

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

Nos. 63 MAP 2012 & 64 MAP 2012

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; and MEHERNOSH KHAN, M.D.,
Appellees/Cross-Appellants,

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; 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,
Appellants/Cross-Appellees.

**On Appeal From the Order of the Commonwealth Court Entered
On July 26, 2012, Docket No. 284 M.D. 2012**

BRIEF OF *AMICUS CURIAE* TROUT UNLIMITED, INC.

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STATEMENT OF QUESTIONS INVOLVED

In the case before the Court, the questions for review are:

1. Does Act 13 prevent a municipality from fulfilling its constitutional obligation to protect public natural resources under Article I, Section 27 of the Pennsylvania Constitution?

Suggested Answer: YES.

Answer below: NO.

2. Does Act 13 unconstitutionally delegate to the Pennsylvania Department of Environmental Protection the power to grant waivers from distance requirements from streams and wetlands without adequate standards?

Suggested Answer: YES

Answer below: YES.

INTERESTS OF *AMICUS CURIAE*

By this brief, *Amicus* Trout Unlimited support Appellees/Cross-Appellants position, seeking (1) reversal of the decision of the court below, finding that Act 13 does not deny a municipality the ability to fulfill their constitutional obligation to protect public natural resources under Article I, Section 27 of the Pennsylvania Constitution; and (2) affirmation of the decision of the court below, that section 3215(b)(4) lacks adequate guidance to the Department of Environmental Protection to determine when a waiver of the distance requirements from a water body and wetland should be granted or denied.¹

Trout Unlimited's mission is to conserve, protect, and restore North America's coldwater fisheries and their watersheds. Trout Unlimited was founded in 1959 in Grayling, Michigan on the banks of the Au Sable River by a group of anglers who successfully sought to change the state's reliance on hatchery production of trout into a program that focused on protecting and restoring fish habitat. Today, Trout Unlimited is the nation's largest grassroots coldwater fishery organization, with approximately 150,000 members organized into more than 400 local chapters across the country. To accomplish its mission and vision, Trout Unlimited employs a comprehensive strategy to protect the highest quality trout and salmon habitat, reconnect high quality habitats with restored areas downstream through the augmentation of instream flows and barrier removals, restore degraded habitats so that they again support healthy trout and salmon populations, and sustain progress by educating and motivating a future generation of environmental stewards.

¹ *Amicus* respectfully asks the Court to apply Pa. R.A.P. Rule 105(a) to permit the consideration of this argument by *Amicus* as timely given the expedited nature of this action. Pa. R.A.P. Rule 105(a)

Trout Unlimited works on a local, state, and national level through an extensive volunteer network and dedicated staff. In Pennsylvania, Trout Unlimited has approximately 12,000 members who are community leaders, professionals, and business owners, and who are passionate and articulate grassroots advocates for protecting important watersheds and landscapes. In 2011, Trout Unlimited's Pennsylvania members spent 59,692 hours working to protect, conserve, and restore streams in the commonwealth. Trout Unlimited members also served as local advocates with private landowners, making the case for land management techniques that benefit local streams and rivers.

Brook trout, native to the northeastern United States, survive in only the coldest and cleanest water and serve as indicators of the health of the watersheds they inhabit. In pre-Colonial times, brook trout were present in nearly every coldwater stream and river in the eastern United States and today, intact stream populations of brook trout inhabit only 5% of their historic range due to poor land management, sedimentation, loss of riparian habitat, stream fragmentation and other factors.² Through the organization's effort to safeguard and restore brook trout populations and high quality and exceptional value streams in Pennsylvania, Trout Unlimited has long advocated for protecting critical stream system components—such as the headwaters of coldwater streams and the floodplain that connects the stream to the landscape—to ensure healthy robust coldwater populations.

In 2011, Trout Unlimited provided guidance to Pine Township in Lycoming County, Pennsylvania, regarding the impacts of allowing well pads and drilling-related infrastructure to be located in the floodplain. Pine Township is located along Little Pine Creek which flows into Pine Creek, a famed trout fishing destination with high ecological integrity and water quality,

² "Eastern Brook Trout: Status and Threats." Eastern Brook Trout Joint Venture. Trout Unlimited. Web. 2 Mar.2012. <<http://www.easternbrooktrout.net/docs/brookiereportfinal.pdf>>.

due in large part to the intact floodplain system. Over the course of several months, township officials held public meetings and engaged in discussion with community members about whether or not to allow drilling-related infrastructure in the floodplain. Based upon input from the community and organizations such as Trout Unlimited, the town adopted an ordinance that prohibited the placement of well pads, compressor stations, oil or gas staging facilities, or water storage facilities in the 100-year floodplain.³ If the decision of the court below is allowed to stand, then Act 13 would render Pine Township's local community planning process and the ordinance it adopted to protect natural resources null and void.

SUMMARY OF ARGUMENT

This case involves the question of whether state-enacted legislation removes the obligation of a municipality to protect public natural resources, pursuant to Article I, Section 27 of the Pennsylvania Constitution. On more than one occasion, this honorable court has recognized the duty of a municipality to act as trustee for public natural resources, and the direct and substantial interest of local government in the environment. Collectively, Sections 3302, 3303 and 3304 of Act 13 eliminate a municipality's ability to protect natural resources under Article I, Section 27, by usurping a municipality's local authority to regulate floodplain activities and other public natural resources. Specifically, through sections 3215(f), a municipality is forbidden from regulating activities that occur in the floodplain, despite its constitutional obligation under Article I, Section 27, and its statutory obligation under the Pennsylvania Flood Plain Management Act and the National Flood Insurance Program.⁴ For this reason, *Amicus* Trout Unlimited urges this court to reverse the decision of the court below, and find that Act 13

³ *Amendments to the Pine Township Zoning Ordinance*, enacted October 24, 2011, by the Pine Township Board of Supervisors.

⁴ 32 P.S. § 679.103 et seq.

prevents a township from fulfilling its duty as the a trustee for public natural resources in the Commonwealth.

As the Commonwealth Court held, Section 3215 (b) of Act 13 delegates the legislative function of policy-making to the administrative branch, by allowing the DEP to determine what conditions constitute the need for a waiver. By doing so, the legislature has removed the ability of the judiciary to review any decision by the Department of Environmental Protection under Section 3215(b). *Amicus Trout Unlimited* urges this court to affirm the holding of the Commonwealth Court and find that Section 3215(b) unconstitutionally delegates the power to DEP to make policy judgments, in violation of the non-delegation doctrine.

