

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

GEOKINETICS USA, INC.

Plaintiff,

Civil Action No. _____

v.

Electronically Filed

MUNICIPALITY OF MONROEVILLE,

Defendant.

COMPLAINT

Plaintiff, Geokinetics USA, Inc. ("Geokinetics"), by its undersigned counsel, files this Complaint against the Municipality of Monroeville ("Monroeville").

I. INTRODUCTION

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. Geokinetics contracted with an oil and gas operator to perform a seismic survey of a project area covering parts of Allegheny and Westmoreland Counties ("Interstellar 3D Project" or "Project"). A portion of Monroeville is located within the Project area.

2. On or about June 8, 2017, Geokinetics requested Monroeville's approval to use certain local roads necessary to conduct the Project. At that time, Monroeville did not have an ordinance regulating seismic testing. While Geokinetics tried to work cooperatively and in good faith with Monroeville in order to create a mutual seismic testing agreement, Monroeville

refused to grant Geokinetics' Proposed Permit and instead passed an exclusionary and unreasonable ordinance purporting to regulate seismic testing.

3. Facing significant time constraints, Geokinetics now has no alternative but to file this action seeking equitable relief. Injunctive relief is necessary 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.

II. PARTIES

4. Plaintiff, Geokinetics USA, Inc. ("Geokinetics"), is a Delaware Corporation with offices at 1500 CityWest Boulevard, Houston, Texas 77042-2380. As used herein, reference to Geokinetics also refers to its agents.

5. Defendant Municipality of Monroeville ("Monroeville") is a home rule municipality located in Allegheny County, Pennsylvania with offices at 2700 Monroeville Boulevard, Monroeville, Pennsylvania 15146.

III. JURISDICTION AND VENUE

6. Jurisdiction is proper pursuant to 28 U.S.C. § 1332 because Geokinetics and the Municipality are citizens of different states and the amount in controversy exceeds \$75,000.

7. Jurisdiction is also proper pursuant to 28 U.S.C. § 1331 because Geokinetics

raises challenges to the action and inaction of Monroeville under the Constitution of the United States of America.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Monroeville is located in this judicial district and the events and acts giving rise to Geokinetics' claims arose in this District.

IV. FACTS

A. The Interstellar 3D Project

9. The Project area of 191-square miles includes portions of Allegheny Township, Delmont Borough, Export Borough, Hempfield Borough, Irwin Borough, City of Jeannette, City of Lower Burrell, Municipality of Monroeville, Murrysville Municipality, City of New Kensington, North Huntingdon Township, North Irwin Borough, North Versailles Township, Penn Hills Municipality, Penn Township, Pitcairn Borough, Plum Borough, Salem Township, Trafford Borough and Wall Borough.

10. A seismic survey involves surveying and laying of seismic recorders and geophones as well as the use of vibroseis trucks and equipment. Although not at issue in this lawsuit, a seismic survey also requires drilling of shot holes on parcels of land. The Project will result in a geophysical map of the underground formations across approximately 83,000 parcels throughout the Project area.

11. The data to be collected is necessary to enhance the safety in oil and gas drilling operations that may occur in the Interstellar 3D Project area and allows for efficient oil and gas operations with the least amount of impact.

12. Geokinetics began field work in January 2017 by approaching municipalities about the Project. In February Geokinetics began approaching property owners, including those

in Monroeville, to obtain permits from private property owners. This process took several months due to the number of property owners affected.

13. Geokinetics has entered into numerous contracts with property owners throughout the Project area, including in Monroeville (“Seismic Contracts”). Pursuant to the Seismic Contracts, Geokinetics has the right to conduct a seismic survey across these properties.

14. Geokinetics must also conduct seismic testing on Monroeville roads and rights-of-way. Geokinetics will use vehicles known as vibroseis trucks on state, county, and local roads; and use ground crews to gather data using receivers or nodes. The use of vibroseis trucks in Monroeville is critical because Geokinetics cannot perform the seismic testing on landowner properties in several areas.

15. Vibroseis operations are benign and approved by the Pennsylvania Department of Transportation (“PennDOT”) on Commonwealth highways. *See* PennDOT Publication 282, Highway Occupancy Permit (HOP) Guidelines, at § 3.7 (“Seismic Surveys – Permits may be issued authorizing seismic surveys using the vibroseis method only (see Regulation 459.9(f)). The approved procedure utilizes a vibrator – off the roadway – to set up minor shock waves for the seismic survey; *virtually precluding damage to the highway*. Seismic surveys are not permanent in nature and do not involve the opening of the surface of the highway or any blasting.” (emphasis added)).

