

Portions of Act 13 gas drilling law struck down as unconstitutional

By David Singer / Observer-Reporter / September 28, 2016

Provisions in the natural gas and oil drilling law known as Act 13 have been ruled unconstitutional by the Pennsylvania Supreme Court. **(See PDF attachments)**

The case, Robinson Township et al v. Commonwealth of Pennsylvania, was challenged primarily in four areas – a medical gag against physicians; a provision that only public water customers would be notified of spills or leaks at gas drilling sites, not those who use private water sources; the Public Utility Commission’s ability to withhold impact fee monies if local ordinances didn’t comply with state law; and eminent domain privileges for natural gas companies using private land for storage of natural gas. **All were struck down as violating either state or U.S. constitutions.**



The medical confidentiality enforcement against physicians – a gag order – was ruled unconstitutional despite the earlier Commonwealth Court ruling that proprietary chemicals in fracking fluids were valid as trade secrets not to be discussed with patients. The high court ruled that “no other industry in the commonwealth has been statutorily shielded in this manner” and that it would create an undue conflict of interest for a doctor weighing obligations to effectively treat and consult with a patient or to accidentally disclose supposed proprietary business information.

In the spill issue, the court ruled that the state Legislature has 180 days to change the notification requirements to alert anyone affected by a spill or leak. Attorney **John M. Smith** (photo on left), who represented many of the appellants in the case, said it was obvious that private water consumers would need notification.

The lead appellant in the case and former Robinson Township supervisors chairman, **Brian Coppola**, said the water notification issue was important to him.

“We had a very large spill in the township. The township wasn’t notified, the homeowners and well water users weren’t notified; we found out by accident. When I became a supervisor, I took an oath to uphold the state constitution. When Governor Corbett and the legislature signed this into law, I knew it was unconstitutional. The law was 100 percent on our side,” Coppola said.

Smith said the rulings show how egregiously state lawmakers allowed industry interests to trump health and safety.



“It shows how influential oil and gas lobbyists were in drafting this law and that the constitution took a back seat,” Smith said.

As for the provisions allowing eminent domain, Smith said there was no public purpose for a company to cite eminent domain to annex private land for storage of natural gas. The ruling said that the eminent domain provision “is unconstitutional on its face, as it grants a corporation the power of eminent domain to take private property for a private purpose ... in violation of the U.S.

Constitution.” Coppola said the eminent domain denial will prevent other industries from trying to operate a public utility.

“This was a victory for every Pennsylvanian,” said Peters Township councilman and appellant **David Ball** (photo on left), “this completes the picture, from zoning to water to allowing doctors to treat their patients without worry, it’s finally done, because the original law was complete legislative overreach.”

The president of the Marcellus Shale Coalition said the organization is disappointed in aspects of the court’s ruling.

“(The ruling) will make investing and growing jobs in the Commonwealth more-not less-difficult without realizing any environmental or public safety benefits. Despite this ruling, our industry remains deeply committed to adhering to the high bar set by Act 13, a common sense bipartisan law that modernized our oil and natural gas regulatory framework and serves as a national model for other states,” said **David Spigelmyer** (photo on right).



[Story](#)

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Act 13 was originally crafted as House Bill 1950

Let’s take a look back to see who voted “Yes” for this legislation...

YES VOTES

Pennsylvania House of Representatives Roll Calls

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☒ TRUITT

☒ TURZAI

☒ VEREB

☒ VULAKOVICH

☒ WATSON

☒ CALTAGIRONE

☒ GERGELY

☒ SMITH, S.

And who voted “Yes” for it in the Penna. Senate...

YES VOTES

Senate of Pennsylvania Roll Calls

Session of 2011 - 2012

Details for RCS# 513 Tuesday Feb. 7, 2012 House Bill 1950 PN 3048

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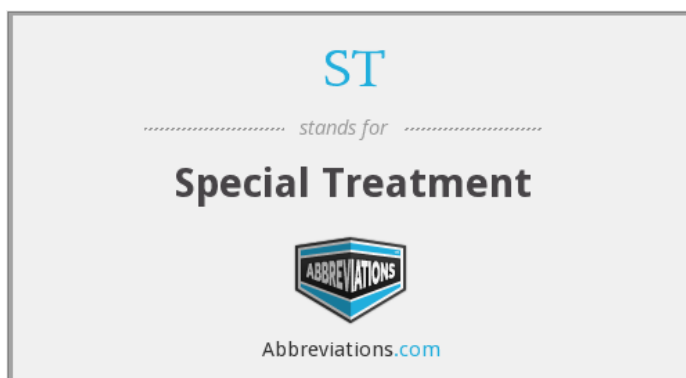
“Under the Dome” in Harrisburg

State Supreme Court rules against shale industry-friendly provisions

By Don Hopey / Pittsburgh Post-Gazette / September 28, 2016

The Pennsylvania Supreme Court has decided that Act 13, the state legislature's 2012 attempt to accommodate the shale gas industry, isn't so "special" after all.

The court, in a decision handed down today, ruled that Act 13's provisions limiting notification of spills and leaks to public water suppliers but not private well owners, and its so-called "physician gag order" restricting health care professionals from getting information about drilling chemicals that could harm their patients, **violate the state Constitution's prohibition against "special laws" that benefit specific individuals, groups or industries.**



The court also struck down the law's provision that allows companies involved in transporting, selling or storing natural gas to seize privately-owned subsurface property through eminent domain. And the ruling prohibits the state Public Utility Commission from reviewing local ordinances and withholding impact fee payments from municipalities that limit shale gas drilling.

