Id._ at 813.

2. _Id._

3. _Pennsylvania Game Commission v. Pennsylvania, Department of Environmental Resources, Ganzer Sand & Gravel, Inc. and Hammermill Paper Company, 97 Pa. Commw. 78, 509 A.2d 877(1986)._ The permit was first issued on November 1, 1982, following over three years of meetings and discussions between Ganzer Sand & Gravel, Inc., the DER, and the Hammermill Paper Company. _Id._ at 79.

4. _Ganzer, 555 A.2d at 813._

5. _Id._ Among its challenges, the Commission alleged that the operation of the landfill would produce polluted ground water and surface water run-off, and that such would adversely impact upon the eco-system of the waterfowl sanctuary. Also, the Commission asserted that the allowance of the landfill violated several environmental laws, namely, provisions of the Solid Waste Management Act(SWMA), the Dam Safety and Encroachments Act(DSEA), and the environmental rights article of the Pennsylvania Constitution, Article I, section 27. _Id._

6. _Id._ Section 1921-A of the Administrative Code provides: _Environmental Hearing Board._

(a). The Environmental Hearing Board shall have the power and its duties shall be to hold hearings . . . on any order, permit, license or decision of the Department of
Commission's central challenge, however, was based on the Dam Safety and Encroachments Act (DSEA).\textsuperscript{7} The DER did not consider the DSEA applicable to the landfill; thus a water obstruction permit was deemed unnecessary as there was no proof that a water obstruction would result.\textsuperscript{8} The Commission disagreed, and contended that the landfill would create a water obstruction\textsuperscript{9} and appealed to the Board, urging that the DER could not legitimately authorize the Ganzer landfill without first securing compliance with the DSEA.\textsuperscript{10}

Although the Board preliminarily decided that the Commission did have standing to protect the inhabitants of Siegel Marsh and to prosecute the appeal,\textsuperscript{11} it subsequently rejected each of the Commission's challenges on the merits, and sustained the issuance of the permit to Ganzer.\textsuperscript{12} The Board determined, after making an extensive finding of facts based on the evidence, that the Commission failed to meet its burden of showing that the proposed landfill, as designed, would have an adverse impact on the environment and that the DER's issuance of the landfill permit was not an abuse of discretion, but was in compliance with the law.\textsuperscript{13} The Board concluded that the Ganzer landfill would not create a

Environmental Resources.
\textsuperscript{(c) ... any action of the Department of Environmental Resources may be taken initially without regard to the Administrative Agency Law, but no such action of the department [DER] adversely affecting any person shall be final as to such person until such person has had the opportunity to appeal such action to the Environmental Hearing Board. ...}

\textsuperscript{8} Ganzer, 555 A.2d at 813. One of the express purposes of the Dam Safety and Encroachments Act (DSEA) is the protection of natural resources and environmental values. See 32 PA. CONS. STAT. ANN. § 693.2(3) (Purdon 1988). To that end, the DSEA provides,\textsuperscript{inter alia}, that "[n]o person shall construct, operate, maintain... any dam, water obstruction or encroachment without the prior written permit of [DER]." See 32 PA. CONS. STAT. ANN. § 693.6(a) (Purdon 1988).

\textsuperscript{9} Id.

\textsuperscript{10} Id. at 814.

\textsuperscript{11} Id. The Board initially questioned whether the Commission, as a sister agency of the DER in the Commonwealth governmental structure, had standing to challenge DER's issuance of the solid waste permit. The Board ultimately determined that the Commission did have standing to defend and protect Siegel Marsh. Id.

\textsuperscript{12} Id. DER did not abuse its discretion in issuing the permit and determining that a water obstruction permit was unnecessary. Id.

