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Comments

Due Process Challenges to the Strict Criminal Liability Provisions of Pennsylvania's Solid Waste Management Act

I. Introduction

Societies have long realized that the industrial and technological progress of humanity could adversely affect the health and well-being of the natural environment. Recognizing the importance of a healthy environment, societies began to regulate activities that caused, or had the potential to cause harm to the environment. In the early 1980's, state legislatures began to provide criminal sanctions for violations of their environmental laws.¹ Behaviors adversely affecting the environment were deemed controllable, and as a result, individuals and corporations could be held criminally responsible for their unlawful actions that harmed, or had the potential to harm the environment. Some states have drafted their environmental laws to include strict criminal liability for offenses, dispensing with the common law requirement of *mens rea*.²

1. MARY CLIFFORD, ENVIRONMENTAL CRIME: ENFORCEMENT, POLICY, AND SOCIAL RESPONSIBILITY xvii (1998).

2. As stated at common law, crime resulted only from the concurrence of an evil-meaning mind with an evil-doing hand. *Morrisette v. United States*, 342 U.S. 246, 251 (1951). Thus, a crime generally consisted of two elements. *Id.* The first is a physical wrongful act or deed, the *actus reus*. *Id.* The second is the guilty mind that produces the

The Pennsylvania General Assembly has gone as far as making it possible for an individual or corporation to be held strictly liable³ for a felony under the Solid Waste Management Act of 1980 (hereinafter SWMA).⁴

Departures from common law standards, such as the requirement of *mens rea*, usually result in Constitutional challenges, frequently on due process grounds. In Pennsylvania, there have been numerous due process challenges to the imposition of strict criminal liability under the SWMA.

In order to better understand these challenges and their implications, this comment will first briefly discuss the growth of environmental crimes and the use of strict criminal liability for violations of environmental laws in Pennsylvania. Next, several of the challenged SWMA provisions will be discussed as well as strict liability and due process in general. Finally, several Pennsylvania cases raising specific due process challenges to the strict criminal liability provisions of the SWMA will be discussed followed by a discussion on the continued viability of the strict criminal liability provisions following the doubts expressed in the 2002 case of *Commonwealth v. Packer*.

II. Environmental Crimes History

In England, criminal penalties for pollution date back to the early 14th century.⁵ In 1306, King Edward I issued a Royal proclamation prohibiting craftsmen from using coal in their furnaces in order to reduce the amount of smoke over London.⁶ Violators of the King's decree could be put to death.⁷ The first environmental regulation in what would eventually become the United States took place in 1626, when the Plymouth Colony enacted ordinances regarding the harvesting of timber on colony lands.⁸ The first environmental law in the United States to

act, or *mens rea*. *Id.* *Mens rea* refers to a mental state, often an element of the offense, which expresses the intent necessary for a particular act to constitute a crime. The intent necessary may be expressed in a number of ways, i.e., knowingly, intentionally, willfully, etc. Normally, a criminal conviction requires both a wrongful act and wrongful intent. *Id.* at 251-52.

3. "In the context of the SWMA, strict or absolute liability means that criminal sanctions may be imposed without the necessity of the Commonwealth proving that the defendant acted with the intent to commit a crime." *Baumgardner Oil Co. v. Commonwealth*, 606 A.2d 617, 625 (Pa. Commw. Ct. 1992).

4. 35 PA. CONS. STAT. § 6018.606(f), (i) (2003).

5. YINGYI SITU & DAVID EMMONS, ENVIRONMENTAL CRIME: THE CRIMINAL JUSTICE SYSTEM'S ROLE IN PROTECTING THE ENVIRONMENT 22 (2000).

6. JAY S. ALBANESE & ROBERT D. PURSLEY, CRIME IN AMERICA: SOME EXISTING AND EMERGING ISSUES 225 (1993).

7. *Id.*

8. CLIFFORD, *supra* note 1, at 32.

contain criminal sanctions for violations was the Rivers and Harbors Appropriation Act of 1899, commonly referred to as the Refuse Act.⁹ Violations of the Refuse Act were classified as misdemeanors, punishable by a fine of up to \$2,500, imprisonment of up to one year, or both.¹⁰ Criminal sanctions for violations of environmental laws have progressed significantly since 1899. Today, violations of environmental laws such as Pennsylvania's Solid Waste Management Act can be punishable as felonies and, in some cases, violators can be held strictly liable.¹¹

III. The Roots of Strict Liability for Environmental Crimes in Pennsylvania

A. *Commonwealth v. Immel*

One of the precursors to modern Pennsylvania law regarding strict liability for environmental crimes occurred in the 1907 case of *Commonwealth v. Immel*.¹² A discharge from the Bramcote Dye Works (Bramcote) flowed into "pits" (the physical characteristics of the pits were not described), which progressed into a local stream and finally emptied into the Schuylkill River.¹³ The defendant in *Immel*, the proprietor of Bramcote, was charged with violating a state law prohibiting the pollution of waters.¹⁴ According to the law at issue, a person polluted water if the placement of poisonous substances into waters of the Commonwealth resulted in the destruction of fish.¹⁵

9. SITU & EMMONS, *supra* note 5, at 22. Rivers and Harbors Appropriation Act of 1899, 30 Stat. 1152, 1153 (1899). Now codified at 33 U.S.C. § 407 (2000); 33 U.S.C. § 411 (2000).

10. *Id.* The penalties section of the Refuse Act are now codified at 33 U.S.C. § 411 (2000). In 1996, the penalty provision was amended to allow a higher fine, \$25,000 as opposed to \$2,500. Water Resources Development Act of 1996, Pub. L. No. 104-303, § 218(a), 110 Stat. 3658, 3696 (1996).

11. See 35 PA. CONS. STAT. § 6018.606(f), (i) (2003).

12. *Commonwealth v. Immel*, 33 Pa. Super. 388 (1907).

13. *Id.* Among the poisonous substances allegedly emitted from Bramcote were; "aniline, chromine, sulphate of copper, chloride of copper, sulphuric acid, hydrochloric acid, and other substances all of which were deadly poison." The Schuylkill River is located in southeastern Pennsylvania and is the largest tributary of the Delaware River, which it joins in Philadelphia before emptying into the Delaware Bay. *The Schuylkill River*, available at <http://www.web-savvy.com/river/schuylkill/schuylkill2.html> (last visited Nov. 25, 2003).