"The decision is another historic vindication for the people's constitutional rights," said Jordan Yeager, lead counsel representing the Delaware Riverkeeper Network and Bucks County municipalities on the case. "The court has made a clear declaration that the Pennsylvania legislature cannot enact special laws that benefit the fossil fuel industry and injure the rest of us."

Travis Windle, a spokesman for the Marcellus Shale Coalition, an industry trade and lobbying organization, said it's reviewing the court's decision and **declined comment** until that review is completed. Dan Weaver, president of the

Pennsylvania Independent Oil and Gas Association, **did not respond** to a request for comment.



Neil Shader, a state Department of Environmental Protection spokesman, said the department's lawyers were still reviewing the decision to determine its impact on regulators. He said the eventual need to notify private well owners of drilling spills and leaks affecting their water supplies could have the biggest impact on department operations.

Act 13, the state's 2012 revision of its oil and gas law to deal with shale development, preempted municipal zoning of oil and gas development and established an impact fee on natural gas. In March 2012, seven municipalities, an environmental organization, two elected municipal officials and a doctor, filed an appeal challenging multiple provisions of the law as unconstitutional.



"A majority of our state legislators joined with the oil and gas industry in placing corporate desires and profits over the Constitutional rights of Pennsylvania citizens. The Pennsylvania Supreme Court correctly found that the Constitution is

not a document to be ignored," said John M. Smith, who represented four Western Pennsylvania municipalities in the case.



The Supreme Court ruled significant parts of it unconstitutional in late 2013, and ordered the state Commonwealth Court to reconsider other provisions. The Supreme Court decision today should end the lengthy legal battle, Mr. Smith said.

"After reviewing the new law for 30 days we were able to pick out a number of provisions we felt were unconstitutional," he said, "and the court today agreed with us on almost all of them." [Story](#)



Pennsylvania State Flag

Mount Pleasant Township (aka Hickory, Pa)

Six days after another long continuation hearing with a room full of lawyers in front of the zoning board (partly related to the Yonkers well site being close to Fort Cherry schools) the Mount Pleasant Township supervisors held their monthly meeting on Wednesday September 28, 2016 and **APPROVED the Yonkers well pad conditional use for Range Resources**. Twelve wells are planned for that pad with the first phase completing six of those wells.

"The apple of Range's eye"... Someone said during the meeting that **94% to 95%** of the township is leased to Range Resources. This edited (shortened) video includes only the parts of last night's meeting related to the Yonkers Well Pad:

MEETING VIDEO: <https://youtu.be/ldHgUu7t8Zs>

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Range Marcellus pad approved near Fort Cherry schools

By Scott Beveridge / Observer-Reporter / September 29, 2016

HICKORY – Supervisors in Mt. Pleasant Township approved a new Marcellus shale natural gas drilling pad after being met Wednesday by environmentalists who objected to the site's close proximity to public schools.

The approval of Range Resources' Yonkers pad included a number of zoning and related conditions on the operation, the third of its kind just beyond the boundaries of the Fort Cherry School District campus at 110 Fort Cherry Road.

"Three well pads around a school is completely unheard of," said Raina Rippel, director of Southwest Pennsylvania Environmental Health Project.

Rippel said industrial expansion does not belong next to a school and vulnerable people when she spoke at a news conference before the township meeting began.



Raina Rippel, director of the Southwest Pennsylvania Environmental Health Projects, speaks Wednesday about her concerns about natural gas drilling near the Fort Cherry School District.
Photo: Scott Beveridge/Observer-Reporter

"We want to be here to see what the conditions are and if they are healthy and safe for our children," added Jane Worthington of Robinson Township, who has two children enrolled in Fort Cherry schools.

The meeting was filled beyond capacity with local residents and others with an interest in the well pad. **MEETING VIDEO:** <https://youtu.be/ldHgUu7t8Zs>

Many residents wore matching yellow and green T-shirts containing the phrase, “Land Owners United,” some of whom approached the board stating their support of Southpointe-based Range Resources and the progress and prosperity the company has brought to the rural township.



Range Resources Appalachia headquarters building in Southpointe, Canonsburg, PA
Photo: Marcellus Air

Range spokesman Matt Pitzarella (photo below) said earlier Wednesday nearly 95 percent of the township is under lease with the gas industry, and that number indicates to him a clear majority of landowners there support drilling.

“Our employees live and raise (their) children in the communities where we work, including in Mt. Pleasant,” Pitzarella said. “And while state and federal regulatory agencies have repeatedly found gas development to be safe and well regulated, including Fort Cherry School District, we commend the township for conducting this process to ensure that everyone’s voice can be heard and that the activity is done in a manner best for the community.”

He said Range paid about \$50 million in lease and royalty payments in Mt. Pleasant township, with about \$500,000 paid to the school district.



Photos Copyright Brian Cohen

Still, others in the crowd also pressed the township to deny the permit application.

“Any wells near the schools should not be allowed,” resident Eileen Steding said.

“I am a lease holder, but I do not support drilling near the schools,” added resident Kimberly Staub.



Township solicitor Tom McDermott said the supervisors cannot set conditions that go beyond what is outlined in state and federal drilling regulations.

“You’d be better served to knock on Harrisburg’s doors rather than on ours,” McDermott said.

He said some of the township conditions in the Yonkers permit likely won’t be welcomed by Range.

He summarized the conditions at the end of the meeting, saying they involve such issues as the use of vapor recovery units, emissions monitoring and “green completion methods.”

[Story](#)

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