ARGUMENT

I. Act 13 Is Unconstitutional Because It Prevents Municipalities From Fulfilling Their Constitutional Obligations To Protect Public Natural Resources Pursuant To Article I, Section 27 Of The Pennsylvania Constitution

Act 13 prevents a municipality, as an agent of the Commonwealth, from fulfilling its obligation under Article I, Section 27 of the Pennsylvania Constitution, to protect the public natural resources within its boundaries.

Article I, Section 27 of the Pennsylvania Constitution states:

“The people have a right to clean air, pure water, and to the preservation of the 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 the people.

Pa. Const. Art. I, Sec. 27 (the “Environmental Rights Amendment”).

Public natural resources include the stream and river corridors that run through a municipality’s geographic boundaries and provide habitat for aquatic life and pure water and

natural and esthetic values for members of that community. Municipalities have several tools available to them to meet their constitutional obligation to protect stream systems as public natural resources under Article I, Section 27. Municipal authority to adopt local ordinances and zoning ordinances to protect streams and adjacent lands arises from Section 603(b) of the Municipalities Planning Code.⁵ Additionally, a municipality has been empowered—and in some cases, is required—to adopt floodplain protections to protect stream systems by the Pennsylvania Flood Plain Management Act.⁶ The Commonwealth has expressly acknowledged that “(i)n Pennsylvania, the power and responsibility to plan for land use and its regulation lies exclusively with local government including counties,” and that “the Municipalities Planning Code has been amended several times to encourage local governments to address valuable natural and cultural resources such as agricultural lands, wetlands, floodplains, historic and water supply resources.”⁷

This honorable court has upheld the municipal obligation to protect natural resources under Article I, Section 27 in numerous cases. See Community College of Delaware County v. Fox, 20 Pa. Commw. 335, 358, 342 A.2d 468, 482 (1975) (holding that governing bodies of boroughs, townships, counties and cities are trustees of the public natural resources, and

⁵“Zoning ordinances, except to the extent that those regulations of mineral extraction by local ordinances and enactments have heretofore been superseded and preempted by... the act of December 19, 1984 (P.L. 1140, No.223), known as the “Oil and Gas Act,”... are preempted by other federal or state laws *may permit, prohibit, regulate, restrict and determine*: (1) Uses of land, watercourses and other bodies of water; ... (5) Protection and preservation of natural and historic resources and prime agricultural land and activities. (Emphasis added.). 53 P. S. §§ 10603.

⁶ Pennsylvania Floodplain Management Act, Act 166 of 1978, P.L. 851; 32 P.S. § 679.103 et seq.; defined in sections 113.2 and 113.3 of the Flood Plain Management Regulations, developed to implement the Pennsylvania Floodplain Management Act.

⁷ Pennsylvania Governor’s Center for Local Government Services, *Local Land Use Controls in Planning, Planning Series #1 (4th Ed.)*, Pennsylvania Department of Community and Economic Development, Pages 1-2. (May, 2001); available at http://www.newpa.com/webfm_send/1517 (Referring to sections 603(b)(5), 604(1) and 604(3) of the Municipalities Planning Code).

Department of Environmental Resources is not the sole trustee, supervisor and/or coordinator of Commonwealth responsibilities as trustee of all public natural resources); and See also Franklin Tp. v. Com., Dept. of Environmental Resources, 500 Pa. 1, 7-10., 452 A.2d 718, 721-22 (1982) (holding that “the direct and substantial interest of local government in the environment, and in the quality of life of its citizenry cannot be characterized as remote. We need not wait until an ecological emergency arises in order to find that the interest of the municipality and county faced with such a disaster is immediate.”). However, despite the explicit acknowledgement of the Commonwealth Court below that a municipality has a constitutional duty to protect natural resources, the court concluded that Act 13— a state statute—precluded a municipality from considering environmental concerns, when using its zoning power pursuant to Article I, Section 27 of the Pennsylvania Constitution. Robinson Tp. v. Com., ---A.3d---, 2012 WL 3030277 (Pa. Commw. 2012).

Prior to Act 13, this honorable court distinguished local ordinances that attempted to regulate the features of oil and gas well operations regulated by the Oil and Gas Act from local ordinances that sought to designate where different uses should be permitted in a manner that accounts for the community’s development objectives, its character and the suitabilities and special nature of particular parts of the community. Huntley & Huntley, Inc. v. Borough Council of Oakmont, 600 Pa. 207, 225, 964 A.2d 855, 857 (2009).

Sections 3302, 3303 and 3304 of Act 13 eliminate a municipality’s ability to protect natural resources under Article I, Section 27, by usurping a municipality’s local authority to regulate floodplain activities and by attempting to occupy the entire field of environmental regulation. Floodplains—if protected and left intact—are valuable public natural resources that (1) provide societal benefits to communities by attenuating flows during flood events, (2)

enhance biological productivity by supporting a high rate of plant growth, and (3) provide excellent habitats for fish and wildlife by serving as breeding and feeding grounds.

Given that a municipality's primary tools to protect public natural resources—such as streams, rivers and floodplains—are local ordinances, zoning provisions and floodplain management ordinances, and that Act 13 renders those tools meaningless, the Commonwealth Court erred in holding that Act 13 did not prevent municipalities from fulfilling their constitutional obligations to protect public natural resources pursuant to Article I, Section 27 of the Pennsylvania Constitution.

A. The Commonwealth Court erroneously concluded that Act 13 relieves a municipality's obligation to address environmental concerns through the administration of zoning ordinances.

In the decision below, the Commonwealth Court held that Section 3303 of Act 13 alleviated a municipality's obligation to take into consideration environmental concerns in the administration of their zoning ordinances. Robinson Tp. v. Com., ---A.3d---, 2012 WL 3030277 (Pa. Commw. 2012). This conclusion fails to consider the obligation of a municipality to protect its floodplain—a natural resource that connects streams to the landscape, protects habitat for trout and helps to maintain stream function—pursuant to the Pennsylvania Flood Plain Management Act and the National Flood Insurance Program.

