

**Berks Gas Truth
Clean Water Action
Delaware Riverkeeper Network
Gallows Run Watershed Assn.
PennEnvironment
Pocono Environmental Coalition & Wildlife Society, Inc.
Protecting Our Waters
Sierra Club, Pennsylvania Chapter**

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Groups speak out before Legislator Forum on Act 13 – the gas drilling takeover law -- in Bucks County, PA

Kintnersville, Bucks County, PA – Organizations spoke out this evening before a forum being put on by Legislators who voted in favor of HB1950 - now Pennsylvania's Act 13 of 2012. Act 13 preempts municipalities' right to zone natural gas and oil operations and guts municipal controls, gags physicians who treat people exposed to chemicals used by the industry, and removes environmental safeguards. The groups held a press conference prior to the forum denouncing Act 13 as unconstitutional and a disaster for Pennsylvania communities.

The press conference came on the heels of a victory in Commonwealth Court on April 11; the Court issued a preliminary injunction against a portion of Act 13, ensuring that zoning ordinances dealing with oil and gas operations remain in effect and are not immediately pre-empted by Act 13 on April 14, 2012, which was a looming deadline in the Act. Organizations attending the press event called for the Act to be overturned by the Courts.

“By depriving municipal elected officials of their ability to use zoning and community decisionmaking to protect precious natural resources; schools, hospitals and homes from damaging industrial practices, and to ensure the rights of everyone are

honored and protected, this law has undermined the very fabric of municipal and constitutional law in the Commonwealth, threatening our water, air, kids and communities," said Maya van Rossum, the Delaware Riverkeeper.

Nockamixon Township Supervisor Nancy Alessi said, "Act 13 takes away local land use in a manner that is unprecedented in Pennsylvania history. Until now no land use was required in every zoning district by the state - not a church, not a school, not a home. Every municipality had the authority to control its own planning and growth and to take into account each community's unique features. Now the state has mandated that every community from Bucks County to Bradford County be the same - with gas and oil drilling legally permitted everywhere. I am appalled at the audacity of our legislators in voting for this law, which is an affront to every town, township and landowner in Pennsylvania."

"On the heels of the state courts agreeing that a 'time out' is needed for the far-reaching override of local control for our communities, these legislators should take the high ground and acknowledge their error in voting in support for this law—and pledge to do whatever it takes to repeal it and preserve the sanctity of local control in this Commonwealth," said David Masur, PennEnvironment Director.

"The people have been left out of the legislative process; and have not yet been informed about the social and environmental impacts of large scale extraction of natural gas planned for our State. The promise of prosperity and the assurances of safety should be taken with two grains of salt," said Karl Schwartz, Gallows Run Watershed Association.

"There are no legal contortions in Act 13. It is not a complicated law. Anyone who wants to understand how Act 13 undermines local control of land use should just read Section 3304, "Uniformity of Local Ordinances." It's about a page or two. Act 13 makes five-acre natural gas well-pads - the kind that are known to blow up and leak benzene - a permitted use in every part of every town. The community has no say. It's really that simple. Read the bill," stated Brady Russell, Eastern PA Director, Clean Water Action.

"We are still shocked that Senator McIlhinney reversed his position and voted to remove local government's legal authority to prevent gas drilling and associated activities in residential zones throughout Pennsylvania," said Dave Meiser, Sierra Club Bucks County Conservation Committee Chair. "In a letter he sent to his Senate leadership, he said he opposed elimination of local zoning authority. In a message he sent to me as a constituent, Senator McIlhinney said he opposed drilling in residential areas. I don't see how we can trust Sen. McIlhinney, when he tells us one thing and

then votes the opposite. Whose side is he on, the drillers or the people?" continued Meiser.

"All Pennsylvania legislators who approved this law sold us down the river and must be held accountable. They ushered in a new PA Dark Ages by approving a gag order on physicians, stripping municipalities of their ability to protect residents, and allowing corporations to place poisonous industrial operations within hundreds of feet of our waterways, the veins and arteries which keep us alive," said Iris Marie Bloom, Protecting Our Waters.

"It would have been bad enough to trade a puny impact fee for local control over drilling. What a lot of people, especially those in Southeastern PA, don't understand, though, is that the more imminent threat to their communities is not drilling, but something that falls within the much broader category of drilling operations and those operations are not eligible for the impact fee. Under Act 13, the natural gas industry may decide to run a pipeline near an elementary school, down Main Street or down your street and there's nothing your local officials can do to stop it. Act 13 is an abomination. It's got to go," said Karen Feridun, Founder, Berks Gas Truth.

"Pocono Environmental Coalition and Wildlife Society rebukes the 'gag order' in Act 13 which requires nondisclosure of Physicians treating patients exposed to chemicals used in gas extraction, and also jeopardizes all citizens exposed to the same toxic environmental conditions," said Elizabeth Grieco, founder/President, Pocono Environmental Coalition & Wildlife Society, Inc.

