

**Highland Township
Elk County, Pennsylvania**

Ordinance No. 1-9 of 2013

Whereas, this ordinance establishes a Bill of Rights which recognizes and secures the civil and political rights of Highland Township residents; and

Whereas, this ordinance then bans the depositing of waste from the extraction of shale gas within Highland Township because that extraction violates the civil rights of Highland residents, and because it threatens the health, safety, and welfare of residents and neighborhoods of Highland; and

Whereas, this ordinance removes legal powers and authority from corporations involved in the disposal, storage, surface or subsurface injection or “treatment” of waste products produced by shale gas extraction activities within the Township, in recognition that those legal powers are illegitimate and unjust, in that they place the rights of a corporate minority over the rights and political authority of a majority of Highland Township residents; and

Whereas, this Ordinance shall be known and may be cited as “Highland Township’s Community Rights and Protection from Injection Wells Ordinance;” and

Whereas, this Ordinance is enacted pursuant to the inherent right of the residents of Highland Township to govern their own community, including, without limitation, the Declaration of Independence’s declaration that governments are instituted to secure the rights of people, and the Pennsylvania Constitution’s recognition that “all power is inherent in the people” and Article I Section 27 which guarantees 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

Section 1—Findings and Intent

The Board of Supervisors of Highland Township finds that the injection of waste derived or resulting from the extraction of shale gas into the ground, as well as the disposal of such waste into surface waters, onto the land or into the air in Highland Township, would violate the rights of residents and neighborhoods, and pose a significant threat to their health, safety, and welfare. Moreover, widespread environmental and human health impacts have resulted from disposal of waste resulting from shale gas extraction in other areas. Regulating these activities automatically means allowing gas extraction waste to be disposed of within the Highland Township, thus violating the rights of residents and neighborhoods and endangering their health, safety, and welfare by allowing the deposit of toxins into the air, soil, water, environment, and the bodies of residents within our Township.

Meaningful regulatory limitations and prohibitions concerning the disposal of shale gas extraction waste and byproducts, along with zoning and land use provisions relating to these issues, are generally barred by state law because such local regulations would conflict with certain legal powers claimed by resource extraction corporations and protected against local democratic decision-making by the state. The Township Board of Supervisors recognizes that environmental and economic sustainability cannot be achieved if the rights of municipal majorities are routinely

overridden by corporate minorities claiming certain legal powers, with the imprimatur of the state.

The Township Board of Supervisors believes that the protection of residents, neighborhoods, and the natural environment constitutes the highest and best use of the police powers that this municipality possesses. The Township Board of Supervisors also believes that local legislation that embodies the interests of the community is mandated by the doctrine of the consent of the governed, and the right to local, community self-government. Thus, the Township Board of Supervisors hereby adopts this ordinance, which establishes a Bill of Rights for the residents and communities of the Township, bans disposal, storage, or “treatment” of waste materials resulting from shale gas extraction because those activities cannot be achieved without violating the rights of residents and communities or endangering their health, safety, and welfare, and it removes certain legal powers from corporations operating within Highland Township in violation of these prohibitions, and nullifies state laws, permits, and other authorizations which interfere with the rights secured by this ordinance.

Section 2—Definitions

- (a) **“Corporation”** for purposes of this ordinance, shall include any corporation, limited partnership, limited liability partnership, business trust, or limited liability company organized under the laws of any state of the United States or under the laws of any country, and any other business entity that possesses State-conferred limited liability attributes for its owners, directors, officers, and/or managers.
- (b) **“Disposal”** shall include but not be limited to the depositing, storage, treatment, recycling, injection, or by any other means the distribution or depositing of brine, “produced water,” “frack water,” tailings or any other waste or by-product of shale gas extraction upon, into, or over the land, waterways, air or any area within the jurisdiction of Highland Township.
- (c) **“Extraction”** shall mean the digging or drilling of a well for the purposes of exploring for, developing or producing shale gas or other hydrocarbons.
- (c) **“Sustainable energy”** shall mean energy that is produced without violating the rights of the human and natural community, and which is specifically not derived from fossil fuels or nuclear fission. Energy derived from existing flows of energy generated by on-going natural processes, including, but not limited to, energy generated from the sun, flowing water, wind flows, and geothermal heat flows. The term shall not include any source of energy generated from an increase in the use of fossil fuels, nuclear fission, or any derivative of those energy sources.

Section 3---Statements of Law – Rights of Highland Residents and the Natural Environment

(a) **Right to Water.** All residents, natural communities and ecosystems in Highland Township possess a fundamental and inalienable right to sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the Township.

(b) **Right to Clean Air.** All residents, natural communities and ecosystems in Highland Township possess a fundamental and inalienable right to breathe air untainted by toxins, carcinogens, particulates and other substances known to cause harm to health.

(c) **Rights of Natural Communities and ecosystems.** Natural communities and ecosystems,

including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights to exist and flourish within Highland Township. Residents of the Township, along with the municipality, shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems.

(c) Right to a Sustainable Energy Future. All residents, natural communities, and ecosystems in Highland Township possess a right to a sustainable energy future, which includes, but is not limited to, the development, production, and use of energy from renewable energy sources.

