

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA

GEOKINETICS USA, INC.

Plaintiff,

Civil Action No. 2:17-cv-01314-JFC

v.

MUNICIPALITY OF MONROEVILLE,

Defendant.

**GEOKINETICS USA, INC.'S MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff Geokinetics USA, Inc. (“Geokinetics”), by and through counsel, respectfully moves this Court for a preliminary injunction pursuant to Federal Rule of Civil Procedure 65, enjoining the Municipality of Monroeville, Allegheny County, Pennsylvania (“Monroeville”) from interfering with its seismic testing operations and retroactively applying a seismic ordinance to Geokinetics’ seismic operations. As grounds for this motion, Geokinetics relies upon the facts set forth in its verified Complaint. Furthermore, Geokinetics states as follows:

1. Geokinetics provides seismic data and geological services to the oil and gas industry. Seismic testing is a method of exploring for oil and gas in which sound waves are used to map rock layers underground. Information that Geokinetics provides is vital to the efficient exploration for and safe development of oil and gas reserves.

2. Geokinetics has contracted with an oil and gas operator to perform a seismic survey (the “Project”) that requires the collection of data in Monroeville.

3. In March of 2017, Geokinetics approached Monroeville to discuss its seismic testing operations in the municipality. On June 8, 2017, Geokinetics submitted a permit to use certain local roads necessary to conduct the Project (“Proposed Permit”). At that time,

Monroeville did not have an ordinance regulating seismic testing. For numerous months, Geokinetics tried to work cooperatively and in good faith with Monroeville to conduct its operations. Nonetheless, on September 12, 2017 Monroeville's Council denied Geokinetics' Proposed Permit; instead, Council passed an exclusionary and unreasonable ordinance purporting to regulate seismic testing ("Ordinance").<sup>1</sup>

4. Monroeville has not provided Geokinetics with any justification for its denial of the Proposed Permit.

5. Facing significant time constraints, Geokinetics now has no alternative but to seek injunctive relief in order to prevent Monroeville from interfering with Geokinetics' lawful right to complete the Project and meet its contractual obligations. At issue is solely Geokinetics' need to collect data using Monroeville roads and rights-of-way through use of vibroseis vehicles, which PennDOT has determined to be safe, and temporary placement of receivers. No opening of the surface of the roads is necessary. Geokinetics is willing to post a bond and hold Monroeville harmless against any claims. Upon information and belief, Monroeville's intransigence is not motivated by any legitimate concerns for the health and safety of its citizens, but rather by its Council's concerns about November elections.

6. Prior to denying Geokinetics' Proposed Permit or enacting the Ordinance, Monroeville conducted no scientific analysis to determine the likelihood of harm to citizens or facilities in Monroeville as a result of seismic testing.

7. The Ordinance effectively prohibits seismic testing in Monroeville through

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<sup>1</sup> Geokinetics seeks an injunction with respect to Monroeville's denial of its Proposed Permit, as Monroeville's seismic Ordinance cannot be retroactively applied to Geokinetics' request to conduct seismic testing operations, which was submitted prior to enactment of the Ordinance. In the alternative, Geokinetics seeks injunctive relief with respect to the Ordinance as it is invalid and cannot stand.

arbitrary, capricious and unreasonable regulations. It contains onerous and arbitrary application requirements, confiscatory application fees, punitive penalty provisions, and operational regulations that are inconsistent with state regulations and industry standards.

8. Geokinetics' Project is due to be completed by February 2018. If Geokinetics is not allowed to move forward immediately, it will not be able to complete the Project by the deadline.