Section 679.103 of the Pennsylvania Flood Plain Management Act states that the purposes of the Act are to, among others: Encourage planning and development in floodplains which are consistent with sound land use practices; Authorize a comprehensive and coordinated program of floodplain management, based upon the [National Flood Insurance] Program, designed to preserve and restore the efficiency and carrying capacity of the streams and floodplains of the Commonwealth; Assist municipalities in qualifying for the National Flood

Insurance Program; and Provide for and encourage local administration and management of floodplains.⁸

According to the Pennsylvania Flood Plain Management Act, any municipality within the Commonwealth that has been identified by the United States Department of Housing and Development as having an area or areas which are subject to flooding are required by the Pennsylvania Flood Plain Management Act to participate in the National Flood Insurance Program (NFIP).⁹ If a community has been identified as meeting the criteria described above, and the community does not participate in the NFIP, then a land owner or business with structures located in the community's flood plain will not be able to obtain flood insurance. According to the Pennsylvania Flood Plain Management Act, participation in the federal NFIP requires that a municipality "adopt such flood plain management regulations, and amendments thereto, as are necessary to comply with the requirements of the National Flood Insurance Program."¹⁰ The municipal obligation to protect floodplains through the adoption of local regulations—either through zoning ordinances or single purpose ordinances—is not absolved by the Commonwealth Court's determination that all environmental acts are of statewide concern and thus local regulation is precluded. Act 13 hinders a municipality's obligation to protect the floodplain and to participate in the National Flood Insurance Program.

B. Act 13 prevents a township from protecting floodplains and other components of stream systems.

Section 3302 of Act 13 purports to allow local regulation of floodplains, as long as the local ordinance does not "impose conditions, requirements or limitations on the same features of

⁸ 32 P.S. §679.103.

⁹ 32 P.S. §679.101, et. seq.

¹⁰ 32 P.S. §679.101, et. seq.

oil and gas operations regulated by Chapter 32 or that accomplish the same purposes as set forth in Chapter 32.”¹¹ Despite the clear language of section 3302 preserving a municipality’s right to determine where gas drilling can occur within the floodplain, section 3215(f) of Act 13 establishes a set of conditions, and exceptions to those conditions, that determine when a well site may be prepared or drilled within the floodplain.

“Section 3215(f) states:

(1) No well site may be prepared or well drilled within any floodplain if the well site will have: (i) a pit or impoundment containing drilling cuttings, flowback water, produced water or hazardous materials, chemicals or wastes within the floodplain; OR (ii) a tank containing hazardous materials, chemicals, condensate, wastes, flowback or produced water within the floodway.

(2) A well site shall not be eligible for a floodplain restriction waiver if the well site will have a tank containing condensate, flowback or produced water within the flood fringe unless all the tanks have adequate floodproofing in accordance with the National Flood Insurance Program standards and accepted engineering practices.”

58 Pa. C.S. §3215(f).

Sections 3202 and 3215(f), when read together, are conflicting and remove any and all opportunity for a municipality to adopt regulations that protect the floodplain and determine where gas drilling can occur within its boundaries. By doing so, Act 13 removes the ability of the municipality to meet its constitutional obligation under Article I, Section 27, to protect public natural resources. In short, Act 13 eliminates the local authority to determine where sensitive

¹¹ “Except with respect to local ordinances adopted pursuant to the MPC and the 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. No local ordinance adopted pursuant to the MPC or the Flood Plain Management Act shall contain provisions which impose conditions, requirements or limitations on the same features of oil and gas operations regulated by Chapter 32 or that accomplish the same purposes as set forth in Chapter 32. The Commonwealth, by this section, preempts and supercedes the regulation of oil and gas operations as provided in this chapter.” 58 Pa. C.S. §3302.

natural areas are and limit certain types of development, such as gas drilling, in those areas. If the court ruling below stands, then dozens of municipal ordinances adopted to protect natural resources such as the floodplain, may be rendered null and void if they establish a setback or other conditions that may be greater than the requirements proposed in Act 13. South Fayette and Shaler Townships in Allegheny County, and Sayre and the Township of Athens in Bradford County are examples of municipalities that have enacted local floodplain regulations that would be considered void, if the Commonwealth Court's decision is allowed to stand.¹² Moreover, the Pine Township ordinance that Trout Unlimited provided guidance upon would be considered invalid, if the court ruling below stands. *See* Exhibit A for the Pine Township ordinance.¹³ Pine Township encompasses portions of Little Pine Creek (of the Pine Creek watershed), which is a flashy stream that during a major storm event can topple its banks and flow into the floodplain. If Pine Township is unable to restrict well pads or the use of chemicals in the floodplain, then the township would be powerless to fulfill its obligation to protect public natural resources under Article I, Section of the Pennsylvania Constitution.

C. Act 13 prevents a municipality from adopting and implementing the minimal requirements established in the Pennsylvania Flood Plain Management Act.

Floodplain management ordinances, by their nature, regulate what types of activities should be permitted in the floodplain. Indeed, the minimum ordinance provisions recommended in section 113.7 (b) of Pennsylvania's floodplain regulations, promulgated to implement the Pennsylvania Flood Plain Management Act, 32 P.S. § 679.207, and the National Flood Insurance

¹² S. Fayette Code 160-8 (R), Dangerous Materials or Substances; Shaler Township Code § 130-7, Development which may endanger life; Township of Athens Code § 87-26, Dangerous Activities or Structures; Borough of Sayre Code § 89-27, Development which may endanger human life.

¹³ *See* Exhibit A. *Amendments to the Pine Township Zoning Ordinance*, enacted October 24, 2011, by the Pine Township Board of Supervisors.

Program, require a municipality to regulate structures that will use, store or produce hazardous waste or radioactive materials.¹⁴

Subsection (1) and (2) of section 113.7(b) of the Pennsylvania Flood Plain Regulations provide further clarity as to what activities are allowed in which portion of the floodplain. Such regulations adopted by municipalities shall require at a minimum the following: (1) within any flood hazard area,¹⁵ construction or substantial improvement of structures shall be prohibited, unless adequately floodproofed (up to 1 ½ feet above 100-year flood elevation); and (2) within any delineated floodway,¹⁶ such construction or substantial improvement of structures shall be prohibited, period.

Section 113.7 (c) of the regulations contains a list of materials and substances that shall be considered dangerous to human life, including: (1) Acetone, (2) Ammonia, (3) Benzene, (4) Calcium carbide, (5) Carbon disulfide, (6) Celluloid, (7) Chlorine, (8) Hydrochloric acid, (9) Hydrocyanic acid, (10) Magnesium, (11) Nitric acid and oxides of nitrogen, (12) Petroleum products—gasoline, fuel oil, and the like, (13) Phosphorous, (14) Potassium, (15) Sodium, (16)

¹⁴ Section 113.7(b): The flood plain management regulations adopted by municipalities shall include provisions regulating the construction or substantial improvement of any structure located within a flood hazard area, **which will be used for the production or storage of any material or substance listed in subsection (c) of this section**, ...or which will involve the production, storage, or use of any amount of radioactive substances. (Emphasis added). Flood Plain Management Regulations Adopted Pursuant to the PA Floodplain Management Act (Act 166 of 1978).