\textsuperscript{13} Id. The Board found that no streams or drainage courses run through the landfill site, and that the site was higher in elevation than any neighboring water courses and the wetlands constituting the Commission's wildlife refuge and thus there was no basis for alleging that environmental injury would occur. Id.
"water obstruction" as the term is defined by the DSEA,\textsuperscript{14} and thus, that the statute was not applicable to the case.\textsuperscript{15}

In response to the Board's decision, the Commission filed a petition for review with the Pennsylvania Commonwealth Court.\textsuperscript{16} Although the Board accorded standing to the Commission to defend the wetlands and to regulate wildlife, the Commission, in its appeal to the Commonwealth Court, included an assertion that it had been denied "standing" to raise violations of the DSEA as an issue before the administrative tribunal.\textsuperscript{17}

The Commonwealth Court affirmed the Board's decision.\textsuperscript{18} Judge Colins,\textsuperscript{19} in stating the appellate court's opinion, put forth two alternative grounds.\textsuperscript{20} The first determination was that the Commission lacked standing to raise the DSEA as a basis for challenging the solid waste permit issued to Ganzer.\textsuperscript{21} The alternate

\begin{itemize}
\item \textsuperscript{14} Id. Section 693.3 of the DSEA defines "water obstruction" as including "any dike, bridge, culvert, wall, wing wall, fill, pier, wharf embankment, abutment or other structure located in, along, across, or projecting into any water course, floodway or body of water." 32 PA. CONS. STAT. ANN. § 693.3 (Purdon 1988).
\item \textsuperscript{15} Ganzer, 555 A.2d at 814. With the rejection of the Commission's assertions under the DSEA, so too failed its argument pursuant to the environmental rights article of the Pennsylvania Constitution, Article I, Section 27, since the constitutional challenge was based exclusively on the Commission's contentions regarding the DSEA. Id.
\item \textsuperscript{16} Id.
\item \textsuperscript{17} Id. The Board found that the Commission had standing to appeal those aspects of DER's grant of the permit which would threaten the Commission with substantial, immediate and direct injuries lying within the zone of interests in the Commission's power and duties, namely, regulation and protection of the game or wildlife population. However, the Board determined that the environmental injury alleged by the Commission (which the Commission subsequently failed to prove) was not within the zone of interests which the DSEA must protect or regulate, namely, water conservation and the proper planning of dams, water encroachments, etc. and therefore the DSEA was not applicable.
\item \textsuperscript{18} Id.
\item \textsuperscript{19} Commonwealth of Pennsylvania, Pennsylvania Game Commission v. Commonwealth of Pennsylvania, Department of Environmental Resources, Ganzer Sand & Gravel, Inc. and Hammermill Paper Company, 97 Pa. Commw. 78, 509 A.2d 877 (1986). Judge Colins delivered the opinion of the court. Id. at 879.
\item \textsuperscript{20} Ganzer, 555 A.2d at 814.
\item \textsuperscript{21} Commonwealth of Pennsylvania, Pennsylvania Game Commission v. Commonwealth of Pennsylvania, Department of Environmental Resources, Ganzer Sand & Gravel, Inc. and Hammermill Paper Company, 97 Pa. Commw. 78, 509 A.2d 877 (1986). Judge Colins stated:
\end{itemize}

Looking to the DSEA itself, it is difficult to conclude that it has the preservation of wildlife as one of its central concerns. Sections 2(1), 2(3), and 2(4) of the Act specify that people and property, natural resources, and water obstructions are among the concerns of the Act. Of course, wildlife are dependent for their continuing viability upon the natural resources of their ecosystem and habitat, but it is an illogical jump for us to proceed from this premise and conclude that as trustee of game and wildlife in the Commonwealth, the Game Commission has standing under the DSEA to insure the maintenance of all natural resources required to sustain its faunal wards. Such a
holding announced by Judge Collins was that even if the Commission had the requisite standing, the Board's adjudication had to be sustained due to lack of abuse of discretion, under the standard of judicial review prescribed by section 704 of the Administrative Agency Law.

The Supreme Court of Pennsylvania granted review in order to determine whether the Commonwealth Court correctly concluded that the Commission lacked standing to use the DSEA as a ground for challenging the permit issued by DER. In an opinion written by Chief Justice Nix, the Supreme Court held that the Commonwealth Court erred in its decision regarding the Commission's lack of standing.