14. *Id.*

15. *Id.* The Act violated read as follows:

That from and after the passage of this act it shall be unlawful to fish in any waters of this Commonwealth with dynamite, nitro-glycerine, torpedoes, electricity, quick-lime, or with any kind of explosive or poisonous substances; or to place such substances in any waters whatever, except for engineering

The court held that the statute required a showing of intent on the part of the actor for the placement of poisonous substances into the stream but did not require a showing of intent to destroy the fish.¹⁶ In support of their holding, the court reasoned that intent and motive are two different things, and as a general rule, “a sane man is presumed to intend the necessary or the natural and probable consequences of his voluntary acts.”¹⁷

B. *The Pittston Borehole Case*

Perhaps the first serious case of an environmental crime in Pennsylvania, demonstrating the need for legislation with serious criminal penalties and strict criminal liability, was the Pittston borehole case.¹⁸ From August 1978 to July 1979, waste hauled by the Hudson Oil Refining Corporation of Edgewater, New Jersey was being dumped down a borehole located on the property of an automotive service station in Luzerne County owned and operated by Elmo Scatena and his two sons.¹⁹ On July 29, 1979, hundreds of thousands of gallons of untreated industrial and chemical wastes began spewing into the Susquehanna River from the Butler Mine Tunnel in Pittston, Pennsylvania.²⁰ In two

purposes, when written permission has been given thereof by the proper national, state, city or county official or officials. Any person violating any of the provisions of this act shall, on conviction thereof as provided in section 38 of this act, be subject to a fine of one hundred dollars and imprisonment of six months in the county jail.

Act of May 29, 1901, § 26, 1901 Pa. Laws 302.

16. *Id.* In interpreting the statute, the *Immel* court gave the word “place” its ordinary meaning, implying a direct act or an act from which a result would flow. *Id.* The court rejected the view that the poisonous substance must pass directly from the hand of the accused or his agent/servant into the stream. *Id.* Instead, the court held that the word “place,” as used in the statute, contemplated not every negligent or inadvertent act no matter how remote, but an intentional act proximately connected with introduction of the poisonous substance into the stream. *Id.* “But in proving the commission of the prohibited act it is not necessary to prove that the accused was impelled by an evil motive to destroy the fish.” *Id.*

17. *Id.*

18. Michael A. Staub, *The Environmental Crimes Section: A Historical Perspective*, available at <http://www.attorneygeneral.gov/cld/articles/envi.cfm> (last visited Nov. 18, 2004); *Commonwealth v. Scatena*, 498 A.2d 1314 (Pa. 1985).

19. STAUB, *supra* note 18; *Scatena*, 498 A.2d at 1315. A borehole is a mine ventilation shaft. Elmo Scatena and his two sons, the proprietors of the Highway Auto Service, received a cash payment between \$150.00 and \$200.00 for each load dumped. *Scatena*, 498 A.2d at 1315. Among the substances dumped down the borehole were metallic chips of iron, chrome, nickel, and copper hydroxides from “oily sludges and cutting solutions”. *Id.* Also, substances containing sodium methacrylate, sodium chlorine, sodium sulfate, hydroquinone, and pyrogallol acids were dumped down the borehole. *Id.* In addition, at least 66,000 gallons of waste cyanide were dumped. *Id.*

20. STAUB, *supra* note 18; *Scatena*, 498 A.2d at 1316. Pittston is located in northeast Pennsylvania (Luzerne County), approximately twelve miles southeast of

days, despite immediate efforts to contain the discharge, the Susquehanna River was polluted with a bank-to-bank oil sheen that spread thirty-five miles downstream from the point of discharge.²¹ The discharge also threatened the water supply of the town of Danville, Pennsylvania, some sixty miles downstream from the point of discharge.²² Tests confirmed that the waste dumped down the Scatena's borehole was the cause of the pollution emanating from the mine tunnel.²³ Because the SWMA was not passed until July of 1980, Elmo Scatena and his two sons were charged with, and subsequently convicted of, risking a catastrophe and violating the Pennsylvania Clean Stream Law.²⁴

The convictions of Elmo Scatena and his two sons were upheld by the Pennsylvania Supreme Court in *Commonwealth v. Scatena*.²⁵ The *Scatena* court held that the pollution of a major public water source resulting from the discharge of enormous quantities of hazardous industrial wastes and dangerous chemicals is enough to establish a violation of the risking a catastrophe statute.²⁶ The Pittston borehole case also resulted in the convictions of the Hudson Oil Refining Corporation, its president, and six other officials and employees of the corporation.²⁷

C. *From Then to Today*

In 1980, two important developments in Pennsylvania environmental protection occurred. The first was the creation of a specialized unit in the Pennsylvania Office of Attorney General for the investigation and prosecution of environmental crimes, which this comment will not discuss in detail.²⁸ The second was the enactment of

Scranton.

21. *Scatena*, 498 A.2d at 1316; STAUB, *supra* note 18.

22. *Scatena*, 498 A.2d at 1316; STAUB, *supra* note 18. Specifically, tests revealed the presence of dichlorobenzene, which had been found in and around the borehole, in the raw water intake and the finished water of Danville. *Scatena*, 498 A.2d at 1316. Also, officials considered ordering a mass evacuation of the area due to the potentially explosive and poisonous gases escaping from the mine tunnel. Staub, *supra* note 18.

23. *Scatena*, 498 A.2d at 1316. In August of 1979, a dye test, known as a rhodamine-wt dye test, revealed that over 60% of the dye poured into the defendant's borehole had issued from the Butler Mine Tunnel. *Id.*

24. *Scatena*, 498 A.2d at 1315.