¹⁵ The flood hazard area is defined as “the 100-year floodway and that maximum area of land that is likely to be flooded by a 100-year flood, as shown on the flood plain maps provided by FEMA.” Section 113.1 of the Flood Plain Management Regulations Adopted Pursuant to the PA Floodplain Management Act (Act 166 of 1978).

¹⁶The floodway is defined as “the portion of the flood plain, including the watercourse itself and any adjacent land area, that must be kept open in order to carry the water of a 100-year flood. At a minimum, any floodway must be large enough to carry the water of the 100-year flood without causing an increase of more than one foot in the elevation of the existing 100-year flood.” Section 113.1 of the Flood Plain Management Regulations Adopted Pursuant to the PA Floodplain Management Act (Act 166 of 1978).

Sulphur and sulphur products, (17) Pesticides (including insecticides, fungicides, and rodenticides), and (18) Radioactive substances insofar as such substances are not otherwise subject to regulation.¹⁷

By requiring a municipality to regulate certain structures that use, produce or store hazardous materials, the legislature intended for a municipality to regulate the activities in the floodplain. Many of the specific materials and substances listed in section 113.7(c) of the Flood Plain Management Regulations are commonly used, stored or produced during the development of unconventional natural gas resources.¹⁸ Act 13 sought to address the storage of hazardous materials on a well pad site in the floodplain in section 3215(f). 58 Pa. C.S. §3215(f).

However, section 3215(f)(1) of Act 13 falls short of meeting the minimum requirements identified in the Pennsylvania Flood Plain Management Act for at least two reasons. First, the language in section 3215(f)(1) of Act 13, regarding when a well pad site may be prepared or drilled within the floodplain, fails to meet the minimum standards outlined in the Pennsylvania Flood Plain Management Act and in the National Flood Insurance Program, because Act 13's limiting provisions regarding hazardous materials are based upon only the "storage" of these materials (i.e. tanks or pits), but fail to address whether a well may be located in the floodplain if it "uses" or "produces" such hazardous materials, as required by the Pennsylvania Flood Plain Management Act.¹⁹ Unconventional gas drilling requires the use of hydraulic fracturing, which uses a combination of water, sand or other proppants (man-made or specially-engineered

¹⁷ Section 113.7(b) of the Flood Plain Management Regulations adopted pursuant to section 207 of the PA Floodplain Management Act (Act 166 of 1978).

¹⁸ See FracFocus, *Hydraulic Fracturing Fluid Product Component Information Disclosure*, <http://www.hydraulicfracturingdisclosure.org/fracfocusfind/> (use the "map search" to identify wells within a particular township. Click on placemark to open Hydraulic Fracturing Fluid Product Component Information Disclosure form).

¹⁹ Section 113.7(b) of the Flood Plain Management Regulations adopted pursuant to section 207 of the PA Floodplain Management Act (Act 166 of 1978).

particles to hold fractures open), and chemicals—many of which have been identified as dangerous to human life in section 113.7(c) of the Pennsylvania Flood Plain Management Regulations. If a well pad is allowed to be drilled in a floodplain pursuant to conditions outlined in Act 13, and the process of hydraulic fracturing is employed, then the drilling process may “use” the chemicals determined to be dangerous and subject to regulation by municipalities under the Pennsylvania Flood Plain Management Act.²⁰ Further, when hydraulically fractured, the Marcellus Shale formation releases radionuclide materials, such as Radium-226, that have been trapped in the geologic formation.²¹ Thus, the process of hydraulically fracturing a well “produces” these radioactive materials, and thus must be subject to regulation under Section 113.7. Act 13 fails to address if and when a well pad may be prepared or drilled in the floodplain, if it uses or produces hazardous or radioactive materials. If Act 13 is allowed to stand, municipalities will be unable to meet their obligation to protect natural resources under Article I, Section 27, through the regulation of the use and production of hazardous and radioactive materials in the floodplain.

Second, sections 3215(f)(2) and (3) allow the DEP to waive the restriction on when a tank or pit may be located in the floodplain.²² By providing DEP with the authority to waive

²⁰ Because the type and amount of chemicals used during hydraulic fracturing is different for each well, based upon a number of factors, it would be impossible for a town to know whether one of the chemicals that it was charged with regulating was being used in the floodplain. See <http://fracfocus.org/hydraulic-fracturing-how-it-works/hydraulic-fracturing-process>.

²¹ Resnikoff, Marvin, Ph.D., Radioactivity in Marcellus Shale, Prepared for Residents for the Preservation of Lowman and Chemung. May 18, 2010. pp. 4-14; Resnikoff, Marvin, Ph.D., Radon in Natural Gas from Marcellus Shale. Jan 10, 2012. pp. 1-14; Rahon, Theodore E., CoPhysics Corporation, Radiological Survey Report, “Marcellus Shale Drilling Cuttings from Tioga and Bradford Counties, PA. and New England Waste Services of N.Y., Inc. Landfill Sites in Chemung, NY, Campbell NY, Angelica NY.” April 2010. pp. 1-11.

²² 58 Pa. C.S. §3215(f). (2) A well site shall not be eligible for a floodplain restriction waiver if the well site will have a tank containing condensate, flowback or produced water within the flood

restrictions on whether a well pad may be prepared or drilled in the floodplain, Act 13 has created standards that are less stringent than the minimal standards outlined in the Pennsylvania Flood Plain Management regulations. As such, Act 13, through the language in section 3215(f), prevents a municipality from protecting natural resources such as the floodplain, streams and aquatic life, and therefore prevents a municipality from fulfilling its obligation to protect natural resources pursuant to the Pennsylvania Flood Plain Management Act.

D. Act 13 prevents a municipality from adopting stronger regulations than the minimal requirements established by the Pennsylvania Flood Plain Management Act.

Section 204 of the Pennsylvania Flood Plain Management Act explicitly declares that “(t)he flood plain management regulations adopted by a municipality in order to comply with the requirements of the National Flood Insurance Program shall be deemed minimum standards for the management of the flood plains, and no provision of this act shall be construed as in any way limiting the power of any municipality to adopt more restrictive ordinances, codes or regulations for the management of flood plains.”²³ Yet, Act 13 prevents a municipality from adopting stronger flood plain management regulations—thus frustrating a municipality’s obligation to protect natural resources in accord with Article I, section 27. Because the language in section 3215(f) requires that a municipality allow a well pad to be drilled or prepared within the floodplain, as long as such well pad meets the standards in said section, the municipality is

fringe unless all the tanks have adequate floodproofing in accordance with the National Flood Insurance Program standards and accepted engineering practices. (3) *The department may waive restrictions upon submission of a plan that shall identify the additional measures, facilities or practices to be employed during well site construction, drilling and operations. The waiver, if granted, shall impose permit conditions necessary to protect the waters of the Commonwealth.* (Emphasis added).