(d) Right to Self-Government. All residents of Highland Township possess the fundamental and inalienable right to a form of governance where they live which recognizes that all power is inherent in the people, that all free governments are founded on the people's authority and consent, and that corporate entities and their directors and managers shall not enjoy special privileges or powers under the law which make community majorities subordinate to them.

(e) People as Sovereign. Highland Township shall be the governing authority responsible to, and governed by, the residents of the Township. They have at all times the right to use this municipality to exercise their right to local community self-government, and to make law to assert and protect their rights. They at all times enjoy and retain an inalienable and indefeasible right to self-governance in the community where they reside. Use of the "Highland Township" municipal corporation by the sovereign people of the Township shall not be construed to limit or surrender the sovereign authority or immunities of the people to a municipal corporation that is subordinate to them in all respects at all times.

(f) Rights as Self-Executing. All rights delineated and secured by this ordinance shall be self-executing and these rights shall be enforceable against corporations and governmental entities.

Section 4---Statements of Law – Prohibitions Necessary to Secure Bill of Rights' Protections

(a) It shall be unlawful for any individual or corporation, or any director, officer, owner, or manager of a corporation to use a corporation, to deposit, store, "treat,," inject or process waste water, "produced" water, "frack" water, brine or other materials, chemicals or by-products that have been used in the extraction of shale gas onto or into the land, air, or waters within Highland Township. This prohibition shall specifically apply to disposal injection wells.

(b) Corporations in violation of the prohibitions enacted by this ordinance, or seeking to engage in activities prohibited by this ordinance shall not have the rights of "persons" afforded by the United States and Pennsylvania Constitutions, nor shall those corporations be afforded rights under the 1st or 5th amendments to the United States Constitution or corresponding sections of the Pennsylvania Constitution, nor shall those corporations be afforded the protections of the commerce or contracts clauses within the United States Constitution or corresponding sections of the Pennsylvania Constitution. "Corporations," for purposes of this ordinance, shall include any corporation, limited partnership, limited liability partnership, business trust, or limited liability company organized under the laws of any state of the United States or under the laws of any country, and any other business entity that possesses State-conferred limited liability attributes for its owners, directors, officers, and/or managers.

(c) Corporations in violation of the prohibitions enacted by this ordinance, or seeking to engage in activities prohibited by this ordinance shall not possess the authority or power to enforce State or federal preemptive law against the people of Highland Township, or to challenge or overturn municipal ordinances adopted by the Board of Supervisors of Highland Township, when that enforcement or challenge interferes with the rights asserted by this ordinance or interferes with the authority of the municipality to protect the health, safety, and welfare of its residents.

(d) No permit, license, privilege or charter issued by any State or federal agency, Commission or Board to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the prohibitions of this Ordinance or deprive any Township resident(s), natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Pennsylvania Constitution, the United States Constitution, or other laws, shall be deemed valid within Highland Township.

Section 5—Enforcement

(a) Any person, corporation, or other entity that violates any prohibition of this Ordinance shall be guilty of a summary offense and, upon conviction thereof by a district justice, shall be sentenced to pay the maximum fine allowable under State law for that violation, and shall be imprisoned to the extent allowed by law. A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Ordinance found to be violated.

(b) Highland Township may also enforce this Ordinance through an action in equity brought in the Court of Common Pleas of Elk County. In such an action, Highland Township shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

(c) Any Township resident shall have the authority to enforce this Ordinance through an action in equity brought in the Court of Common Pleas of Elk County. In such an action, the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

Section 6—Effective Date and Existing Permit Holders

This Ordinance shall be effective five (5) days after the date of its enactment, at which point the Ordinance shall apply to any and all depositing of waste from shale gas extraction, whether originating in Highland Township or elsewhere, regardless of the date of any applicable permits.

Section 7—People's Right to Self-Government

The foundation for the making and adoption of this law is the people's fundamental and inalienable right to govern themselves, and thereby secure their rights to life, liberty, and pursuit of happiness. Any attempts to use other units and levels of government to preempt, amend, alter, or overturn this Ordinance, or parts of this Ordinance, shall require the Township Board of Supervisors to hold public meetings that explore the adoption of other measures that expand local control and the ability of residents to protect their fundamental and inalienable right to self-government.

Section 8—Call for Constitutional Change

With adoption of this Ordinance, the people of Highland Township call for binding amendment(s) to the Constitution of the Commonwealth of Pennsylvania that recognize and enforce the right to local community self government that shall not be preempted when the municipality enacts laws that protect the health, safety and welfare of the community or assert and expand the rights of human and natural communities. Such changes shall also elevate the rights of the community above the legal privileges and protections afforded to corporations.

Section 9—Severability

The provisions of this Ordinance are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part, or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the Ordinance. The Board of Supervisors of Highland Township hereby declares that in the event of such a decision, and the determination that the court's ruling is legitimate, it would have enacted this Ordinance even without the section, clause, sentence, part, or provision that the court decides is illegal, invalid, or unconstitutional.

Section 10—Repealer

All inconsistent provisions of prior Ordinances adopted by the Highland Township are hereby repealed, but only to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this 9 day of ^{JANUARY} 2013 by the Board of Supervisors of Highland Township.

Edna M. Vayle

Christy Reegal

Paul Burton S.