25. *Id.*

26. *Id.* at 1317

27. *Id.* at 1315 (for the three owners of the Highway Auto Service); Staub, *supra* note 18. Along with a \$750,000 fine for the Hudson Oil Refining Corp., the president of the corporation was sentenced to one year in prison, which marked the first time a corporate official had been imprisoned on illegal dumping charges. *Id.*

28. STAUB, *supra* note 18. In February of 1980, then Pennsylvania Attorney General Edward G. Biester, Jr. created the Toxic Waste Investigation and Prosecution Unit, which

the SWMA by the Pennsylvania General Assembly.²⁹

The SWMA created a myriad of offenses for the illegal management of hazardous, residual, and municipal waste.³⁰ Prior to the passage of the SWMA, offenses for the mismanagement of waste were handled primarily as summary littering violations.³¹ In stark contrast to summary littering violations, the SWMA provided misdemeanor and felony penalties as well as strict criminal liability for violating its provisions.³² The use of these strict criminal liability provisions has been challenged several times in Pennsylvania courts as being in violation of the due process requirements found in the Pennsylvania and the United

has become the Environmental Crimes Section. *Id.* For more information on the Environmental Crimes Section *see id.*

29. *See* STAUB, *supra* note 18; Act of July 7, 1980, No. 97, 1980 Pa. Laws 380 (codified at 35 PA. CONS. STAT. §§ 6018.101-6018.1003 (2003)).

30. 35 PA. CONS. STAT. §§ 6018.101-6018.1003 (2003). Hazardous waste is defined in the SWMA as

Any garbage, refuse, sludge from an industrial or other waste water treatment plant, sludge from a water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid or contained gaseous material resulting from municipal, commercial, industrial, institutional, mining, or agricultural operations, and from community activities, or any combination of the above, (but does not include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under § 402 of the Federal Water Pollution Control Act . . .), which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

- (1) cause or significantly contribute to an increase in mortality or an increase in morbidity in either an individual or the total population; or
- (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. . . .

35 PA. CONS. STAT. § 6018.103 (2003). Municipal waste is defined in the SWMA as Any garbage, refuse, industrial lunchroom or office waste and other material including solid, liquid, semisolid or contained gaseous material resulting from operation of residential, municipal, commercial or institutional establishments and from community activities and any sludge not meeting the definition of residual or hazardous waste hereunder from a municipal, commercial or institutional water supply treatment plant, waste water treatment plant, or air pollution control facility.

35 PA. CONS. STAT. § 6018.103 (2003). Residual waste is defined in the SWMA as Any garbage, refuse, other discarded material or other waste including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, mining and agricultural operations and any sludge from an industrial, mining or agricultural water supply treatment facility, waste water treatment facility or air pollution control facility, provided that it is not hazardous. . . .

35 PA. CONS. STAT. § 6018.103 (2003).

31. STAUB, *supra* note 18. Under Pennsylvania law crimes are classified as felonies, misdemeanors, or summary offenses. 18 PA. CONS. STAT. § 106(a-d) (2003). Summary offenses are minor criminal offenses usually characterized by monetary penalties, as with a traffic citation. Summary offenses can carry maximum penalties of up to ninety days in jail. 18 PA. CONS. STAT. § 106(d) (2003).

32. 35 PA. CONS. STAT. § 6018.606(f)(g)(i) (2003).

States Constitutions. In each case, the SWMA provisions imposing strict criminal liability have been upheld.³³ However, doubt may have been cast on the continued viability of the SWMA's strict criminal liability provisions after the 2002 case of *Commonwealth v. Packer*, which will be discussed near the end of the comment.³⁴

IV. Several Challenged SWMA Provisions

The Pennsylvania General Assembly recognized that improper and inadequate solid waste practices create public health hazards, environmental pollution, economic loss, and irreparable harms to the public health, safety and welfare.³⁵ The SWMA was enacted, in part, to protect the public from the short and long-term dangers of transporting, processing, treating, storing and disposing of all wastes and to provide a flexible and effective means of implementing and enforcing the Act.³⁶ As further justification for enacting the SWMA, the General Assembly invoked Article I, Section 27 of the Pennsylvania Constitution, which recognizes the right of the people to a healthy environment.³⁷

Numerous SWMA provisions set out illegal conduct.³⁸ Generally,

33. *Commonwealth v. Packer*, 798 A.2d 192 (Pa. 2002); *Baumgartner Oil Co. v. Commonwealth*, 606 A.2d 617 (Pa. Commw. Ct. 1992); *Commonwealth v. Parker White Metal Co.*, 515 A.2d 1358 (Pa. 1986); *Commonwealth v. Farmer*, 750 A.2d 925 (Pa. Commw. Ct. 2000).

34. See *Commonwealth v. Packer*, 798 A.2d 192 (Pa. 2002) (Saylor, JJ., concurring and dissenting).

35. 35 PA. CONS. STAT. § 6018.102 (2003). Section 102 states:
[t]he Legislature hereby determines, declares, and finds that, since improper and inadequate solid waste practices create public health hazards, environmental pollution, and economic loss, and cause irreparable harm to the public health, safety and welfare, it is the purpose of this act to:
(4) protect the public health, safety, and welfare from the short and long term dangers of transportation, processing, treatment, storage, and disposal of all wastes;
(5) provide a flexible and effective means to implement and enforce the provisions of this act. . . .”

Id.

36. 35 PA. CONS. STAT. § 6018.102(4), (5) (2003).

37. 35 PA. CONS. STAT. § 6018.102(10) (2003). Article I, § 27 of the Pennsylvania Constitution states:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

PA. CONST. art. I, § 27. This provision not only recognizes rights not to be denied by the government, but also establishes rights to be protected by the government. *Commonwealth v. Nat'l Gettysburg Battlefield Tower, Inc.*, 302 A.2d 886, 892 (Pa. Commw. Ct. 1973).

38. Like most modern environmental laws, the SWMA divides criminal behavior

most prosecutions for violating the SWMA are under Section 6018.610, which identifies nine unlawful acts.³⁹ Notably, under Section 610(1), it is unlawful for any person or municipality to dump or deposit any solid waste⁴⁰ “onto the surface of the ground, underground, or into the waters of the Commonwealth, by any means, unless” permitted by the Pennsylvania Department of Environmental Protection (DEP).⁴¹ Additionally, the prohibitions of Section 610(9) make it unlawful for any person or municipality to assist in the violation of any provision of the SWMA.⁴²

Another frequently violated provision of the SWMA that has resulted in prosecutions and subsequent constitutional challenges is Section 6018.401. Section 401 prohibits any storage, transportation, treatment, or disposal of hazardous waste without a permit.⁴³ Of particular importance is Section 401(b) which declares the intention of the Pennsylvania legislature to subject to liability for harm the person carrying on those particular activities even if the utmost care was used and regardless of whether the activities were conducted prior to the

into three basic categories. The first class contains violations of a permit condition, such as dumping waste in excess of the permitted amount. The second class contains acts or omissions that are violations of Pennsylvania environmental regulations. An example would be the transportation of hazardous waste without a manifest of the waste being transported as required by 25 PA. CODE § 236.532 (2002). The last category contains actions that would be illegal regardless of regulations such as dumping hazardous waste on the side of the highway.