9. Accordingly, Geokinetics has been wrongfully prohibited from engaging in seismic testing operations in Monroeville.

10. The verified Complaint pleads the following causes of action:

- (i) In Count I, Geokinetics seeks a declaratory judgment that by denying permission to conduct seismic testing on Monroeville roads and rights-of-way Monroeville has deprived Geokinetics of substantive due process under the Fifth and Fourteenth Amendments of the United States Constitution.
- (ii) In Count II, Geokinetics seeks a declaratory judgment that by denying permission to conduct seismic testing on Monroeville roads and rights-of-way Monroeville has deprived Geokinetics of equal protection under the law as required by the Fourteenth Amendment of the United States Constitution.
- (iii) In Count III, Geokinetics seeks a declaratory judgment that by denying permission to conduct seismic testing on Monroeville roads and rights-of-way Monroeville has abused its police power.
- (iv) In Count IV, Geokinetics seeks a declaratory judgment that by denying permission to conduct seismic testing on Monroeville roads and rights-of-way Monroeville has impermissibly exercised legislative authority.
- (v) In Count V, Geokinetics seeks a declaratory judgment that by denying permission to conduct seismic testing on Monroeville roads and rights-of-way Monroeville has engaged in exclusionary zoning.
- (vi) In Count VI, Geokinetics seeks a declaratory judgment that Monroeville Ordinance No. 2668, An Ordinance of the Municipality of Monroeville, Allegheny County, Pennsylvania, Regulating Geophysical/Seismic Testing Activities ("Ordinance") should be declared invalid as violating the Substantive Due Process and Equal Protection Clauses of the United States Constitution Amendments V and XIV.

- (vii) In Count VII, Geokinetics seeks a declaratory judgment that the Ordinance is preempted by Pennsylvania law because it was not adopted pursuant to the Municipal Planning Code (“MPC”). “[T]he plain terms of Act 13 indicate that a local ordinance purporting to regulate oil and gas operations must be adopted pursuant to the MPC and the Flood Plain Management Act.” *Seneca Resources Corp. v. Highland Twp.*, 2017 WL 4354710, at \*6 (W.D. Pa. Sept. 29, 2017).
- (viii) In Count VIII, Geokinetics seeks a declaratory judgment that the Ordinance is invalid because Monroeville failed to follow the MPC’s procedural requirements for enactment of a zoning or land use ordinance. *See* 53 P.S. § 10607, 10608, 10610.
- (ix) In Count IX, Geokinetics seeks injunctive relief based on the conduct alleged in the Complaint.

11. In considering a motion for preliminary injunction, the Court must weigh four factors: (1) whether the movant is likely to succeed on the merits; (2) whether the movant is likely to sustain irreparable harm in the absence of preliminary relief; (3) whether the balance of equities tips in movant’s favor; and (4) whether the injunction is in the public interest. *See Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008); *Chester ex rel. N.L.R.B. v. Grane Healthcare Co.*, 797 F. Supp. 2d 543, 550 (W.D. Pa. 2011).

12. Geokinetics has a reasonable probability of success on the merits because:
- (a) Monroeville’s denial of Geokinetics’ request to conduct seismic testing on municipal roadways constitutes impermissible exclusionary zoning;
  - (b) Monroeville’s denial of Geokinetics’ request to conduct seismic testing on municipal roadways violates Geokinetics’ substantive due process and equal protection rights;
  - (c) Monroeville’s denial of Geokinetics’ request to conduct seismic testing was an impermissible exercise of police power;
  - (d) Monroeville’s denial of Geokinetics’ request to conduct seismic testing was an impermissible exercise of legislative power;
  - (e) Monroeville’s enactment of the arbitrary and unreasonable Ordinance violates Geokinetics’ substantive due process and equal protection rights;
  - (f) The Ordinance is preempted by Act 13 given that it was not enacted pursuant to

the MPC and the MPC's Procedural Requirements for enacting a zoning and land use ordinance were not followed;

- (g) The Ordinance operates as an improper *de facto* ban on seismic operations;
- (h) The Ordinance improperly determines duties and responsibilities of business.<sup>2</sup>

13. Unless an injunction is granted, Geokinetics will suffer immediate and irreparable harm that cannot be compensated for in money damages. Geokinetics is ready to immediately commence seismic testing operations and has invested considerable time and resources into completing the surveying Project. Geokinetics has obtained the necessary permits and approvals from the Pennsylvania Department of Environmental Protection, the Pennsylvania Department of Transportation, and private landowners within Monroeville. However, due to the actions and inactions of Monroeville, it is impossible for Geokinetics to conduct seismic testing operations in the municipality, in violation of its constitutional rights. Further, the Ordinance subjects Geokinetics to unnecessary, unreasonable, irrational, inconsistent, and prohibitively burdensome requirements that are preempted by state law.