²³ 32 P.S. §679.204.

prevented from adopting an ordinance that goes further in limiting where hazardous and radioactive materials may be used, stored and produced within the floodplain. Furthermore, the language in Act 13 does not provide the same level of protection as the minimal regulations outlined in the Pennsylvania Flood Plain Management Ordinance. If the decision of the court below is allowed to stand, municipalities will be prevented from fulfilling their obligations to protect the floodplain under Article I, section 27, through its zoning and local planning power delegated by the Pennsylvania Flood Plain Management Act and the National Flood Insurance Program.

II. Act 13 Unconstitutionally Delegates To The Pennsylvania Department of Environmental Protection The Power to Grant Waivers Without Adequate Standards.

Section 3215 (b)(4) violates the separation of powers doctrine by concentrating all powers, including the legislative, executive, and judiciary powers, in the hands of the state Department of Environmental Protection (DEP). The setback waiver provision, found at section 3215(b)(4), transfers policy-making responsibility from the legislature to the DEP—a straightforward violation of the nondelegation doctrine, as the Commonwealth Court below correctly held. Additionally, Section 3215(b)(4) encroaches upon the judiciary’s power by shielding from judicial review DEP’s waiver of the statutory setback requirements for individual gas wells.

While the enforcement powers necessary to carry out a law are vested in the executive branch, the adjudicative powers necessary to prevent arbitrary enforcement are vested in the

judiciary.²⁴ Section 3215 violates the separation of powers doctrine because it permits an executive agency, i.e., the DEP, to perform a judicial function without the possibility of judicial review.²⁵ Because section 3215(b)(4) lacks any details on what criteria the DEP will use to determine whether a waiver is appropriate, the judiciary—even if given an opportunity to review—cannot determine whether the agency action to deny or approve a waiver request was arbitrary or capricious.

Specifically, section 3215(b)(4) allows DEP to decide that a statewide law will not apply in a particular part of the state. Because section 3215(b)(1) is intended to protect land and water resources, a decision not to apply that provision in a particular area will affect legitimate expectations of property rights in that area. Under Pennsylvania law, “agency decisions that affect legitimate expectations of personal or property rights are appealable and need to be substantiated.”²⁶ Moreover, when an agency's decision or refusal to act leaves a complainant with no other forum in which to assert his or her rights, privileges, or immunities, the agency's act is an “adjudication,” from which appeal may be taken.²⁷ An act of agency discretion is not

²⁴ 2 Pa. Cons. Stat. Ann. § 702 (Any interested person aggrieved by an agency adjudication has the right to appeal therefrom to the courts.); 2 Pa. Cons. Stat. Ann. § 704 (the court must hear the appeal without a jury on the record certified by the agency. After hearing, the court must affirm the adjudication unless it finds that the adjudication violates constitutional rights of the appellant, or is not in accordance with law, or that the provisions of Subchapter A of Chapter 5 (relating to practice and procedure of Commonwealth agencies) have been violated in the proceedings before the agency, or that any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence.); see. e.g., *Beckert v. Warren*, 497 Pa. 137, 144-46, 439 A.2d 638, 642-43 (1981)

²⁵ *Pennsylvania Human Relations Comm'n v. First Judicial Dist. of Pa.*, 556 Pa. 258, 262, 727 A.2d 1110, 1112 (1999).

²⁶ *Nitterhouse v. Department of General Services, Bd. of Com'rs of Public Grounds and Bldgs.*, 706 A.2d 381, (Pa. Cmwlt. 1998)

²⁷ *Ruiz v. Attorney General of Pennsylvania*, 789 A.2d 372, (Pa.Cmwlt.2001), appeal denied 798 A.2d 1294, 568 Pa. 745. (2001) (emphasis added).

immune from review. If an agency exercises its discretion arbitrarily, the reviewing court will set aside the action.²⁸

The DEP's waiver authority under 3215(b)(4) entails a determination of individual rights on a case by case basis, a quintessentially judicial function. Yet, section 3215(d) denies any form of appeal or judicial review to a locality affected by the DEP's decision to waive the setback protections.²⁹ The section authorizes DEP to render unappealable decisions concerning the rights of municipalities to receive a statutory protection within their borders. Act 13 does not place any checks on this power. Executive adjudications are permissible only where the law "accords the disappointed party to the administrative process the absolute right to a . . . judicial review of the determination."³⁰ Section 3215 explicitly denies that right. Therefore, it unconstitutionally infringes the judicial prerogative and must be struck down.

²⁸ *Edwards v. Com., Dept. of State, Com'r of Professional and Occupational Affairs (State Bd. of Funeral Directors)*, 383 A.2d 564, 34 Pa.Cmwlth. 249, Cmwlth.1978

²⁹ 58 Pa. C.S. § 3215(d).

³⁰ *See, e.g., Parker v. Children's Hosp. of Philadelphia*, 483 Pa. 106, 394 A.2d 932 (1978) (Requirement in Pennsylvania Health Care Services Malpractice Act that claimant must first pursue a statutorily created administrative remedy before seeking relief in courts did not usurp the judicial function, because the Act provided for an appeal to courts de novo.)


CONCLUSION

For the foregoing reasons, Trout Unlimited, Inc., respectfully request that the Court (1) reverse the ruling of the court below and hold that Act 13 does prevent a municipality from fulfilling its obligation to protect natural resources pursuant to Article I, Section 27 of the Pennsylvania Constitution; and (2) affirm the ruling of the court below holding that Act 13 provides insufficient guidance to DEP as to when to grant a waiver from the setback requirements established by the Legislature.

Respectfully submitted,

PARKOWSKI, GUERKE & SWAYZE, P.A.

Dated: September 18, 2012



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EXHIBIT A

Amendments to the Pine Township Zoning Ordinance

(Enacted October 24, 2011)
by the Pine Township Board of Supervisors.

AMENDMENTS
to the
PINE TOWNSHIP ZONING ORDINANCE
(effective January 1, 2001)

Enacted: October 24, 2011

Effective: October 29, 2011

Enacted by the
PINE TOWNSHIP BOARD OF SUPERVISORS

with the Assistance of

DENISE DIETER, ESQUIRE
Township Solicitor

and

LANDPLAN, INC.
Professional Land Use Planning Consultant

OIL & GAS DEVELOPMENT

1301 DEFINITIONS

(insert the following new definitions)

DERRICK: Any portable framework, tower mast and/or structure which is required or used in connection with drilling or re-working a well for the production of oil or gas.