39. Interview with David Raphael, former Deputy Attorney General, Pennsylvania Office of Attorney General, Environmental Crimes Section, in Harrisburg, Pa. (Mar. 21, 2001). In nine subsections, § 610 sets out a variety of offenses for the improper storage, transportation, disposal, and treatment of solid waste. 35 PA. CONS. STAT. § 6018.610(1-9) (2003).

40. Solid waste as defined in the SWMA is: “Any waste, including but not limited to, municipal, residual or hazardous wastes, including solid, semisolid or contained gaseous materials. The term does not include coal ash or drill cuttings.” 35 PA. CONS. STAT. § 6018.103 (2003).

41. 35 PA. CONS. STAT. § 6018.610(1) (2003) reads:

It shall be unlawful for any person or municipality to:

(1) Dump or deposit, or permit the dumping or depositing, of any solid waste onto the surface of the ground or underground or into the waters of the Commonwealth, by any means, unless a permit for the dumping of such solid wastes has been obtained from the department; provided, the Environmental Quality Board may by regulation exempt certain activities associated with normal farming operations as defined by this act from such permit requirements.

Id.

42. 35 PA. CONS. STAT. § 6018.610(9) (2003) reads: “It shall be unlawful for any person or municipality to: (9) [c]ause or assist in the violation of any provision of this act, any rule or regulation of the department, any order of the department or any term or condition of any permit.” *Id.*

43. 35 PA. CONS. STAT. § 6018.401 (2003).

passage of the SWMA.⁴⁴

Violators of the above provisions may be held criminally responsible for their actions as prescribed in Section 6018.606.⁴⁵ A person who violates any provision of the SWMA may be found guilty of a summary offense or a third-degree misdemeanor.⁴⁶ Under Section 606(a), a person who violates any provision of the SWMA may be found guilty of a summary offense and upon conviction, subject to a fine of between \$100 and \$1,000 and court costs.⁴⁷ Under Section 606(b), a person who violates any provision of the SWMA may be found guilty of a third-degree misdemeanor and upon conviction, subject to a fine of between \$1,000 and \$25,000 per day for each violation or imprisoned for not more than one year.⁴⁸ Under Section 606(f), any person in violation of Section 401 may be found guilty of a second-degree felony and upon conviction, sentenced to pay a fine of between \$2,500 and \$100,000 per day for each violation or imprisoned for between two and ten years, or both.⁴⁹ Most importantly, for purposes of this comment is Section 6018.606(i), which declares the Pennsylvania legislature's intent to

44. 35 PA. CONS. STAT. § 6018.401(b) (2003) states: "The storage, transportation, treatment, and disposal of hazardous waste are hereby declared to be activities, which subject the person carrying on those activities to liability for harm although he has exercised utmost care to prevent harm, regardless whether such activities were conducted prior to the enactment hereof." *Id.*

45. 35 PA. CONS. STAT. § 6018.606(a-j) (2003).

46. 35 PA. CONS. STAT. § 6018.606(a), (b) (2003).

47. 35 PA. CONS. STAT. § 6018.606(a) (2003).

Any person, other than a municipal officer exercising his official duties, or a municipality who violates any provision of this act, the rules and regulations of the department, or any order of the department, or any term or condition of any permit upon conviction thereof in a summary proceeding, shall be sentenced to pay a fine of not less than \$100 and not more than \$1,000 and costs and, in default of the payment of such fine and costs, to undergo imprisonment for not more than 30 days.

Id.

48. 35 PA. CONS. STAT. § 6018.606(b) (2003) states:

Any person, other than a municipal officer exercising his official duties who violates any provision of this act, any rule or regulation of the department, any order of the department, or any term or condition of any permit, shall be guilty of a misdemeanor of the third degree and, upon conviction, shall be sentenced to pay a fine of not less than \$1,000 but not more than \$25,000 per day for each violation or to imprisonment for a period of not more than one year, or both.

Id.

49. 35 PA. CONS. STAT. § 6018.606(f) (2003) states:

Any person who stores, treats, or disposes of hazardous waste within the Commonwealth in violation of section 401, or in violation of any order of the department shall be guilty of a felony of the second degree and upon conviction, shall be sentenced to pay a fine of not less than \$2,500 but not more than \$100,000 per day for each violation or to imprisonment for not less than two years, but not more than 20 years, or both.

Id.

impose strict liability for specified offenses including Sections 6018.610 and 6018.401.⁵⁰ Violators of the SWMA have challenged these strict liability provisions as being in violation of both state and federal Due Process Clauses. Several significant cases addressing these challenges will be discussed following an overview of the theory of strict liability and the requirements of due process.

V. Strict Liability and Due Process of Law

A. *Strict Liability Generally*

The SWMA imposes strict criminal liability for specified offenses.⁵¹ Strict liability allows the imposition of criminal responsibility, or culpability, without proof of *mens rea*. In other words, the prosecution does not have to prove that the defendant acted with the intent to commit a crime.⁵² Under the theory of strict liability, a person who commits an

50. 35 PA. CONS. STAT. § 6018.606(i) (2003) states in pertinent part: "With respect to the offenses specified in subsections (a), (b), (c) and (f), it is the legislative purpose to impose absolute liability for such offenses." *Id.*

51. 35 PA. CONS. STAT. § 6018.606(i) (2003) reads:

With respect to the offenses specified in subsections (a), (b), (c) and (f), it is the legislative purpose to impose absolute liability for such offenses. However, a generator who has complied with section 403 shall not be held criminally liable under this section if wastes have been transported in compliance with all applicable provisions of this act and the regulations promulgated and licenses issued thereunder, and provided that such wastes have been accepted by a facility designated in accordance with section 403(b)(6).

Id.

