



Pennsylvania Commonwealth Court Voids Act 13 Zoning Provisions

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On Thursday, July 26, 2012, the Pennsylvania Commonwealth Court issued an order voiding those provisions of Act 13 that would have required municipalities to change their zoning rules to accommodate natural gas development activities.¹ Act 13, a landmark piece of legislation in Pennsylvania that became law in February of this year, imposed impact fees on unconventional wells (e.g., horizontal shale gas wells) and established uniform regulatory requirements throughout the commonwealth for oil and gas operations, expressly preempting local regulation.² According to the court, because Act 13 required municipalities to allow drilling operations, impoundments, and gas compressor stations, among other things, in all zoning districts, it failed to protect the interests of neighboring property owners from harm, would alter the character of municipal neighborhoods, and made irrational classifications. As a result, the court concluded that enforcement of those provisions would result in substantive due process violations under the Pennsylvania Constitution.

In addition to voiding the Act's attempted preemption of local municipal regulation of oil and gas operations, the Commonwealth Court's decision also voids the provision at 58 Pa. C.S. § 3215(b)(4) allowing the Department of Environmental Protection (DEP) discretion to waive statutory

setback requirements applicable to streams, springs, bodies of water and wetlands. Concluding that the legislation fails to give any guidance to DEP on how to exercise its discretion, the court reasoned DEP was therefore granted unfettered power to make "legislative policy judgments" more properly reserved to the General Assembly. It is important to note, however, that DEP's ability to grant a variance with respect to setbacks from buildings, water wells and water supplies used by a public water supplier is not affected.

The Commonwealth Court's ruling represents a significant victory for advocates of local control, but a potential major setback for oil and gas operators, including midstream and gathering pipelines, who sought the regulatory certainty intended by Act 13. That being said, the proponents of Act 13 will almost certainly seek allocatur to the Pennsylvania Supreme Court.³ In the meantime, and for the foreseeable future, municipalities will continue to be able to craft zoning ordinances that determine where oil and gas operations may take place.

To discuss any questions you may have regarding the opinion discussed in this Alert, or how it may apply to your particular circumstances, please contact:

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¹ Robinson Township v. Commonwealth, No. 284 M.D. 2012 (Cmwlt. Ct. July 26, 2012). A copy of the order is available [here](#)

² The court had preliminarily enjoined certain provisions of Act 13 in April.

³ The court did signal that a legislative remedy may be available to cure its nullification of § 3215(b)(4) by providing proper guidance to DEP on when a waiver may be granted.