COMMONWEALTH COURT OF PA

Office of the Chief Clerk
601 Commonwealth Avenue
Suite 2100
P.O. Box 69185
Harrisburg, PA 17106-9185
(717) 255-1658
(717) 787-9559 (Fax)

FAX

John Arminas, Esq.	**412-281-1121**
Jennifer L. Fahnestock, Esq.	**724-745-5125**
William Johnson, Esq.	**724-225-1365**
Jonathan M. Kamin, Esq.	**412-281-1121**
Linda L. Kelly, Esq.	**717-787-8242**
Michael Krancer, Esq.	**717-705-4980**
John M. Smith, Esq.	**724-745-5125**
Lauren M. Williams, Esq.	**215-736-3647**
Jordan B. Yeager, Esq.	**215-340-3929**
Susan J. Kraham, Esq.	**212-854-3554**

Walter A. Bunt, Jr., Esq. 412-355-6501

Christopher Nestor, Esq. 717-231-4501

David Overstreet, Esq. 412-355-6501

From: Nancy Phone: 717-255-1658

Date: 4/11/2012 Pages: 5 (inc. cover)

COMMENTS: Order Re: 284 MD 2012

FAX

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robinson Township, Washington County, Pennsylvania, Brian Coppola, Individually and in his Official Capacity as Supervisor of Robinson Township, Township of Nockamixon, Bucks County, Pennsylvania, Township of South Fayette, Allegheny County, Pennsylvania, Peters Township, Washington County, Pennsylvania, David M. Ball, Individually and in his Official Capacity as Councilman of Peters Township, Township of Cecil, Washington County, Pennsylvania, Mount Pleasant Township, Washington County, Pennsylvania, Borough of Yardley, Bucks County, Pennsylvania, Delaware Riverkeeper Network, Maya Van Rossum, the Delaware Riverkeeper, Mehernosh Khan, M.D.,	:	
Petitioners	:	
v.	:	
Commonwealth of Pennsylvania, Pennsylvania Public Utility Commission, Robert F. Powelson, in his Official Capacity as Chairman of the Public Utility Commission, Office of the Attorney General of Pennsylvania, Linda L. Kelly, in her Official Capacity as Attorney General of the Commonwealth of Pennsylvania, Pennsylvania Department of Environmental Protection and Michael L. Krancer, in his Official Capacity as Secretary of the Department of Environmental Protection,	:	No. 284 M.D. 2012
Respondents	:	Heard: April 11, 2012

ORDER

NOW, April 11, 2012, after hearing on petitioners' motion for preliminary injunction, the motion is granted and Section 3309 of the Act of February 14, 2012, P.L. ___, 58 Pa. C.S. §§2301-3504 (Act 13), is hereby enjoined from taking effect for a period of 120 days from the date of this order.[1]

Until the effective date of Act 13, that is April 14, 2012, the law of this Commonwealth provided that municipalities have authority to regulate the location of oil and gas operations but not the manner of operation. *See Huntley & Huntley, Inc. v. Borough Council of the Borough of Oakmont*, 600 Pa. 207, 964 A.2d 855 (2009). Act 13, however, raises issues as to the state of the law during the 120-day period in which municipalities may amend local ordinances to comply with Act 13. The parties' main point of disagreement appears to be the status of pre-existing local ordinances on April 14, 2012. *See* 58 Pa. C.S. §3309(b). While the ultimate determination on the constitutionality of Act 13 is not presently before the Court, the Court is of the view that municipalities must have an adequate opportunity to pass zoning laws that comply with Act 13 without the fear or risk that development of oil and gas operations under Act 13 will be inconsistent with later validly passed local zoning ordinances. For that reason, pre-existing ordinances must remain in effect until or unless challenged pursuant to Act 13 and are found to be invalid. To the extent that Chapter 33 or any other provision of Act 13 may be interpreted to immediately pre-empt pre-existing local ordinances, a preliminary injunction is issued pending further order of Court. Additionally, the Court agrees with petitioners that 120 days is not sufficient time to allow

[1] For purposes of the preliminary injunction only, the Court is satisfied that petitioners have standing to challenge governmental activity that would otherwise go unchallenged, i.e. the effect of Act 13 as it relates to municipalities' ability to comply with Act 13 within 120 days. *See Application of Biester*, 487 Pa. 438, 409 A.2d 848 (1979).

for amendments of local ordinances and, therefore, will preliminarily enjoin the effective date of Section 3309 for a period of 120 days. Other than the limited preliminary injunction as provided above, petitioners' request for preliminary injunctive relief is denied.[2]

Petitioners shall post a $1,000 bond with the Commonwealth Court, Office of the Chief Clerk, pursuant to Pa. R.C.P. No. 1531(b).

It is further ordered than any other matters brought before the Court that do not mandate an evidentiary hearing shall be submitted to a panel of the Court for disposition.

Keith B. Quigley, Senior Judge

[2] To obtain a preliminary injunction, the petitioner must show: (1) an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated for by damages; (2) greater injury will result from refusing an injunction than by granting it, and issuance of an injunction will not substantially harm other interested parties; (3) an injunction will properly restore the parties to the status quo as it existed prior to the alleged wrongful conduct; (4) the activity the petitioner seeks to enjoin is actionable, the right to relief is clear and there is likely success on the merits; (5) the injunction is reasonably suited to abate the offending activity, and (6) an injunction will not adversely affect the public interest. *Lutz v. City of Phila.*, 6 A.3d 669 (Pa. Cmwlth. 2010). For a preliminary injunction to issue, every one of the requirements must be established. *Id.*

Based on in-chambers argument of counsel and as noted above, the Court concludes that there is an immediate and irreparable risk of harm to the municipalities that development of oil and gas operations under Act 13 may be incompatible with later validly passed zoning ordinances. This harm results in greater injury to the municipalities than to the Commonwealth. Further, other interested parties, i.e. the "oil and gas industry," will not be substantially harmed by the injunction because they may continue to proceed under current local ordinances to develop oil and gas operations, and the public interest is not harmed because the Court is only enjoining application of Chapter 33 of Act 13 while the remainder of Act 13 becomes effective. An injunction further restores the status quo, as the oil and gas industry may continue to proceed under current local ordinances. While the court is not convinced that petitioners' likelihood of success on the merits is high, it has weighed this factor against the other prerequisites for a preliminary injunction and concludes the remaining factors compel issuance of an injunction. *Cf. Pa. Public Util. Comm'n v. Process Gas Consumer Group*, 502 Pa. 545, 467 A.2d 805 (1983).