The SWMA uses the term absolute liability in referring to the imposition of criminal liability without a showing of intent. 35 PA. CONS. STAT. § 6018.606(f) (2003). For the purpose of this comment, the term strict liability will be used as opposed to absolute liability. Strict liability under the SWMA may be applied to "any person" violating the specified sections. *Id.* A "person" under the SWMA is defined as

[a]ny individual, partnership, corporation, association, institution, cooperative enterprise, municipal authority, Federal government or agency, State institution and agency . . . , or any other legal entity whatsoever which is recognized by law as the subject of rights and duties. In any provision of this act prescribing a fine, imprisonment, or penalty, or any combination of the foregoing, the term "person" shall include the officers and directors of any corporation or other legal entity having officers and directors.

35 PA. CONS. STAT. § 6018.103 (2003).

52. *Baumgartner Oil Co. v. Commonwealth*, 606 A.2d 617, 625 (Pa. Commw. Ct. 1992). At common law, prosecutors were required to show the defendant acted with the requisite intent (*mens rea*) for a conviction. *See supra* note 2. Proving the intent of an actor is no easy task especially in the environmental crimes context. If prosecutors were required to show that the accused intended to harm the environment by their actions, convictions would be much tougher to obtain. By removing this requirement, strict liability offenses substantially lowers the burden on prosecutors in order to convict the accused. Under a strict liability standard, prosecutors need only prove that the defendant committed the act, not that the actor intended the consequences.

act or fails to act when required to do so, is responsible for that act whether or not he or she intended to cause harm or whether or not the act was legal at the time of commission.⁵³ Thus, a defendant is subject to criminal liability simply on the proof that the defendant committed the act.⁵⁴ As a result, the burden of proof for the prosecution in cases of certain alleged SWMA violations is lower than the burden of proof for other crimes requiring *mens rea* for a conviction. Pennsylvania's use of strict liability raises several concerns, one of which is the federal and state Constitutional demand that no person be deprived of life, liberty, or property without due process of law.⁵⁵ These demands serve as a limit to a state's power to enact laws imposing strict liability.

B. Due Process Generally

The Fourteenth Amendment to the United States Constitution prohibits a person from being deprived of life, liberty, or property, without due process of law.⁵⁶ Article I Section 9 of the Pennsylvania State Constitution provides that a criminally accused person cannot be deprived of life, liberty, or property, "unless by judgment of his peers or the law of the land."⁵⁷ The phrases "law of the land" as used in the Pennsylvania Constitution and "due process of law" as used in the Fourteenth Amendment are legal equivalents.⁵⁸

Due process of law ensures "respect for those personal immunities so rooted in the traditions and conscience of our people as to be ranked as fundamental, or those implicit in the concept of ordered liberty."⁵⁹ The U.S. Supreme Court has declared that the touchstone of due process is protection of the individual against arbitrary government action.⁶⁰

53. CLIFFORD, *supra* note 1, at 18.

54. *Id.* at 134.

55. U.S. CONST. amend XIV § 1; PA. CONST. art. I, § 9.

56. The Fourteenth Amendment states, in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend XIV § 1.

57. Article I, § 9 provides, in part: "In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, . . . he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty, or property, unless by judgment of his peers or the law of the land. . . ." PA. CONST. art. I, § 9.

58. *Commonwealth v. Heck*, 491 A.2d 212, 219 (Pa. Super. Ct. 1985) (citing *Eiffert v. Pennsylvania Cent. Brewing Co.*, 15 A.2d 723 (Pa. Super. Ct. 1940)); *Commonwealth v. CSX Transp.*, 653 A.2d 1327, 1331 n.4 (Pa. Commw. Ct. 1995).

59. *Heck*, 491 A.2d at 219 (citing *Commonwealth v. Mayhugh*, 336 A.2d 379 (Pa. Super. Ct. 1975)).

60. *Wolff v. McDonnell*, 418 U.S. 539, 559 (1974) (citing *Dent v. West Virginia*, 129 U.S. 114 (1889)).

Included in the concept of due process has been a degree of protection against the imposition of criminal responsibility without proving *mens rea* on the part of the actor.⁶¹

The necessity of *mens rea* as a prerequisite to a finding of criminal responsibility or culpability is an ancient concept.⁶² This requirement, as the U.S. Supreme Court noted in *Morissette v. United States*, is as universal and persistent in mature systems of law as belief in the freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.⁶³ Therefore, as a general principal, crime generally resulted only from a “concurrence of an evil-meaning mind” and “an evil-doing hand.”⁶⁴ This principal permeated American common law while developing certain exceptions during the process.⁶⁵ The offenses for which exceptions to a *mens rea* requirement have been recognized are of a different character from those offenses at common law which required *mens rea*.⁶⁶ One such category of offenses exempted from the common law requirement of *mens rea* is public welfare offenses.⁶⁷

C. *Modification of the Mens Rea Requirement for the Advent of Public Welfare Offenses*

In *United States v. Balint*, then Chief Justice Taft recognized a modification to the common law rule requiring *mens rea* for proof of every crime.⁶⁸ Instances of this modification are largely found in regulatory measures where the emphasis of the statute is upon achievement of some social betterment rather than the punishment of criminal acts, as in the case of crimes *mala in se*.⁶⁹ One such exception

61. *Heck*, 491 A.2d at 219 (citing *Morissette v. United States*, 342 U.S. 246 (1952)).

62. *See Morissette v. United States*, 342 U.S. 246, 250-51 (1952).

63. *Morissette*, 342 U.S. at 250.

64. *Id.* at 251.

65. *Id.*; *see also United States v. Balint*, 258 U.S. 250, 251 (1922). Exceptions include: sex offenses such as rape, offenses of negligence such as involuntary manslaughter or criminal negligence. *Morissette*, 342 U.S. at 251 n.8.

66. *Morissette*, 342 U.S. at 252-53.

67. *Id.*

68. While the general rule at common law was that the scienter was a necessary element in the indictment and proof of every crime, and this was followed in regard to statutory crimes even where the statutory definition did not in terms include it [...], there has been a modification of this view in respect to prosecutions under statutes the purpose of which would be obstructed by such a requirement.

United States v. Balint, 258 U.S. 250, 251-52 (1922).