14. Thus, unless an injunction is granted, Geokinetics will suffer immediate and irreparable harm that cannot be compensated for in money damages. Geokinetics will not be able to comply with its contractual duties to the oil and gas operator and individual land and mineral owners. The continued prohibition of seismic testing will also result in incomplete data and substantial lost value to Geokinetics and its client, as there is no other way for Geokinetics to obtain the information. Finally, the inability to obtain sufficient data may render the whole Project unusable and will affect the ability of Geokinetics to obtain contracts and future business. Therefore, Geokinetics can demonstrate irreparable harm for which a preliminary

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<sup>2</sup> Geokinetics pleads both that Monroeville's seismic Ordinance cannot be retroactively applied to Geokinetics' request to conduct seismic testing operations, which was submitted prior to enactment of the Ordinance and, in the alternative, that the Ordinance is invalid and cannot stand.

injunction should be issued.

15. Additionally, the balance of equities tips in Geokinetics' favor. If injunctive relief is not granted, greater injury will result than is prevented. Beyond the irreparable injuries that Geokinetics would suffer, granting injunctive relief will cause Monroeville no harm. Geokinetics seeks only to conduct a safe and scientifically accepted seismic survey which is necessary in order to complete oil and gas exploration and permitted by Pennsylvania law. Geokinetics has agreed to hold Monroeville harmless against any claims arising from the contemplated activities and to post appropriate security. Furthermore, the denial of the preliminary injunction would likely lead to greater injury to the general public as the data collected will assist in preventing future unsafe and dangerous circumstances from occurring.

16. The denial would also adversely affect the efficient production of future oil and gas operations in the area thereby resulting in greater impact to the community and environment. Moreover, if Geokinetics is prevented from conducting its seismic testing, the mineral owners who have seismic contracts with Geokinetics will likewise be prevented from benefiting from oil and natural gas development.

17. Injunctive relief is in the public's interest. The seismic testing is necessary to facilitate oil and gas development, which is needed to supply natural gas for residential, commercial, and industrial customers in Allegheny County and which will benefit the local economy.

18. The injunction will restore the parties to the status quo as it existed prior to passage of the unreasonable and arbitrary Ordinance, as Monroeville did not require seismic activity permits prior to Geokinetics' request for approval to use the Monroeville's roads and right-of-ways.

19. Geokinetics is willing and able to post a bond as required by this Court.

20. In support of this Motion for Preliminary Injunction, Geokinetics relies upon its verified Complaint, which is incorporated herein by reference.

WHEREFORE, Plaintiff Geokinetics USA, Inc. respectfully requests that this Court grant its Motion for Preliminary Injunction and enter the proposed order attached hereto.

Respectfully submitted,

STEPTOE & JOHNSON, PLLC

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*Attorneys for Plaintiff Geokinetics,  
USA, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing was filed electronically through the Court's CM/ECF System this 18<sup>th</sup> day of October, 2017. Notice of this filing will be sent via email to all parties by operation of the Court's electronic filing system.

/s/Kevin Gormly  
Kevin Gormly



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Defendant.

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2017, after hearing and on consideration of the Plaintiff's Complaint and Motion for Preliminary Injunction, and pursuant to Federal Rule of Civil Procedure 65, and it appearing to the Court that immediate and irreparable damage and injury will result to the Plaintiff if injunctive relief is not issued, it is ORDERED, ADJUDGED and DECREED:

- (i) that Defendant, Municipality of Monroeville, is hereby ENJOINED from interfering with the proposed operations of Geokinetics and its agents and assigns in conducting seismic testing in the Municipality of Monroeville; and
- (ii) that *Monroeville* is hereby ENJOINED *from applying Ordinance No. 2668, An Ordinance of the Municipality of Monroeville, Allegheny County, Pennsylvania, Regulating Geophysical/Seismic Testing Activities*, to Geokinetics' seismic testing operations.

Any violation of the above acts shall be sufficient reason to hold Monroeville in contempt upon due and proper notice to this Court.

This Order is conditioned upon the filling of an approved bond in the amount of \$\_\_\_\_\_.

BY THE COURT:

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Joy Flowers Conti  
United States Chief District Judge