16. Geokinetics has applied for and received a Highway Occupancy Permit (“HOP”) from PennDOT authorizing Geokinetics’ seismic operations on state roads within the Interstellar 3D Project area.

17. Geokinetics’ seismic operations are also subject to the regulation of the Pennsylvania Department of Environmental Protection (“DEP”).

B. Geokinetics' Attempts to Work With Monroeville

18. While historically seismic operations have not been subject to local ordinances, recently some municipalities in the Commonwealth have attempted to regulate the seismic testing process.

19. In March 2017, prior to conducting any seismic operations in Monroeville, Geokinetics approached Monroeville in good faith to negotiate a reasonable seismic agreement. Geokinetics originally requested permission to conduct seismic testing on Monroeville-owned land. In June 2017 Geokinetics added a request for permission to use Monroeville's roads to conduct vibroseis and lay receivers. At that time, Monroeville did not have an ordinance regarding seismic testing.

20. On July 6, 2017, Geokinetics provided the Municipal Manager with a map and list of the lands and roads upon which Geokinetics planned to perform the seismic survey.

21. During these discussions, Geokinetics submitted a proposed permit to allow seismic testing on Monroeville-owned lands ("Proposed Permit"), which included an attached addendum addressing proposed terms for use of local roads and rights-of-way ("Addendum").

22. The Proposed Permit provides: "Our Operations will be conducted in accordance with industry standard practices and in a prudent and careful manner, and Geokinetics USA, Inc. agrees to indemnify and hold you harmless from all liability and claims, if any, that may result from the activities conducted under this permit."

23. The Addendum concerning road use provides that Geokinetics will provide a certificate of insurance for \$1,000,000 naming Monroeville as additional insured; and that the permit is contingent upon the posting of a \$100,000 blanket road bond requested by Monroeville. The Addendum further states that maximum PPV (peak particle velocity) for the

seismic testing will not exceed .35 inches per second.

24. Geokinetics actively engaged in discussions with Monroeville's Manager and road engineer. Geokinetics fully explained the seismic testing process and answered all questions.

25. On July 11, 2017 and August 3, 2017, Geokinetics attended Monroeville "Citizens Nights" in which its representatives comprehensively explained the seismic survey and answered questions from the public. Present were Monroeville's Mayor, Council members, Municipal Manager, Solicitor and members of the public.

26. Despite its good faith efforts, Geokinetics learned that Monroeville had been considering the enactment of an Ordinance to regulate seismic testing.

27. At the Monroeville Council meeting on August 8, 2017, the Council voted to deny Geokinetics' request for permission to conduct a seismograph survey on Monroeville-owned lands.

28. Also at the August 8, 2017 meeting, the Monroeville Council presented a proposed ordinance ("Ordinance") purporting to regulate seismic testing and voted to advertise it.

29. Upon information and belief, 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.

30. On August 11, 2017, counsel for Geokinetics and its client Huntley & Huntley Exploration, Inc. ("Huntley & Huntley") asked Monroeville's Solicitor for a meeting to discuss concerns about certain items in the Ordinance. The Monroeville Solicitor later responded that he had been instructed to decline such a meeting.

31. By letter from counsel dated August 21, 2017, Geokinetics asked Monroeville to reconsider its decision denying the Proposed Permit. The Solicitor responded on August 28, 2017 stating that the request to use the roads would be discussed at on September 9, 2017 at a Council Executive Session and a Citizens Night to follow, and then voted upon at a September 12, 2017 Council meeting.

32. On September 7, 2017, Geokinetics participated in another Citizens Night in which the subject of its seismic survey was discussed. That evening it received information that Council was unwilling to approve a seismic survey with November elections pending.

33. On September 8, 2017 Geokinetics further communicated its willingness to negotiate the terms of an agreement.

34. The Council decided to vote on Geokinetics' Proposed Permit at its Council meeting on September 12, 2017.

35. Prior to the Monroeville Council meeting on September 12, 2017, Geokinetics was informed that Monroeville was going to deny Geokinetics' Proposed Permit and, further, that Monroeville was going to enact the Ordinance.

36. In fact, at the Council meeting on September 12, 2017, the Monroeville Council voted to deny Geokinetics' Proposed Permit to conduct seismic operations on Monroeville's roads and rights-of-way.