The Supreme Court initially reviewed the concept of standing in regard to "who" is entitled to make a legal challenge to the matter involved. Chief Justice Nix continued by reiterating the need for conclusion would give every Commonwealth agency the right to intervene in another agency's proceedings, so long as the interest concerned was a "prerequisite" to the health or well-being of the interest entrusted to the rival agency. This approach ignores the requirement of showing a direct, immediate, and substantial interest in the matter to be adjudicated. Such a requirement must be met by specific pleadings in at least some circumstances. Here, the Game Commission would have been required to show that the violations of the DSEA bore a direct, immediate, and substantial relation to its status as a trustee of the Commonwealth's wildlife. Our review of the record indicates that the Game Commission failed to plead sufficient facts or law in support of its conclusion that it had standing.

Id. at 881 (footnote deleted).

22. Id. "Assuming arguendo that the Game Commission did have standing under the DSEA, we note that the requirements of the DSEA are waivable by the DER. [and that] the DER has the ultimate power to issue permits under the DSEA in any event. . . ." Id. at 881 (footnote deleted).

23. Ganzer, 555 A.2d at 814.


It is clear that matters of evidence taking, and the admission of testimony and exhibits, are matters committed to the sound discretion of the hearing body. The matter to be adjudicated was of a technical nature, and this Court may not substitute judicial discretion for administrative discretion in matters involving technical expertise and which are within the special knowledge and competence of the Board. We find that the Board's decisions . . . were technical matters within the special knowledge and competence of the Board, and absent a blatant abuse of discretion, we cannot disturb the Board's decision.

Id. at 887,888 (citation omitted).


27. Id. at 815.

28. Id. Here, the court cited Sprague v. Casey, 520 Pa. 38, 550 A.2d 184 (1988); Appli-
a person to be adversely affected and thereby aggrieved in order to obtain a judicial resolution of the challenge. With regard to actions or decisions of state administrative agencies, the court cited section 702 of the Administrative Agency Law, as well as section 1921-A of the Administrative Code of 1929.

The Supreme Court's primary analysis, however, involved more than just articulating the working definitions of standing. Chief Justice Nix reasoned:

The terms "substantial interest," "aggrieved," and "adversely affected" are the general, usual guides in that regard, but they are not the only ones. For example, when the legislature statutorily invests an agency with certain functions, duties and responsibilities, the agency has a legislatively conferred interest in such matters. From this it must follow that, unless the legislature has provided otherwise, such an agency has an implicit power to be a litigant in matters touching upon its concerns.

To illustrate this point Chief Justice Nix relied on Chapman v. Federal Power Commission which he found "to be a sound principle for resolving certain questions of standing that may arise in our jurisdiction."

Finally, the court determined that the Commonwealth Court's conclusion that the Commission had no standing to raise the DSEA because "that . . . statute had nothing to do with the Commission's statutory functions" was "patently erroneous." Here Chief Justice Nix cited several pertinent sections of the Game and

---

30. Ganzer, 555 A.2d at 815. The Administrative Agency Law, section 702 mandates that a person's right to obtain judicial review depends on having a direct interest in the agency's action and being aggrieved thereby. See 2 PA CONS STAT ANN. § 702 (1988).
32. Ganzer, 555 A.2d at 815.
33. Id.
34. Chapman v. Federal Power Commission, 345 U.S. 153, (1953). Here the United States Supreme Court held that the Secretary of the Interior had standing to challenge an order of the Federal Power Commission licensing a new hydroelectric generating station. This decision was based on the fact that the Power Commission's action impacted on the Department of Interior's statutorily mandated role as the marketer of excess hydroelectric power and its general statutory duties relating to the conservation of the nation's water resources.
35. Ganzer, 555 A.2d at 816.
36. Id.
Wildlife Code (Code) which set forth the powers and duties of the Game Commission. The most significant of these, in the court's opinion, was section 2161(c) of the Code. From this Chief Justice Nix concluded that "it is clear that the legislature recognized that the DSEA has a relationship to the functions and interests of the Commission, and it expressly gives the Commission the power to enforce the DSEA where a violation of it would adversely impact upon the property under the Commission's control."