"Act 13 is, quite simply, a complete takeover of all Pennsylvania municipalities by gas drilling interests. The fact that Act 13 deprives all municipalities of zoning for the intrinsically dangerous industrial activities of gas drilling and its myriad of operations is straight-up unconstitutional, denying municipal officials of any meaningful means to protect their residents and public resources. The Legislators who voted for this Draconian law are being confronted here by their constituents for selling them out. We hope that the Courts will overturn Act 13 and its supporters will be exposed as protectors of special interests to the detriment of the public good," said Tracy Carluccio, Deputy Director, Delaware Riverkeeper Network.

Read the legal challenge to Act 13 here: <http://www.scribd.com/doc/87252080/Act-13-Challenge>

Read the 4.11.12 Order of Commonwealth Court here: http://www.delawariverkeeper.org/resources/Comments/Order%204_11_12.pdf

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The Basics about Pennsylvania's Act 13

What does Act 13 do?

- Supersedes all local ordinances related to oil and gas operations¹
- Supersedes all bans of oil and gas development ordinances²
- Extinguishes all existing zoning and planning by permitting oil and gas operations, except for certain gas processing plants, anywhere in a municipality³ (including residential neighborhoods, by schools, hospitals, and day care centers, and sensitive natural and public resources)
- “Oil and gas operations” is defined broadly and includes gas well drilling, hydraulic fracturing (or “fracking”), location assessment, seismic testing, and pipeline operations⁴
- Requires that gas and oil wells, well sites, open pits or gas fluid impoundments, pipelines, and other oil and gas operations, except for compressor stations and processing plants, be allowed in residential districts with a maximum setback of 300 feet from the well pad, pit, and other operations to an existing building⁵. Three hundred feet is less than a football field (360 feet) in length.
- Requires municipalities to allow natural gas compressor stations as uses permitted by right in agricultural and industrial districts, and as conditional uses in all other zoning districts. Pipelines and their requisite compressor stations are expected to multiply as gas companies seek to deliver their product to market. Even in communities where no drilling is occurring, gas pipelines and compressor stations are being built. This means that these air polluting facilities must be allowed throughout Pennsylvania on farms (and industrial districts) and,

¹ (except for the Floodplain Management Act): Section 3302: Except with respect to local ordinances adopted pursuant to the MPC and act of October 4, 1978 (P.L.851, No.166), known as the Flood Plain Management Act, all local ordinances purporting to regulate oil and gas operations regulated by Chapter 32 (relating to development) are hereby superseded.

² Section 3304(a): In addition to the restrictions contained in sections 3302...and 3303...all local ordinances regulating oil and gas operations shall allow for the reasonable development of oil and gas resources.

³ Section 3304(b): Shall authorize oil and gas operations, other than activities at impoundment areas, compressor stations and processing plants, as a permitted use in all zoning districts.

⁴ Section 3301, Definitions: “Oil and gas operations”. Includes “...well location assessment, including seismic operations, well site preparation, construction, drilling, hydraulic fracturing and site restoration...water and fluid storage or impoundment areas...oil and gas pipelines, natural gas compressor stations...processing plants...equipment...”.

⁵ Section 3304(5) and (6)

if approved as a conditional use, will be allowed in residential districts as well.⁶ The maximum setback of a compressor station from an existing building is 750 feet and 200 feet from the nearest lot line unless waived by the owner of the adjoining lot. It is not clear what the required setback would be if the distance requirement were waived.⁷ Noise levels can be as high as 69dbA at the nearest property line (or applicable federal standard).⁸

- Requires that natural gas processing plants be allowed in industrial districts by right and in agricultural districts as a conditional use with a maximum setback of 750 feet from an existing building and 200 feet from the nearest lot line unless waived by the owner of the adjoining lot. It is not clear what the required setback would be if the distance requirement were waived.⁹ Noise levels can be as high as 69dbA at the nearest property line (or applicable federal standard).¹⁰
- Limits restrictions on vehicular access for overweight vehicles to the standards authorized under 75 Pa.C.S. or the Municipalities Planning Code. More stringent standards may not be imposed by municipalities.¹¹
- Limits on “subterranean operations” (such as drilling and fracking) cannot be limited by the municipality and hours of operation for well drilling or fracking, compressor stations, processing plants, or assembly/disassembly of drill rigs may not be limited or conditioned.¹²
- Gives gas drillers and operators, and landowners within a municipality, the right to appeal a local ordinance.¹³ Also allows any “person who is aggrieved” by a local ordinance to bring an action in Commonwealth Court to invalidate it and allows the Court to make the municipality pay the plaintiffs’ attorneys fees “and other reasonable costs” under certain conditions.¹⁴ The municipality is also made ineligible to collect the Act’s impact fees if the Court finds a local ordinance in violation of Act 13 or the Municipalities Planning Code.¹⁵
- Municipalities are also deprived of any meaningful role in state permitting. A municipality can submit comments to PADEP on permit applications for gas

⁶ Section 3304(7)

⁷ Section 3304 (7) i

⁸ Section 3304 (7)ii

⁹ Section 3304 (8) and (8)i

¹⁰ Section 3304 (8)ii

¹¹ Section 3304 (9)

¹² Section 3304 (10)

¹³ Section3305 (a)1

¹⁴ Section 3306 and 3307

¹⁵ Section 3308

operations but PADEP is NOT REQUIRED TO EVEN CONSIDER those comments.