69. *Id.* at 252. *Mala in se* (evil in itself) is defined as “[a] crime or an act that is inherently immoral, such as murder, arson, or rape.” BLACK’S LAW DICTIONARY 777-78 (abr. 7th ed. 2000). *Mala prohibita/um* (prohibited evil) is defined as “[a]n act that is a crime merely because it is prohibited by statute, although the act itself is not necessarily

has been in the area of so called public welfare offenses which include criminal nuisances and violations of general police regulations passed for the safety, health or well-being of the community.⁷⁰

Public welfare offenses do not fit neatly into any one classification of common law offenses, such as offenses against the state, the person, property, or public morals.⁷¹ Public welfare offenses are not offenses of aggression or invasion.⁷² Instead, these offenses are in the nature of neglect where the law requires care, or inaction where the law imposes a duty.⁷³ Most violations do not result in an immediate injury to persons or property, but merely create the danger or probability of the harm the law seeks to minimize or prevent.⁷⁴

Public welfare offenses may not compromise national security, but they are equal to offenses against national authority, making the resulting harm comparable.⁷⁵ Their occurrence impairs the efficiency of controls that are essential to the social order.⁷⁶ “In this respect, whatever the intent of the violator, the injury is the same, and the consequences are injurious or not according to fortuity.”⁷⁷ In other words, whether the harm to society from public welfare offenses actually leads to injuries to property or people depends merely on chance. As a result, public welfare offenses do not specify intent as an element.

In concluding his discussion of public welfare offenses, Chief Justice Taft pointed out one of the primary justifications for allowing an exception to the *mens rea* requirement—that the penalties for violations are relatively small, and convictions do not gravely damage the offender’s reputation.⁷⁸ However, this is no longer the case under several public welfare statutes, such as the SWMA. This break with traditional public welfare offenses makes the strict liability provisions of the SWMA especially susceptible to constitutional challenges.

immoral.” *Id.* Examples of *mala prohibita* are jaywalking, many regulatory offenses, and public welfare offenses.

70. Francis B. Sayre, *Public Welfare Offenses* 33 COLUM. L. REV. 55, 73, 84 (1933).

71. *Morissette*, 342 U.S. at 255.

72. *Id.*

73. *Id.*

74. *Id.* at 256.

75. *Id.*

76. *Morissette*, 342 U.S. at 256.

77. *Id.*

78. *Id.*

VI. Due Process Challenges to the Strict Criminal Liability Provisions of the SWMA

There is no absolute due process requirement that a legislature condition criminal liability on the intent, knowledge, or diligence of the actor.⁷⁹ Despite this fact, a state's power to enact statutes protecting the public health, safety, and welfare by imposing strict criminal liability is limited by the constitutional commands of due process.⁸⁰ Cognizant of these limits, Pennsylvania courts have been consistent in holding that the strict liability provisions of the SWMA are not in violation of the due process requirements of the Pennsylvania or United States Constitutions.

Individuals and corporations have challenged the validity of the SWMA's criminal provisions on several different due process theories. Among the arguments that will be discussed in the remainder of this comment are void for vagueness and excessive penalties for strict criminal liability provisions.

A. *Void for Vagueness*

The most common due process challenge to the strict criminal liability provisions of the SWMA has been under the void for vagueness doctrine. Generally, the void for vagueness doctrine requires that a criminal statute define a specified offense with "sufficient definiteness" that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.⁸¹

The principle aspect of the doctrine is the requirement that legislation establish minimal guidelines to govern law enforcement.⁸² Without such minimal guidelines, a criminal statute might permit "a standardless sweep that allows policemen, prosecutors, and juries to pursue their personal predilections."⁸³ Beyond minimal guidelines for law enforcement, a criminal statute is unconstitutionally vague if it fails to give a person of ordinary intelligence fair notice that contemplated conduct is forbidden.⁸⁴ In addition, vague sentencing provisions may also present due process issues if they do not state with sufficient clarity

79. *Commonwealth v. Heck*, 491 A.2d 212, 219 (Pa. Super. Ct. 1985); *see also*, *Lambert v. California*, 355 U.S. 225 (1957).

80. *Heck*, 491 A.2d at 219.

81. *Commonwealth v. Parker White Metal Co.*, 515 A.2d 1358, 1367 (Pa. 1986) (quoting *Kolender v. Lawson*, 461 U.S. 352, 357 (1983)).

82. *Parker White Metal Co.*, 515 A.2d at 1367.

83. *Id.*

84. *Commonwealth v. Farmer*, 750 A.2d 925, 929 (Pa. Commw. Ct. 2000) (citing *Commonwealth v. Barud*, 681 A.2d 162 (Pa. 1996)).

the consequences of violating a given criminal statute.⁸⁵ At a minimum, due process requires that the prohibited conduct and the range of penalties associated with the offense be unambiguously identified.⁸⁶ The requirements of due process are satisfied if the statute in question contains reasonable standards to guide prospective conduct.⁸⁷

1. *Commonwealth v. Parker White Metal Co.*

The first case to make a vagueness challenge to the strict criminal liability provisions of the SWMA was *Commonwealth v. Parker White Metal Co.*⁸⁸ The Parker White Metal Co. (Parker White) was charged with misdemeanors of the third degree under Section 6018.606(b) for illegally transporting solid wastes to a facility that had not obtained a permit, and for dumping residual and/or hazardous wastes without a permit in violation of Sections 6018.610(1) and (6).⁸⁹ Parker White raised three constitutional challenges to the criminal provisions of the SWMA, one of which was a due process void for vagueness challenge.⁹⁰

Parker White alleged that section 606(b) was unconstitutionally vague and gave prosecutors unfettered discretion in choosing between significantly different penalties without sufficient guidelines.⁹¹ Parker White's claim was based on the almost identical language in Sections 606(a) and 606(b).⁹² Both sections prohibit any person from violating any provision of the SWMA.⁹³ However, the consequences for such a violation can vary from a summary proceeding under 606(a)—the equivalent of a speeding ticket—to a misdemeanor of the third degree under 606(b).⁹⁴

In holding that sections 606(a) and 606(b) did not violate due process for vagueness, the court emphasized two points. First, Parker White was fully informed by the SWMA of exactly what conduct was prohibited as well as the full range of civil and criminal penalties that they might be subjected to for violating a substantive provision of the

85. *Parker White Metal Co.*, 515 A.2d at 1367 (citing *United States v. Batchelder*, 442 U.S. 114 (1983)).