Although the Supreme Court rejected the Commonwealth Court's holding as to the Commission's standing, the Supreme Court nonetheless affirmed the intermediate court's decision with regard to an adjudication on the merits. Chief Justice Nix responded that the Commonwealth Court correctly observed the narrow scope of judicial review in such an adjudication. Absent any of the infirmities which constitute an abuse of discretion, a decision by a state administrative agency must be affirmed. Under this governing standard of judicial review, the Supreme Court concluded that the Board's adjudication in this matter was not disturbable.

In a concurring opinion, Justice Larsen agreed with the majority's holding that the Commission did indeed have standing to raise violations of the DSEA to challenge the issuance of the solid waste permit granted by DER. He also contended that the Com-

37. *Id.* Game and Wildlife Code § 103(a) states that "ownership, jurisdiction over and control of game or wildlife is vested in the [C]ommission as an independent agency of the Commonwealth. . . ." See 34 PA. CONS. STAT. ANN. § 103(a) (Purdon 1988). Another section of the Code provides that the Commission (as an agency of the Commonwealth) is "authorized to regulate, protect, propagate, manage and preserve game and wildlife. . . ." See 34 PA. CONS. STAT. ANN. § 103(a) (Purdon 1988).

38. *Ganzer*, 555 A.2d at 816. Section 2161(c) of the Code provides in pertinent part that "the Commission shall have concurrent authority to enforce. . . . the Dam Safety and Encroachments Act, and the regulations thereto, with respect to encroachments and water obstructions only if a violation, would, in the opinion of the [C]ommission, negatively impact upon a swamp, marsh or wetland." See 34 PA. CONS. STAT. ANN. § 2161(c) (Purdon 1988).

39. *Ganzer*, 555 A.2d at 816. Here the court concluded that the Commission had standing to raise the DSEA in its challenge to DER's issuance of the solid waste permit. *Id.*

40. *Id.*

41. *Id.* See supra note 24.

42. *Id.* Section 704 of the Administrative Agency Law dictates that judicial review is restricted to a determining of whether there has been an error of law or a violation of constitutional rights, and whether any finding of fact necessary to the adjudication is supported by substantial evidence. See 2 PA. CONS. STAT. ANN. § 704 (Purdon 1969).

43. *Ganzer*, 555 A.2d at 816.

44. *Id.* at 817. Justice Larsen stated, "There is no question that the Commission has standing under our constitution, statutes and case law. . . ." *Id.*
mission, as one of the Commonwealth's trustees of natural resources and the public estate, had standing under Article I, Section 27 of the state constitution. Justice Larsen also agreed with the majority that the decision of the Board in affirming the issuance of the solid waste permit must be upheld.

Justice Larsen wrote separately to emphasize that the Commission's standing did not cease upon the issuance of the permit, but that the Commission may later petition DER to suspend or modify the permit if it detects environmental damage to Siegel Marsh or its inhabitants which, in the opinion of the Commission, would be caused by operation of the Ganzer landfill. Justice Zappala filed a separate concurring opinion in which he agreed with the majority's result that the permit should stand because there was no abuse of discretion by DER; however, he disagreed with the majority's holding that the Commission had standing to raise violations of the DSEA. Justice Zappala favored the Commonwealth Court's analysis which found that the Commission lacked standing to use the DSEA to challenge the solid waste permit. Furthermore, Justice Zappala disagreed with the majority's reliance on section 2161(c) of the Game and Wildlife Code dealing with concurrent authority.

45. Id. Article I, Section 27 of the Pennsylvania Constitution reserves a right in the people of the state to "... clean air, pure water, and the preservation of the natural, scenic, historic and esthetic values of the environment... as trustee of these resources the Commonwealth shall conserve and maintain them for the benefit of all..." PA. CONST. art. I, § 27, (adopted May 18, 1971).