DORMITORY-STYLE HOUSING FACILITY: A housing facility providing space for sleeping, eating, training and recreation for a group of individuals who are associated for a common overall function, i.e. educational purposes or temporary workers. This definition shall not apply to camps, cabins or vacation homes as defined in this Ordinance, or to temporary mobile homes or recreational vehicles placed on an oil or gas well site for management or operational purposes.

DRILLING: The digging or boring of a well, either vertically or horizontally, for the purpose of exploring for, developing or producing oil or gas or other hydrocarbons, or for the purpose of injecting gas, water or any other fluid or substance into the earth.

DRILLING PAD: The area of surface operations surrounding the surface location of a well or wells. Such area shall not include an access road to the drilling site.

FRACKING: The process of injecting water, customized fluids, sand, steam or gas into a gas well under pressure to improve gas recovery, also known as hydraulic fracturing or fracture stimulation.

NATURAL GAS COMPRESSOR STATION: A permanent facility designed and constructed to compress natural gas that originates from a gas well or collection of such wells operating as a midstream facility for the delivery of gas to a transmission pipeline, distribution pipeline, natural gas processing plant or underground storage field, including one or more natural gas compressors, associated buildings, pipes, valves, tanks and other equipment.

NATURAL GAS METERING STATION: A permanent structure that is used as a midstream operation for the purpose of metering or measuring the flow and/or volume of gas and includes associated equipment, tanks and site disturbance.

NATURAL GAS PROCESSING PLANT: A permanent facility designed and constructed to remove materials such as ethane, propane, butane, and other constituents or similar substances from natural gas to allow such natural gas to be of such quality as is required or appropriate for transmission or distribution to commercial markets, but not including facilities or equipment that is designed and constructed to primarily remove water, water vapor, oil or naturally occurring liquids from the natural gas.

OIL AND GAS: Crude oil, natural gas, methane gas, coal bed methane gas, propane, butane and/or any other constituents or similar substances that are produced by drilling an oil or gas well.

OIL AND GAS DEVELOPMENT: The well site preparation, construction, drilling, re-drilling, hydraulic fracturing, and/or site restoration associated with an oil or gas well of any depth; water and other fluid storage, impoundment and transportation used for such activities; and the installation and use of all associated equipment, including tanks, meters and other equipment and structures, whether permanent or temporary; and the site preparation, construction, installation, maintenance and repair of oil and gas pipelines and associated equipment; and other equipment and activities associated with exploration for, production and transportation of oil and gas. (See also NATURAL GAS COMPRESSOR STATION, NATURAL GAS METERING STATION, and NATURAL GAS PROCESSING PLANT.)

OIL OR GAS STAGING FACILITY: A facility or location on a permitted site for the storage of equipment, pipes, and vehicles used to support gas development activities at other permitted sites.

OIL OR GAS WELL: A pierced or bored hole drilled or being drilled in the ground for the purpose of, or to be used for, producing, extracting or injecting gas, oil petroleum or other liquid related to oil or gas production or storage, including brine disposal.

OIL OR GAS WELL SITE: The location where facilities, structures, materials and equipment, whether temporary or permanent, necessary for or incidental to the preparation, construction, drilling, production or operation of an oil or gas well, including exploratory wells, are located.

SEISMIC TESTING: Testing conducted on the earth's surface or shallow subsurface for the purpose of evaluating subsurface geologic conditions.

STORAGE WELL: A well used for and in connection with the underground storage of natural gas, including injection into or withdrawal from an underground storage reservoir for monitoring or observation of reservoir pressure.

STRUCTURE, PERMANENT: A structure placed on or in the ground, or attached to another structure in a fixed position, and intended to remain in place for a period of more than six (6) months.

WATER STORAGE FACILITY: Tanks of any construction (metal, fiberglass, concrete, etc.) and wastewater treatment settlement ponds, surface mining ponds, detention and retention ponds, artificial lakes and ponds, and similar water impoundment features used for the storage of water that is to be used, has been used, and/or is being reused.

(adjust the following existing definitions)

MINERAL EXTRACTION OPERATION: The commercial extraction of natural minerals from the earth, including facilities for the mixing and batching of extracted materials. For the purposes of this Ordinance however, oil and gas development shall not be considered to be mineral extraction operations. (See also Section 413, OIL & GAS DEVELOPMENT, and Section 430.)

MINERALS: Any aggregate or mass of mineral matter, whether or not coherent. The term includes, but is not limited to, anthracite and bituminous coal, coal refuse, peat, limestone, dolomite, sand, gravel, rock, stone, earth, fill, slag, iron or zinc ore, vermiculite, clay, and crude oil and natural gas.

TEMPORARY STRUCTURE: A non-permanent structure which is located on a lot in the Township for a specified duration. Some temporary structures may only be permitted for very short periods of time, while others may be authorized for up to six (6) months. (See also Section 424.)

DISTRICT REGULATIONS

304 AGRICULTURAL DISTRICT

Uses and Structures

(insert the following new uses as Items # 12, 13, 14, 15 & 16 in the list of Conditional Uses & Structures)

Conditional Uses & Structures

12. Oil and gas well sites. (See 430 A.)
13. Natural gas compressor stations, processing plants or metering stations. (See 430 B.)
14. Water storage facility. (See 430 C.)
15. Oil or gas staging facility. (See 430 D.)
16. Dormitory-style housing facilities. (See 431)

Lot, Yard and Open Space Requirements

(insert new dimensional requirement as Item c. in Minimum Lot Area Requirements column and re-letter all remaining Sub-Parts; adjust re-lettered Sub-Part d. as follows; and insert the following new dimensional requirements as Items g. and h. to the list and re-letter remaining Sub-Parts)

Minimum Lot Requirements

1. Minimum Lot Area Per Principal Structure or Use:

- c. Dormitory-style Housing Facilities - 5 acres.
- d. Oil and Gas Well Sites or Mineral Extraction Operations - 5 acres. *
- g. Natural Gas Compressor Stations, Processing Plants or Metering Stations - 5 acres. *
- h. Oil or Gas Staging Facilities or Water Reuse Storage Facilities - 5 acres.*

* *Contiguous parcels under the control of the same operator may be considered as one for the purpose of this minimum acreage requirement.*

305 **OPEN SPACE CONSERVATION DISTRICT**

Uses and Structures

(insert the following new uses as Items # 12, 13, 14 & 15 in the list of Conditional Uses & Structures)

Conditional Uses & Structures

- 12. Oil and gas well sites. (See 430 A.)
- 13. Natural gas compressor stations, processing plants or metering stations. (See 430 B.)
- 14. Water storage facility. (See 430 C.)
- 15. Oil or gas staging facility. (See 430 D.)