- Act 13 prevents municipalities from appealing PADEP permitting decisions for oil and gas permits. The municipality, with its knowledge and responsibility to safeguard residents and important community resources, is prohibited from defending them as a result of Act 13.
- Applies to every municipality in Pennsylvania, regardless of whether they are located in the Marcellus Shale region. There is no provision in Chapter 33 of Act 13 that exempts certain municipalities from the restrictions of Chapter 33 based on whether the municipality is located in an “unconventional formation”, such as the Marcellus Shale. The impact fee Chapter of Act 13 applies only to wells in an “unconventional formation”, defined as: “A geologic formation existing below the base of the Elk Sandstone or is geologic equivalent stratigraphic interval where natural gas generally cannot be produced at economic flow rates or in economic volumes except by vertical or horizontal well bores stimulated by hydraulic fracture treatments or by using multilateral well bores or other techniques to expose more of the formation of the well bore”.¹⁶ But this is a separate Chapter of Act 13 than Chapter 33, which applies to municipal zoning provisions, and does not have any effect on the local zoning preemption and others provisions in Chapter 33 of Act 13.
- Allows setbacks from existing buildings or water wells to be waived if the owner of the building or water well consents or if the gas rights owner and would be deprived “...of the right to produce or share in the oil and gas...” the gas well operator may be granted a variance from the setback.¹⁷ There are no defined standards in Act 13 of what the further restrictions would be required in the “plan” the operator would submit to get the variance. In other words, there are essentially NO defined standards for setbacks. Presumably, a gas well could be 10 feet from a house or water well.
- Allows the 100 foot/300 foot setback distance (for conventional wells or unconventional oil and gas wells respectively) from streams, springs, or bodies of water (identified on current 7 ½ minute topographic USGS maps, which excludes many headwater and first order streams) and 1000 foot setback of unconventional wells from a public water supply source (as defined in the Safe Drinking Water Act) to be waived if a “plan” is submitted by the operator.¹⁸ There are no defined standards for a minimum setback or the standards of a “plan”; a

¹⁶ Section 3203. “Definitions”: “unconventional formation”.

¹⁷ Section 3215(a)

¹⁸ Section 3215(b)

municipality cannot enact any more stringent provisions than that provided in Act 13, so essentially there are no setbacks or distance separations of gas and oil wells from homes, streams, reservoirs, water wells, parks, schools, day care centers, public facilities, etc. in the entire Commonwealth of Pennsylvania.

- Gags physicians treating patients exposed to chemicals that are claimed as a trade secret or confidential proprietary information by prohibiting health professionals from disclosing the information provided to the professional by a vendor, service provider or operator. Further, a written statement of need and a confidentiality agreement is to be provided by the health professional “as soon as circumstances permit”.¹⁹

Some suggested questions for forums, meetings:

How can you, as lawmakers, support a law that strips away constitutional rights and violates equal protection principles? How can our elected municipal officials protect us as residents, our water supply, and our municipal resources if they have their hands tied by Act 13, forced to allow gas wells to be drilled right next to homes and streams, and water supplies?

Who wrote Act 13? Was the gas industry involved and did they give any input to the committee that drafted HB1950? Who does Act 13 most benefit?

How can municipal officials carry out their legally-binding duty to protect air, water, historic, and natural environmental values as agents and trustees of the Commonwealth, as they are required to do under Article 1, Section 27 of the Pennsylvania Constitution, which reads:

The people have a right to clean air, pure water, and to the preservation of natural, scenic, historic, and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all people.

What about the veracity of the Municipalities Planning Code? Won’t the forcing of these industrial activities undo the planning and zoning for all other activities which now are given less priority than gas and oil development? What about the taking of land use that was intended for other community uses? Why is gas and oil industrial development more important than other development? The forced cookie-cutter zoning that is being

¹⁹ Section 3222.1(b)(11)

imposed by Act 13 will make predictable and comprehensive planning an exception rather than the rule, won't it?

How can it be justified that the Commonwealth's Police Powers are being used to force oil and gas activities into municipalities through a state-mandated ordinance that does not serve the public health, safety, morality and general welfare interests of the community?

What about the economic impacts to my municipality through the sanctions and unreasonable unfunded demands that are in Act 13, such as forcing my municipality to re-do its planning and zoning around gas interests and the short time frames that municipalities have to totally re-do their zoning plans to meet Act 13's requirements and the threat of having to pay attorney fees to those who challenge local ordinances? Why isn't the municipality given the benefit of the doubt?

How is it fair that my municipality cannot appeal a DEP permit for a gas well? My municipal, officials and professional planners know most about my municipality and should have the right to appeal a permit if it is perceived to not be in the public interest. Why has this right been taken away? What could possibly be gained by the State or PADEP to not allow this appeal procedure?

What about the health impacts of Act 13 on people who live and work in the zones where gas operations can take place? Where can people go to get away from the air and water pollution that accompanies these industrial operations? Will the State do a health impact study or track health impacts in these changed zoning districts? How will the cumulative impacts of Act 13 be tracked?