46. Ganzer, 555 A.2d. at 817. See supra note 42.

47. Id. See Solid Waste Management Act, 35 PA. CONS. STAT. ANN. § 6018.503(c), (e) (Purdon 1988). Also, the Commission could take appropriate action in the courts of the Commonwealth to abate pollution and/or nuisances. Id. at section 6018.607.

48. Ganzer, 555 A.2d at 817. Justice Zappala continued:
The majority misunderstands... To establish the requirements of standing, the party, to be aggrieved, must have a direct, immediate and substantial interest in the matter to be adjudicated, and there must be a direct causal connection between the act complained of and the harm alleged. Our review of the record indicates that the Game Commission failed to plead sufficient facts or law to establish that it had a direct, immediate and substantial interest in the controversy to support its conclusion that it had standing.

Id. at 818.

49. Id. at 817. See supra, note 21. Justice Zappala stated, "I believe the statement of [the Commonwealth Court's] rationale is readily understood and is, in fact, correct." Id.

50. Id. at 818. See 34 PA. CONS. STAT. ANN. § 2161(c) (Purdon Supp. 1988). Justice Zappala concluded, "This provision grants concurrent authority to enforce the DSEA against violators of the Commission. It is inconclusive, however, on the question of whether the Commission may intervene in DER's proceedings." Ganzer, 555 A.2d at 818.
Although the Administrative Procedure Act addresses standing in terms of being "adversely affected" or "aggrieved," it is the cases throughout history that have expanded upon this central principle of the law of standing. Standing is defined in Black's Law Dictionary, under the caption "standing to sue doctrine," as meaning a party that has a "sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy," while the Pennsylvania Law Encyclopedia defines "standing to sue" as requiring "an adversely affected or aggrieved party to show a substantial, direct and immediate interest in the subject matter."

Standing has been viewed as an area of increasing inconsistency, unreliability and complexity especially when considering decisions on the subject rendered by the United States Supreme Court. There are two alternative explanations of this confusion and instability. The first explanation is the Supreme Court's primary interest in deciding the merits of a case. The second is the Supreme Court's use of standing to achieve desired results.

In *Chapman v. Federal Power Commission*, the Secretary of the Interior challenged the authority of the Federal Power Commission to grant a license to a private firm to construct a hydroelectric generating station. The central issue in *Chapman* focused

---

51. The Administrative Procedure Act provides that a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. 5 U.S.C. § 702 (1988).
52. 4 K. DAVIS, ADMINISTRATIVE LAW TREATISE, 2d, § 24:2 (1983).
53. 1 PENNSYLVANIA LAW ENCYCLOPEDIA, Persons Entitled to Sue § 5 (1986).
55. Too many decisions are extreme in one direction, at the same time that too many decisions are extreme in the other direction and this leads to the confusion. The simple question of who may litigate can and should have the simple answer that one who is adversely affected in fact by governmental action has standing to challenge its legality, and one who is not adversely affected in fact lacks standing. *Id.* at 212.
56. The quality of the Court's opinions on the law of standing is distinctly lower than it generally is on other questions because (1) the Court's primary interest is typically in the merits and it gives only secondary attention to such peripheral problems as standing, and (2) the Court tends to manipulate the law of standing in order to produce wanted substantive results, so that generalizations about standing often collide with generalizations similarly motivated. *Id.*
57. 345 U.S. 153 (1953).
58. *Id.* at 154.
on whether Congress, through various enactments, withdrew the Commission's authority to decide if the private sector, rather than the government, could construct the station. However, before the central issue could be addressed, the Supreme Court had to decide the issue of whether the Secretary of the Interior had standing. Justice Frankfurter answered that question in the affirmative, but failed to articulate any concrete reason for this answer. He simply stated that "it would not further clarification of this complicated specialty of federal jurisdiction, the solution of whose problems is in any event more or less determined by the specific circumstances of individual situations, to set out the divergent grounds in support of standing in these cases." Justice Frankfurter then continued with a lengthy discussion concerning the Federal Power Commission's authority. The Supreme Court concluded that the Commission's authority was not revoked by Congress and affirmed the decision of the Court of Appeals allowing the order to stand.