Lot, Yard and Open Space Requirements

(insert new dimensional requirements as Items b., c. & d in Minimum Lot Area Requirements column and re-letter existing Sub-Part b. as Sub-Part e.)

Minimum Lot Requirements

1. Minimum Lot Area Per Principal Structure or Use:

- b. Oil and Gas Well Sites - 5 acres. *
- c. Natural Gas Compressor Stations, Processing Plants or Metering Stations - 10 acres. *
- d. Oil or Gas Staging Facilities or Water Reuse Storage Facilities - 10 acres.*

* *Contiguous parcels under the control of the same operator may be considered as one for the purpose of this minimum acreage requirement.*

SUPPLEMENTARY USE REGULATIONS

(insert the following new Sections to Article 4)

430 OIL AND GAS DEVELOPMENT

A. Oil and Gas Well Sites

Oil and gas well sites may be permitted in the Agricultural and Open Space Conservation Districts as specified in the District Regulations, Article 3, but shall be subject to the following standards, as well as all other applicable State and Federal requirements.

1. Permit Requirements.

- a. A Zoning Permit shall be required prior to the commencement of all new oil or gas well sites or the addition to any existing oil and gas well sites. Any modification to an existing well site that materially alters the size or location of the well site shall require a modification of the Zoning Permit. Multiple wells located at the same well site shall not require the issuance of individual Permits.
- b. A Zoning Permit shall not be required for seismic testing.

2. Permit Application. The applicant shall provide the Township with the following information at the time of Permit application.

- a. A narrative providing an overview of the project including the acreage to be involved, the number of wells to be drilled on the site, and the location, number and description of equipment and structures to be used to the extent known.
- b. A map showing the location of the oil and gas well site, the location of derricks, drilling rigs, equipment and structures and all permanent improvements to be made to the site.
- c. A narrative and map describing all routes to be used to access the well site, including those used for the delivery of equipment, machinery, water, chemicals and other materials used in the siting, drilling, construction, maintenance and operation of the well site.
- d. A statement that the development will be constructed and operated in compliance with all Federal and State permitting requirements and copies of all such Permits issued at the time of submittal, including any DEP Permits and any applicable PennDOT Highway Occupancy Permits.
- e. A narrative describing the environmental impacts of the proposed development on the site and surrounding land and the measures

proposed to protect or mitigate such impacts, where such description is not provided as part of DEP documents required under Sub-Section 430 A.2.d. above.

- f. A certificate or evidence satisfactory to the Township that, prior to the commencement of any activity at the oil or gas well site, the applicant shall have accepted and complied with Ordinance # 2008-02, the Pine Township Motor Vehicle Weight Limitation and Bonding Ordinance, regarding the maintenance and repair of Township roads that are to be used to access the well site for construction, drilling activities and other site operations.
 - g. A site address for the well site determined by the County's 911 addressing program for emergency and safety purposes. Such address shall be conspicuously posted at the nearest point of public access to the site.
 - h. A copy of the Preparedness, Prevention and Contingency Plan prepared for the well site and verification that a copy has also been provided to the local emergency service providers. Such Plan shall include contact information of the individual responsible for operation and activities at the well site, including telephone numbers where such individual can be contacted on a 24-hour basis.
3. Permit Processing. All Zoning Permit applications for oil and gas well sites shall be processed in accordance with the procedure set forth in Section 1202 of this Ordinance.
4. Design and Installation. The following shall be considered minimum standards for the design and installation of oil and gas well sites.
- a. Access. Vehicular access to oil and gas well sites shall minimize the danger to traffic and nuisance to surrounding properties whenever reasonably possible. Access to the site shall via a residential street or road shall be discouraged. Whenever possible, access should be provided from a collector street.
 - b. Height Standards. Permanent and accessory structures associated with an oil or gas well site shall comply with the height regulations for the zoning district in which the well site is located. A temporary exemption to the height restrictions may however be granted by the Township for the temporary placement of drilling rigs, drying tanks, and other accessory uses necessary for the actual drilling or redrilling of an oil or gas well.
 - c. Setback Requirements. Drilling rigs shall be set back a minimum of 1.5 times their height from any property line or public or private street. The drilling pad shall comply with all setback and buffer requirements set

forth in this Ordinance for the zoning district in which it is located, unless approved otherwise by the Township in unique situations.

- d. Lighting. Lighting at the oil or gas well site, either temporary or permanent, shall be directed downward and inward toward the activity, in order to minimize glare on nearby roads and buildings within 100 feet of the well site.
- e. Prohibitions. No oil and gas well sites shall be permitted to be located within any 100-year floodplain area identified as such in the Township's National Flood Insurance Study (FIS) and shown on the accompanying flood mapping prepared for the Township by the Federal Emergency Management Agency (FEMA).

B. Natural Gas Compressor Station, Processing Plant or Metering Station

Natural gas compressor stations, processing plants or metering stations may be permitted in the Agricultural and Open Space Conservation Districts as specified in the District Regulations, Article 3, but shall be subject to the following standards, as well as all other applicable State and Federal requirements.

- 1. Permit Requirements. A Zoning Permit shall be required prior to the construction of any new natural gas compressor station, processing plant or metering station.
- 2. Permit Application. In addition to the information required in Sub-Section 430 A.2 of this Ordinance, the applicant shall provide the Township with the following information at the time of Permit application for a natural gas compressor station, processing plant or metering station.
 - a. A narrative providing an overview of the project as it relates to the proposed compressor station, processing plant or metering station.
 - b. A map showing the location of the natural gas compressor station, processing plant or metering station, including any equipment and structures and all permanent improvements to the site.
 - c. A site address for the facility determined by the County's 911 addressing program for emergency and safety purposes. Such address shall be conspicuously posted by the applicant at the nearest point of public access to the site.
- 3. Permit Processing. All Zoning Permit applications for natural gas compressor stations, processing plants or metering stations shall be processed in accordance with the procedure set forth in Section 1202 of this Ordinance.

4. Design and Installation. In addition to the design and installation requirements set forth in Sub-Section 430 A.4 of this Ordinance, the following standards shall be used by the applicant for the design of natural gas compressor stations, processing plants or metering stations.
 - a. Building Design. In order to minimize noise generated from such facilities, all compressors shall be located within a completely enclosed, acoustically designed building. Additional sound mitigation devices shall be installed where needed to address noise levels that exceed the permissible sound levels.
 - b. Height Standards. Permanent structures associated with natural gas compressor stations, processing plants or metering stations shall comply with the height regulations for the district in which they are to be located.
 - c. Setback Requirements. Natural gas compressor stations, processing plants or metering stations shall comply with all setback and buffer requirements set forth in this Ordinance for the district in which they are to be located, unless approved otherwise by the Township in unique situations.
 - d. Lighting. Lighting at a natural gas compressor station, processing plant or metering station shall be limited to security lighting, when practicable.
 - e. Prohibition. No natural gas compressor station, processing plant or metering station shall be located within any FEMA-identified 100-year floodplain.