86. *Parker White Metal Co.*, 515 A.2d at 1367.

87. *Commonwealth v. Heinbaugh*, 354 A.2d 244, 246 (Pa. 1976) (citing *United States v. Powell* 423 U.S. 87, (1975)).

88. *Commonwealth v. Parker White Metal Co.*, 515 A.2d 1358, 1367 (Pa. 1986).

89. *Id.* at 1361. The criminal information filed with the trial court alleged that Parker White "had transported and dumped some 202 fifty-five gallon drums of residual and hazardous wastes, including trichloroethylene (TCE) at the disposal site between September 1980 and April 1981." *Id.* at n.4.

90. *Id.*

91. *Id.* at 1367.

92. *Id.*

93. 35 PA. CONS. STAT. § 6018.606(a), (b) (2003).

94. *Id.*; see *supra* note 31.

Act.⁹⁵ So long as overlapping provisions, like Sections 606(a) and 606(b) clearly define the prohibited conduct and the punishment authorized, the notice requirements of due process are satisfied.⁹⁶

Second, while the SWMA authorized the prosecutor to choose between two possible ranges of penalties, conviction and punishment were not automatic.⁹⁷ The prosecution must prove its case to the satisfaction of the trier of fact in order to obtain a conviction for either a summary offense or a misdemeanor.⁹⁸ Only after conviction, the sentencing authority, not the prosecutor, selects the sentence from the range established by the statute.⁹⁹

Parker White also raised a constitutional objection to the imposition of criminal liability without *mens rea*, but because the trial court dismissed the charges against Parker White on other grounds, the *Parker White* court did not address that issue.¹⁰⁰ The resolution of that issue would have to wait six years, until the case of *Baumgardner Oil Co. v. Commonwealth*.¹⁰¹

2. *Baumgardner Oil Company v. Commonwealth*

Baumgardner is the seminal case discussing due process challenges to the imposition of strict criminal liability for violations of the SWMA. The Baumgardner Oil Company (BOC) owned and operated a facility that collected used oil and reprocessed it for sale as fuel oil.¹⁰² After an investigation, BOC was charged with numerous violations of the SWMA and Pennsylvania Crimes Code.¹⁰³ Among the charges was an alleged violation of Section 401, for the unlawful management of hazardous waste.¹⁰⁴

One of the arguments raised by BOC was that the SWMA was “too vague to give fair warning as to prohibited acts.”¹⁰⁵ BOC argued that none of the definitions of waste in the SWMA indicated that used oil would be regulated as a hazardous waste.¹⁰⁶ Like *Parker White*, the *Baumgardner* court did not agree that the SWMA was unconstitutionally

95. *Commonwealth v. Parker White Metal Co.*, 515 A.2d 1358, 1368 (Pa. 1986).

96. *Id.* at 1367-68 (quoting *United States v. Batchelder*, 442 U.S. 114, 123 (1979)).

97. *Parker White Metal Co.*, 515 A.2d at 1368 (Pa. 1986).

98. *Id.*

99. *Id.* at 1368-69.

100. *Id.* at 1370.

101. *Baumgardner Oil Co.*, 606 A.2d 617.

102. *Id.* at 619.

103. *Id.* For a listing of the charges filed against BOC, *see id.* at 620.

104. *Id.* at 620.

105. *Baumgardner Oil Co.*, 606 A.2d at 622-23.

106. *Id.* at 623.

vague.¹⁰⁷ In rejecting BOC's argument, the court found that the definitions of municipal, residual, and hazardous waste contain reasonable enough standards to allow an ordinary person to understand what conduct is prohibited under the SWMA.¹⁰⁸ Every type of "garbage, refuse, or discarded material" need not be specifically listed in order to inform a person that they are subject to the SWMA.¹⁰⁹ Because BOC was dealing with an "unwanted discarded liquid," they could reasonably be expected to know that the SWMA would apply to its activities, thus making the imposition of strict criminal liability constitutional.¹¹⁰

3. *Commonwealth v. Farmer*

One of the most recent cases to address the argument that the criminal provisions of the SWMA are void for vagueness was *Commonwealth v. Farmer*.¹¹¹ Farmer and his company were found guilty of owning a residual and hazardous waste treatment facility without a permit in violation of Section 6018.401, unlawfully disposing of solid waste, and other charges.¹¹² The argument against the SWMA in *Farmer* was largely the same as in *Parker White* and *Baumgardner*; that the provisions of the SWMA were so unclear as to render the application of strict liability fundamentally unfair.¹¹³ Following the reasoning of *Baumgardner* and other cases, the *Farmer* court upheld the constitutionality of the imposition of substantial fines and imprisonment based on strict liability.¹¹⁴

B. *Excessive Penalties for Strict Liability Offenses*

The strict criminal liability provisions of the SWMA have also been challenged on the grounds that the sanctions imposed, in the form of substantial fines and imprisonment, offends due process of law. Due process may set some limits on the imposition of strict criminal liability, but at this time the exact limits are unclear.¹¹⁵

1. *Baumgardner Oil Company v. Commonwealth*

In *Baumgardner*, BOC also challenged the penalty provisions of the

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Farmer*, 750 A.2d 925.

112. *Id.* at 926.

113. *Id.* at 929.

114. *Id.*

115. See *Baumgartner Oil Co. v. Commonwealth*, 606 A.2d 617 (Pa. Commw. Ct. 1992).

SWMA as being unconstitutionally harsh for a strict criminal liability statute.¹¹⁶ The *Baumgardner* court rejected this argument for two reasons. First, the offenses contained in the SWMA had previously been held to be public welfare offenses because the SWMA has been described as a “comprehensive scheme designed to protect the public from health and environmental hazards caused by inadequate waste practices.”¹¹⁷ Since SWMA violations are public welfare offenses, the Act forbids the type of conduct that a reasonable person should know is subject to stringent public regulation and may seriously threaten the community’s health or safety.¹¹⁸