In the landmark case of Sierra Club v. Morton, the United States Supreme Court broadened the law of standing while denying the petitioners, a special interest group, standing. Here, the Sierra Club, a membership corporation with a "special interest in the conservation and sound maintenance of national parks. . ." sought to enjoin the development of a ski resort in an area adjac-
cent to Sequoia National Park. Justice Stewart, in delivering the opinion of the Court, first defined standing, and then went on to hold that the Sierra Club lacked standing to seek judicial review under the Administrative Procedure Act, because the club "failed to allege that it or its members would be [adversely] affected."

While the United States Supreme Court has applied a broader interpretation of standing by use of the concepts of "adversely affected or aggrieved" and "injury in fact," the Pennsylvania Supreme Court has, over time, sharpened and redefined its definition of standing. One of the earliest Pennsylvania cases dealing with standing was the case of *Gallager's Appeal*, where the Pennsylvania Supreme Court held that an administrator of an estate had no interest in the distribution of the estate and therefore had no standing to challenge the distribution of that estate. Years later, the Pennsylvania Supreme Court, in the 1934 case of *Landsdowne Borough Board of Adjustment's Appeal*, expanded the working definition of standing from "simply having an interest" to "needing to have a direct interest in the subject matter of a particular litigation." The Court concluded by saying that not only must a party desiring an appeal have a direct interest in the particular question litigated, "but his interest must be immediate and pecuniary, and not a remote consequence of the judgment. The interest must also be substantial."

One of the most famous (or infamous) Pennsylvania cases of recent years dealing with the law of standing is *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*. In this case the Supreme Court of Pennsylvania attempted to clarify the relevant principles of standing set down in *Landsdowne* which had resulted in confu-

---

66. 405 U.S. at 731.
67. *Id.* at 731. "Whether a party has sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy is what has traditionally been referred to as the question of standing to sue." *Id.*
68. *Id.* at 738. Justice Stewart continued by saying that "Some courts have indicated a willingness to . . . confer standing upon organizations that have demonstrated 'an organizational interest in the problem' . . . but a mere 'interest in a problem,' no matter how long-standing . . . is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved' within the meaning of the APA." *Id.* at 739.
69. 89 Pa. 29 (1879).
70. *Id.* at 30.
71. 313 Pa. 523, 170 A. 867 (1934).
72. *Id.* at 523, 170 A. at 868.
73. *Id.* at 525, 170 A. at 868.
74. 464 Pa. 168, 346 A.2d 269 (1975). This case arose after operators of parking lots and city residents and taxpayers challenged the city of Pittsburgh's ordinance imposing tax on all patrons of non-residential parking places. *Id.* at 182, 346 A.2d at 275.
sion among the lower courts. In determining whether the petitioners were aggrieved by the city ordinance, Justice Roberts, in delivering the opinion of the Court, observed that "the core concept, of course, is that a person who is not adversely affected in any way by the matter he seeks to challenge is not 'aggrieved' thereby and has no standing to obtain a judicial resolution of his challenge." In addition to being adversely affected or aggrieved, "one who seeks to challenge governmental action must show a direct and substantial interest" and a sufficiently close causal connection between the challenged action and the asserted injury to qualify the interest as 'immediate' rather than 'remote'.

