
environmental lawflash

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Major Provisions of Pennsylvania's Oil and Gas Act Deemed Unconstitutional

Commonwealth Court rules on amendments limiting municipal zoning authority.

On July 26, the Commonwealth Court of Pennsylvania held that 2012 amendments to Pennsylvania's Oil and Gas Act (Act 13) that preempt local zoning ordinances conflicting with the act are unconstitutional. The amendments were part of a comprehensive legislative package that revised requirements relating to oil and gas drilling and associated operations and that imposed impact fees on wells drilled in the Marcellus Shale and other unconventional formations.

Background

In *Robinson Township v. Commonwealth*, No. 284 M.D. 2012 (Pa. Commw. Ct. July 26, 2012), *available at* http://www.pacourts.us/OpPosting/Cwealth/out/284MD12_7-26-12.pdf, seven municipalities (collectively, Petitioners) filed a petition for review challenging the constitutionality of amendments to the Oil and Gas Act. Act 13 added section 3304, which required municipalities to adopt uniform local zoning ordinances that allow for the development of oil and gas resources in all zoning districts.

The Petitioners claimed that section 3304 prevents them from fulfilling their constitutional obligations to protect the health and safety of their citizens, as well as public natural resources, from the impacts of oil and gas drilling. The Commonwealth of Pennsylvania and the Pennsylvania Public Utility Commission countered that the Petitioners lack standing to bring the suit and have no constitutional right to enact zoning ordinances, and that Pennsylvania property owners have a right to allow oil and gas drilling.

Commonwealth Court's Decision

In a 4-3 majority opinion, the Commonwealth Court held that "58 Pa. C.S. § 3304 violates substantive due process because it does not protect the interests of neighboring property owners from harm, alters the character of neighborhoods and makes irrational classifications" *Robinson Twp.*, slip op. at 33.

The majority found section 3304 "irrational" because it requires municipalities to allow "drilling operations and impoundments, gas compressor stations, storage and use of explosives in all zoning districts, and applies industrial criteria to restrictions on height of structures, screening and fencing, lighting and noise." *Id.*

The majority concluded that because section 3304 mandates "all oil and gas operations in all zoning districts, including residential districts, as a matter of law," it is unconstitutional. The majority declared section 3304 and related provisions to be null and void and permanently enjoined their enforcement by the Commonwealth of Pennsylvania. *Id.* at 35. Section 3302 of the Oil and Gas Act, which prohibits municipalities from enacting ordinances regulating those aspects of oil and gas operations subject to statewide environmental laws, is not affected by the decision.

Implications

The Commonwealth Court's majority opinion will not be the last word on whether the amendments to Pennsylvania's Oil and Gas Act limiting municipal zoning authority are unconstitutional, as the decision already

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has been appealed to the Pennsylvania Supreme Court by the Pennsylvania Public Utility Commission and the Pennsylvania Attorney General. *Robinson Township* nonetheless stands as a stark reminder that regulation of natural gas drilling in the Marcellus Shale region is a rapidly evolving and unsettled area of law that will unquestionably have significant ramifications on the oil and gas industry going forward.

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