Second, the penalties contained in the SWMA were no harsher than penalties contained in federal statutes containing strict criminal liability provisions that have been held constitutional by federal courts.¹¹⁹ As a result, the *Baumgardner* court held that “Section 606 of the SWMA does not offend due process.”¹²⁰ Interestingly, the federal case cited by the *Baumgardner* court in support of their holding was *United States v. Freed*.¹²¹ The defendants in *Freed* were charged with possessing and conspiring to possess unregistered hand grenades in violation of the National Firearms Act (NFA).¹²² What makes the citation to *Freed* particularly interesting is that other federal cases interpreting the same strict liability provisions of the NFA have recognized that “punishing a violation as a felony is simply incompatible with the theory of public welfare offenses.”¹²³

2. *Commonwealth v. Packer*

In the most recent case to discuss due process challenges to the strict criminal liability provisions of the SWMA, doubt may have been cast on the continued validity of the SWMA as a traditional public welfare offense. The majority opinion by the Supreme Court of Pennsylvania in *Commonwealth v. Packer* continued to follow precedent like *Parker White Metal Co.* and *Baumgardner* in holding that the

116. *Id.*

117. *Id.* (quoting *Waste Conversion, Inc. v. Commonwealth*, 568 A.2d 738, 741 (Pa. Commw. Ct. 1990)).

118. *Id.* at 625 n.10.

119. *Baumgartner Oil Co.* 606 A.2d at 625.

120. *Id.*

121. *Id.*

122. *United States v. Freed*, 401 U.S. 601 (1971). The National Firearms Act is codified at 26 U.S.C. §§ 5841-5872 (2000).

123. *Staples v. United States*, 511 U.S. 600, 618 (1994). The court reversed the conviction of Harold Staples for possessing an unregistered machinegun in violation of the NFA because the government should have been required to prove beyond a reasonable doubt that Staples knew the weapon he possessed had characteristics that brought the weapon under the statutory definition of a machine gun. *Id.*

imposition of strict criminal liability for violations of the SWMA did not violate due process.¹²⁴ However, the concurring and dissenting opinion by Justice Saylor expressed disapproval with considering the SWMA a traditional public welfare offense and would favor, in some cases, permitting jurors to consider various forms and degrees of affirmative defenses in order to ameliorate constitutional concerns in relation to strict liability offenses.¹²⁵ Justice Saylor reserved any opinion on the ultimate constitutionality of the strict criminal liability provisions of the SWMA “for a case in which an adequate record is presented.”¹²⁶

Justice Saylor’s concern with the imposition of strict criminal liability for violations of the SWMA relates to the rationale for allowing strict liability for public welfare offenses.¹²⁷ Because public welfare offenses traditionally carry minimal penalties and have slight impacts on the reputation of offenders, culpability is imposed without any showing of intent on the part of the actor.¹²⁸ Justice Saylor points out that a first time violation of the SWMA is a third degree misdemeanor carrying potential penalties of up to one year in prison, a fine between \$1,000 and \$25,000 per day for each violation, or both.¹²⁹ Also, news of a conviction under the SWMA could potentially inflict serious damage on the offender’s reputation in their profession and community. These factors led Justice Saylor to conclude that courts should entertain affirmative defenses and instructions to the jury based on a complete lack of intent of the part of the defendant.¹³⁰ Although Justice Saylor reserved an opinion on the ultimate constitutionality of the SWMA’s strict criminal liability provisions, the doubts expressed in his opinion may have signaled an end to viewing the SWMA’s strict criminal liability provisions as traditional public welfare offenses.

124. *Commonwealth v. Packer*, 798 A.2d 192 (Pa. 2002). Packer, an employee of the United States Environmental Service Corp., was charged and convicted of violating § 610(1) of the SWMA for digging a trench, dumping, and burying tires without a permit. The Commonwealth Court of Pennsylvania reversed Packer’s conviction on the grounds that the General Assembly did not intend section 610(1) to impose criminal liability on mere employees. *Commonwealth v. Packer*, 754 A.2d 44, 48-9 (Pa. Commw. Ct. 2000). The Pennsylvania Supreme Court reversed the Commonwealth Court decision vacating Packer’s conviction. *Packer* 798 A.2d at 201.

125. *Commonwealth v. Packer*, 798 A.2d 192 (Pa. 2002) (Saylor, JJ., concurring and dissenting).

126. *Id.*

127. *Id.*

128. *See Morissette v. United States*, 342 U.S. 246, 256 (1952).

129. *Commonwealth v. Packer*, 798 A.2d 192 (Pa. 2002) (Saylor, JJ., concurring and dissenting); 35 PA. CONS. STAT. § 6018.606(b) (2003).

130. *See id.*

3. The Continued Viability of the SWMA's Strict Criminal Liability Provisions

If strict criminal liability were universally applied to all known and discovered violations of the SWMA, I would agree with Justice Saylor's assertion that the SWMA's criminal provisions are no longer traditional public welfare offenses and the continued use of strict criminal liability should be questioned. However, because only the most egregious violations of the SWMA are actually referred for eventual criminal prosecution, the use of strict criminal liability for those violations is more palatable because of the extent of the harm, the cost of remediation, and the indifference of those responsible for the pollution. Pennsylvania courts have been consistent for over twenty-three years regarding the constitutionality of imposing strict criminal liability for violations of the SWMA. Despite legitimate concerns that the SWMA is not a true public welfare offense, the clear intention of the Pennsylvania legislature to impose strict criminal liability coupled with almost unanimous approval from Pennsylvania courts indicates that strict liability will remain a viable tool in the prosecution of environmental crimes under the SWMA.

VII. Conclusion

Constitutional challenges to the validity of a statute like the SWMA carry a high and difficult burden, namely the presumption of constitutionality. A statute will not be declared unconstitutional unless it plainly, clearly, and palpably violates the constitution.¹³¹ With all doubts being resolved in favor of the constitutionality of a statute, parties claiming that the SWMA is unconstitutionally vague or imposes excessive penalties for strict liability offenses carry an especially high burden. Although there is some validity to the recent doubts concerning the SWMA's use of strict liability in *Commonwealth v. Packer*, those doubts are unlikely to rise to the required level necessary to change the well-established Pennsylvania case law upholding the imposition of strict criminal liability for violations of the SWMA.

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131. *Baumgartner Oil Co. v. Commonwealth*, 606 A.2d 617, 623 (Pa. Commw. Ct. 1992) (citing *Gilman v. Unemployment Comp. Bd. of Review*, 369 A.2d 895 (Pa. Commw. Ct. 1977)).