Standing has become increasingly important with regard to environmental issues, especially in recent years. Several Pennsylvania Supreme Court decisions illustrate this fact. An example is Franklin Township v. Department of Environmental Resources. In Franklin Township, both Fayette County and Franklin Township challenged the Department of Environmental Resources's (DER)
issuance of a permit for a toxic waste landfill. On the question of whether the county and township had standing to challenge the permit, Justice Larsen in his opinion, reiterated the *Wm. Penn Parking Garage* standard, and held that the township and county did have a substantial, direct and immediate interest in the establishment and operation of a toxic waste landfill within its boundaries so as to have standing to challenge the issuance of the permit. He also observed that under the Solid Waste Management Act, consultation and cooperation with local governing bodies is required when the DER seeks to issue a permit. Justice Nix dissented, claiming that the majority had misconstrued the central purpose of the Solid Waste Management Act in holding that the appellants had standing to challenge the DER’s issuance of the permit. He commented that any provisions enabling local government units to “exercise potential vetoes over DER’s judgment” with regard to the issuance of permits was conspicuously absent from the statute and that the majority’s view would allow counties and townships to “intrude upon the ultimate authority vested in DER to establish a statewide solid waste management plan.”

*Susquehanna County v. Department of Environmental Resources* is another case which addressed the standing of a county

---


81. *Franklin Township*, 500 Pa. at 1, 452 A.2d at 718. Justice Larsen reasoned that the interest of local government, which is part of its physical existence, is substantial. “Aesthetic and environmental well-being are important aspects of the quality of life in society and local government has a key role in promoting and protecting this quality of life. Whatever affects the natural environment within the borders of a township or county affects the very township or county itself.” *Id.* at 6.

82. *Id.* at 10, 452 A.2d at 722. Although the provision of the statute calling for cooperation with local government was a recent enactment, Justice Larsen maintained that this was a statutory recognition of the “ever-existing direct and substantial interest local governing bodies have in the character and quality of the environment.” *Id.* See also, Solid Waste Management Act, 35 Pa. Cons. Stat. Ann. § 6018.504 (Purdon Supp. 1988).

83. *Franklin Township*, 500 Pa. at 13, 452 A.2d at 724. Justice Nix stated: The fact that appellants possess an interest in avoiding environmental pollution and economic loss as a result of potentially inadequate disposal of solid waste materials is not disputed. However, the legislature, in its passage of the Act, has clearly expressed a legislative judgment that protection of these environmental interests shall be vested primarily in the state, through DER.

*Id.*

84. *Id.* at 15, 452 A.2d at 725. Justice Nix continued: “The legislature, in enacting the Solid Waste Management Act, sought to achieve a balance between statewide . . . and . . . localized interests. . . . [The majority’s] decision has upset that balance.” *Id.* at 16, 452 A.2d at 725.

to challenge a solid waste permit issued by DER. The Supreme Court held, citing Franklin Township, that the county did have standing because it had a substantial, direct and immediate interest. Justice Larsen, writing again for the Court, reasoned that it would be incongruous to allow standing to challenge the issuance of a permit, yet deny standing to contest amendments to the existing permit. Justice Nix again dissented claiming that the majority's extension of Franklin Township was a further unwarranted infringement on DER's regulatory power. "The majority's holding opens the door to a plethora of third-party lawsuits which can effectively frustrate and render illusory DER's obligation to implement the provisions of the [SWMA]."

In determining that the Game Commission had standing to raise violations of the DSEA in order to challenge the solid waste permit issued by DER, the majority in Ganzer has only succeeded in confusing the concept of standing once again. Although Chief Justice Nix did initially reiterate the need for a party to be adversely affected, and thereby aggrieved, in order to obtain a judicial resolution of a controversy, he and the majority relied much too heavily on Chapman, a 1952 federal case, and section 2161(c) of the Game and Wildlife Code in order to accord the Game Commission standing. Chapman only mentioned standing and the conflict between two governmental agencies in passing so as to allow an examination of the merits of the case. There was no attempt to clarify the meaning of standing in Chapman; indeed Justice Frankfurter mentioned "it would not further clarification of this complicated spe-

