

## Environmental Attorneys Sanctioned for “Frivolous” Litigation Efforts

JANUARY 29, 2018

On January 5, 2018, U.S. Magistrate Judge Susan Paradise Baxter issued an opinion and order in the U.S. District Court for the Western District of Pennsylvania which sanctioned two attorneys from the Community Environmental Legal Defense Fund (CELDF) for advancing “discredited” community-rights based arguments to oppose the issuance of an injection well permit by the United States Environmental Protection Agency (USEPA).

Pennsylvania General Energy Company, LLC (PGE) is a private oil and gas exploration and development company that owns and operates natural gas wells in Grant Township, PA. In 1997, a predecessor entity of PGE established a deep gas well in Grant Township on a property known as Yanity Farm. On September 11, 2014, PGE received a final permit from USEPA to convert the Yanity Well into an injection well.

According to the court, CELDF assisted and directed Grant Township in adopting the Community Bill of Rights Ordinance (CBR) on June 3, 2014. The CBR prohibits any corporation from “engag[ing] in the depositing of waste from oil and gas extraction” and invalidates any “permit, license, privilege, charter, or other authority issued by any state or federal entity which would violate [this prohibition] or any rights secured by [the CBR], the Pennsylvania Constitution, the United States Constitution, or other laws.” The court noted that CELDF has supported other such “local control” efforts aimed at giving local municipalities the power to ban fracking within their borders by pre-empting state and federal laws, and that similar ordinances have consistently been held to be unconstitutional when challenged in court.

On August 8, 2014, PGE filed an action challenging the constitutionality, validity, and enforceability of the CBR. As the litigation continued, PGE also filed a motion for sanctions to be imposed on CELDF’s attorneys as a result of CELDF’s “frivolous, unfounded, harassing pleadings and motions in pursuit of ... illegitimate ends, thereby increasing litigation costs, abusing process, and wasting judicial resources.” PGE argued that CELDF must be aware of the frivolous nature of the claims asserted by them in the subject action, given that identical arguments have been raised by CELDF and its attorneys in prior litigation and uniformly rejected by courts in numerous jurisdictions. The court agreed with PGE, stating, in part, that CELDF’s attorneys’ conduct resulted from “bad faith and not well-intentioned zeal.” The court wrote:

In determining the propriety of sanctions for advancing plainly unreasonable arguments, the Court has examined CELDF’s federal environmental litigation occurring over the past fifteen years in Pennsylvania. CELDF

... has championed the notion of “community self-governance” as justification for CELDF-drafted local ordinances to invalidate corporate property rights, and to strike at the preemptive effect of state and federal law where in conflict with a community-enacted ordinance ... In each cited action, the district court reviewed CELDF’s arguments and found them wanting, lacking argument predicated in law or facts, and failing to justify setting aside historically well-settled legal precepts. The most recent cases, including the instant action, find identical arguments reasserted, but not advanced in any material manner by distinguishing facts, analogy, or supporting case law from any court of coordinate or superior jurisdiction.

The two attorneys for CELDF were sanctioned a total of \$52,000. The order also stated that one of the attorneys, CELDF Executive Director Thomas Linzey, would be referred to the Disciplinary Board of the Supreme Court of Pennsylvania “for such further proceedings as the Board may deem appropriate.”

A trial as to PGE’s remaining claims is scheduled for May 2018.

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