C. Water Storage Facility

Water storage facilities may be permitted in the Agricultural and Open Space Conservation Districts as specified in the District Regulations, Article 3, but shall be subject to the following standards.

1. Permit Requirements. A Zoning Permit shall be required prior to the creation or erection of any water storage facility, including impoundments that are to be used for water storage. Temporary portable water storage tanks, such as frack tanks, shall not require a Zoning Permit.
2. Permit Application. The applicant shall provide the Township with all pertinent information required in Sub-Section 430 A.2 of this Ordinance as part of the application for a water storage facility.
3. Permit Processing. All Zoning Permit applications for water storage facilities shall be processed in accordance with the procedure set forth in Section 1202 of this Ordinance.
4. Design and Installation. In addition to the design and installation require-

ments set forth in Sub-Section 430 A.4 of this Ordinance, the following standards shall be used by the applicant for the design of water storage facilities.

- a. On-Site Parking and Staging. All water hauling vehicle parking and staging associated with the reuse facility shall be contained on the facility property. The applicant shall demonstrate adequate circulation and turning radii for water hauling vehicles accessing reuse facilities.
- b. Soil Erosion & Sedimentation. Evidence shall be provided to the Township that all required Soil Erosion and Sedimentation Control Plans have been properly prepared, and then submitted to and reviewed by the County Conservation District.
- c. Buffer Requirements. A buffer, no less than 25 feet in width, shall be provided around the perimeter of the water property. There shall be no parking, storage or other use permitted in this buffer area. In determining the type and extent of the buffer required, the Township shall take into consideration the design of the proposed structures, the topography of the site, existing vegetation, and the relationship of the proposed project to the surrounding area.
- d. Prohibition. No water storage facility shall be located within any FEMA-identified 100-year floodplain.
- e. Hours of Operation. Where such facilities are located adjacent to residential properties, hours of operation shall be limited to daylight hours.

D. Oil or Gas Staging Facility

Oil or gas staging facilities may be permitted in the Agricultural and Open Space Conservation Districts as specified in the District Regulations, Article 3, but shall be subject to the following standards, as well as all other applicable State and Federal requirements.

1. Permit Requirements. A Zoning Permit shall be required prior to the construction or utilization of any new oil or gas staging facility.
2. Permit Application. The applicant shall provide the Township with all pertinent information required in Sub-Section 430 A.2 of this Ordinance as part of the application for an oil or gas staging facility.
3. Permit Processing. All Zoning Permit applications for oil or gas staging facilities shall be processed in accordance with the procedure set forth in Section 1202 of this Ordinance.
4. Design and Installation. The following shall be considered minimum standards for the design and installation of an oil or gas staging facility. All

precautions shall be taken to minimize potentially noxious, hazardous or nuisance occurrences at the facility.

- a. Access. Vehicular access to oil or gas staging facilities shall minimize danger to traffic and nuisance to surrounding properties, whenever reasonably possible. Access to the site from a residential street or road shall be discouraged. Whenever possible, access shall be provided from a collector street.

Outdoor storage and inventory areas shall be aligned and displayed in an orderly manner so that emergency circulation can be maintained at all times.

- b. Setback Requirements. That portion of the lot intended to be utilized for storage of equipment or construction materials shall be located no less than 25 feet from any adjoining lot or right-of-way line.
- c. Lighting. Lighting at the oil or gas staging facility shall be directed downward and inward toward the activity in order to minimize the glare on nearby roads or adjoining properties. Lighting fixtures shall be hooded or shielded to confine glare to the site.
- d. Prohibition. No oil or gas staging facility shall be located within any FEMA-identified 100-year floodplain.

431 **DORMITORY-STYLE HOUSING FACILITIES**

Dormitory-style housing facilities may be permitted only in the Agricultural District as specified in the District Regulations, Article 3, but shall be subject to the following standards.

- A. Dormitory-style housing facilities shall be designed and constructed to meet all applicable Building Code requirements and shall be inspected and approved by the Township Building Code Official prior to being occupied. Satisfactory evidence shall be provided to the Township indicating that these requirements have been met.
- B. Residents of a dormitory-style housing facility shall be provided with meals, sleeping accommodations, bathroom facilities, and recreational opportunities, and may also be provided with housekeeping services or laundry facilities. There shall however, be no more than two (2) persons per bedroom in such facilities.
- C. The facility shall be set back from all property lines in accordance with the standards set forth in the District Regulations for the applicable zoning district.
- D. Sewage and water facilities shall be sufficient to handle the anticipated loading created by the housing facility and shall meet all requirements of the PA

Department of Environmental Protection.

- E. Arrangement for the collection, storage and disposal of solid wastes generated by the facility shall be made by the applicant and submitted to the Township for approval as part of the application for such use.
- F. Where adjacent land use dictates, in the opinion of the approving authority, screening, meeting the requirements set forth in Section 506 of this Ordinance, shall be provided around the perimeter of the housing facility site.
- G. Outdoor lighting provided for the housing facility shall be directed downward and inward toward the facility in order to minimize the glare on nearby roads or adjoining properties. Lighting fixtures shall be hooded or shielded to confine glare to the site.
- H. Off-street parking and loading facilities shall be provided in accordance with the requirements of Article 8 and Table 1, the Off-Street Parking Schedule, of this Ordinance.
- I. All other applicable requirements of this Ordinance, including the sign regulations set forth in Article 7, shall be met.

ENACTED and **ORDAINED** by the Board of Supervisors of Pine Township,
Lycoming County, PA, as an amendment to the Pine Township Zoning Ordinance of
2001, on this 24th day of October, 2011.

TO BECOME EFFECTIVE on the 29th day of October,
2011.

PINE TOWNSHIP SUPERVISORS

Robert Heyler-Johnston
Chairman

Albert J. Pearson
Supervisor

Supervisor

ATTEST:

Sally K. Johnston
Pine Township Secretary

TOWNSHIP SEAL:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via First Class mail on this date to the following:

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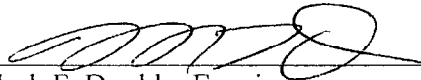
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Trout Unlimited



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