86. Id. Susquehanna County seeks not only to challenge the permit, but to have it revoked entirely even after DER made extensive findings and ordered the permittee to refrain from all obvious violations.
87. Id. at 516, 458 A.2d at 931.
88. Id. Justice Larsen stated: "The County's role in protecting its substantial, direct and immediate interest in the environment could be negated by the issuance of a permit which meets with no county objections. . . ." Id.
89. Id. at 517, 458 A.2d at 932. Section 6018.503(e) of the Solid Waste Management Act states that: "any permit or license granted by the department [DER] . . . shall be revocable or subject to modification . . . at any time the department determines that the solid waste . . . treatment . . . facility . . . adversely affects the environment . . . [and/or] is being operated in violation of any terms or conditions of the permit. . . ." 35 PA. CONS. STAT. ANN. § 6018.503(e) (Purdon Supp. 1988).
90. Susquehanna County, 500 Pa. at 518, 458 A.2d at 932. Justice Nix continued: "The legislature has rendered its judgment that DER shall be the representative of the interests of the citizens of this Commonwealth in protecting the environment. That responsibility should not be abrogated by this Court." Id.
91. See supra notes 52 and 55 and accompanying text.
92. See supra notes 60-63 and accompanying text.
cialty of federal jurisdiction. . . ." Yet, the majority in Ganzer relied on Chapman as being "a sound principle for resolving certain questions of standing that may arise" in Pennsylvania.

There was further reliance on section 2161(c) of the Game and Wildlife Code and from this Chief Justice Nix determined that the Commission had standing to raise the DSEA when a violation would adversely impact upon property under the Commission’s control. According to section 2161(c), the Commission may concurrently enforce the DSEA only if a violation would, in the opinion of the Commission, negatively impact upon a marsh or wetland. However, the Environmental Hearing Board found that the Commission failed to sustain its burden of showing any adverse environmental affects or dangers threatening Siegel Marsh.

The majority cited Wm. Penn Parking Garage as one of the leading cases dealing with standing in Pennsylvania, yet failed to address the essential portion of that holding dealing with the need for a direct causal connection between the act complained of and the harm alleged if one seeks to challenge governmental action. The majority, although it cited precedent, failed to follow it.

As previously mentioned, there was no showing on the part of the Commission that the Ganzer landfill would in any way have an adverse impact upon Siegel Marsh. Herein lies the confusion. Justice Zappala’s concurrence in Ganzer most clearly addressed this confusion and was, therefore, more persuasive than the majority opinion. Justice Larsen’s separate concurrence further illustrated an interesting point where he concluded that the Commission may later petition DER to suspend or modify the permit if, sometime in the future, it detects environmental damage to Siegel

93. See supra note 61 and accompanying text.
94. See supra note 35 and accompanying text.
95. See supra note 37-39 and accompanying text. Only several years earlier, Justice Nix dissented in Franklin Township and again in Susquehanna County, claiming that the allowance of a county to challenge a solid waste permit issued by DER was "a further unwarranted infringement on DER’s regulatory powers." See supra notes 83-84 and notes 89-90 and accompanying text. Today’s decision in Ganzer would allow anyone to challenge a solid waste permit even after the DER has adequately determined that there will be no wastes deposited in the landfill that would adversely affect the environment.
96. See supra note 38 for language of section 2161(c) (emphasis added).
97. See supra notes 12-13 and accompanying text on the Environmental Hearing Board’s findings.
98. See supra note 28.
99. See supra notes 76-78 and accompanying text.
100. See supra note 48.
Marsh.101 It is inconceivable how the majority could reach the conclusion that the Commission does have standing when the Commission failed to sustain its burden of showing a direct, immediate and substantial interest in the controversy and yet affirm the decision of the Environmental Hearing Board.

History and precedent illustrate that the law of standing is a complex and inconsistent concept. Courts tend to redefine standing in each successive case. Instead of adhering to a uniform definition, judges seem to rely more on their own perception of standing rather than relying on precedent. In Ganzer, Chief Justice Nix and the Supreme Court of Pennsylvania created yet another interpretation of standing which will only lead to more confusion.

Carla J. Vrsansky

---

101. See supra note 47 and accompanying text (emphasis added).