

ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



Federal Court Invalidates Portions of a Local Ordinance, Which Banned the Use of Underground Injection Wells

On October 14, 2015, the United States District Court for the Western District of Pennsylvania invalidated several provisions of a Grant Township, Indiana County, Pennsylvania local ordinance that was intended to prevent an oil and gas operator from operating an injection well that had been permitted by the U.S. Environmental Protection Agency (EPA). In *Pennsylvania General Energy Company, L.L.C. v. Grant Township*, C.A. No. 14-209, 2015 U.S. Dist. LEXIS 139921 (W.D. Pa. Oct. 14, 2015), Pennsylvania General Energy Company, L.L.C. (PGE) challenged the constitutionality, validity and enforceability of the Grant Township ordinance that sought to establish a self-described Community Bill of Rights Ordinance (the Ordinance). Babst Calland represents PGE in this case.

PGE drills for and produces natural gas in Grant Township and elsewhere. PGE sought to reclassify a production well as an underground injection well. On March 19, 2014, EPA issued an Underground Injection Control program permit (UIC Permit) to authorize the injection of brine and produced fluids into the well. The UIC Permit subsequently was unsuccessfully appealed to the U.S. Environmental Appeals Board.

Shortly thereafter, on June 3, 2014, Grant Township adopted the Ordinance. It expressly prohibits any corporation or government from depositing waste from oil and gas extraction activities, and invalidates any state or federal injection well permit. The Ordinance further provides that corporations which violate or seek to violate the Ordinance “shall not be deemed to be ‘persons,’ nor possess any other legal rights, privileges, powers, or protections,” and denies corporations the right to challenge the Ordinance on preemption or other grounds.

PGE filed a Complaint in the United States District Court seeking (i) a declaration that the Ordinance is unconstitutional and invalid under state law, (ii) an injunction to prohibit Grant Township from enforcing the Ordinance, and (iii) compensatory damages, attorneys’ fees and costs.

The District Court granted in part PGE’s Motion for Judgment on the Pleadings. The Court held that the Ordinance provisions making it unlawful for a corporation to deposit oil and gas extraction waste and the provisions that nullified state or federal permits were invalid and unenforceable under the Second Class Township Code because Grant Township exceeded the scope of its authority under that law. The Court also struck down these provisions as being exclusionary because they banned a legitimate use.

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The District Court further invalidated the Ordinance's provisions that attempted to strip corporations of their legal rights to challenge the Ordinance as being invalid under the Pennsylvania Limited Liability Company Law (which expressly acknowledges that corporations have the same legal capacity as natural persons) and the Second Class Township Code (which expressly grants persons aggrieved by a local ordinance the right to challenge that ordinance in court).

The Court declined to rule on the constitutionality of the Ordinance because it found that the challenged provisions were invalid under state law. The Court enjoined Grant Township from enforcing the invalidated sections of the Ordinance and will now take up the issues of PGE's damages, including attorneys' fees and costs.

Grant Township is represented on a pro bono basis by Community Environmental Legal Defense Fund (CELDF). CELDF has tried to convince communities across the country to enact self-styled Bill of Rights Ordinances that are designed to stop activities such as oil and gas extraction and management of wastes from those activities. Like in the *PGE v. Grant Township* case, CELDF has urged courts to modify or eliminate well-established legal principles. The Western District of Pennsylvania rejected CELDF's effort on the basis of decades-long precedent.

If you have questions regarding this decision, please contact Kevin J. Garber at (412) 394-5404 or kgarber@babstcalland.com, James V. Corbelli at (412) 394-5649 or jcorbelli@babstcalland.com, or Alana E. Fortna at (412) 773-8702 or afortna@babstcalland.com.