37. Also at the September 12, 2017 meeting, the Council voted to enact the Ordinance. The Ordinance is No. 2668 – An Ordinance of the Municipality of Monroeville, Allegheny County, Pennsylvania, Regulating Geophysical/Seismic Testing Activities.

38. Upon information and belief, the Permit was denied because the Monroeville Council, facing November elections, was unwilling to approve any activity relating to oil and

gas development, even benign vibroseis testing, and not because of any legitimate health or safety concerns arising from seismic testing.

39. As the Monroeville Solicitor has recognized, the Ordinance does not apply to Geokinetics' Proposed Permit given that it was submitted prior to the Ordinance's enactment. An ordinance does not apply retroactively when it was not in effect or pending at the time of the filing of the application. *Lhormer v. Bowen*, 188 A.2d 747, 748 (Pa. 1963).

40. The Ordinance effectively prohibits seismic testing in Monroeville through 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.

41. Geokinetics' Project is due to be completed by February 2018.

COUNT I
Violation of Substantive Due Process
(Improper Denial of Seismic Testing Permit)

42. The above paragraphs are incorporated as if fully set forth herein.

43. The Substantive Due Process Clauses of the Fifth and Fourteenth Amendment of the United States Constitution prohibit the government from abrogating a person's constitutional rights. U.S. Const. Amend. V and XIV, § 1.

44. Monroeville's denial of Geokinetics Proposed Permit to conduct seismic testing on Monroeville roads and rights-of-way is essentially legislative in nature or character. Its action is:

- (a) unreasonable and arbitrary;
- (b) exceeds the limits of governmental authority;
- (c) is an abuse of official power; and

(d) is not substantially or rationally related to a legitimate public purpose.

45. Accordingly, Monroeville has deprived Geokinetics of substantive due process under the Fifth and Fourteenth Amendments of the United States Constitution.

46. As a result of Monroeville's action, Geokinetics has suffered and will continue to suffer irreparable injury and damages. Geokinetics has no adequate remedy at law.

COUNT II
Equal Protection Violation
(Improper Denial of Seismic Testing Permit)

47. The above paragraphs are incorporated as if fully set forth herein.

48. The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution provides that no state shall deny any person within its jurisdiction the "equal protection of its laws." U.S. Const. Amend. XIV.

49. The Due Process Clause of the United States Constitution provides that no person shall be "deprived of life, liberty or property without due process of law."

50. Monroeville treated Geokinetics differently from others similarly situated and did so intentionally.

51. Monroeville has also denied Geokinetics the equal protection of the laws by discriminatory prohibition of its lawful business activities.

52. There was no rational basis for the difference in treatment.

53. The decision of Monroeville Council significantly and materially devalues Geokinetics' legal rights and interests.

54. As a result of Monroeville's actions and inactions, Geokinetics has suffered and will continue to suffer irreparable injury and damages. Geokinetics has no adequate remedy at law.

COUNT III
Impermissible Exercise of Police Power
(Improper Denial of Seismic Testing Permit)

55. The above paragraphs are incorporated as if fully set forth herein.

56. Monroeville's denial of Geokinetics' Proposed Permit to conduct seismic testing on Monroeville roads and rights-of-way is an abuse of its police power and thus invalid.

57. Monroeville's decision to deny Geokinetics' Proposed Permit to conduct seismic testing on its roads and rights-of-way is unduly oppressive, arbitrarily interferes with private business, and imposes unnecessary restrictions upon lawful business activities without any evidence to support adverse effects to the health, safety, and welfare of the residents of Monroeville. The prohibition on Geokinetics' lawful rights does not bear any rational relationship to any legitimate health or safety concern of Monroeville and its citizens.

58. As a result of Monroeville's actions and inactions, Geokinetics has suffered and will continue to suffer irreparable injury and damages. Geokinetics has no adequate remedy at law.

COUNT IV
Impermissible Exercise of Legislative Authority
(Improper Denial of Seismic Testing Permit)

59. The above paragraphs are incorporated as if fully set forth herein.

60. As a home rule municipality, legislation passed by Monroeville cannot conflict with existing state and federal law. *See* 53 Pa. Con. Stat. § 2961.

61. The Monroeville Council's action denying Geokinetics permission to use Monroeville roads and rights-of-way to conduct seismic testing purports to regulate the location and uses within the municipality and is effectively a zoning regulation.

62. In Pennsylvania, the Municipalities Planning Code ("MPC"), 53 Pa. Stat. §

10101, *et seq.*, provides a comprehensive framework for municipal zoning and land use regulation.

63. The Pennsylvania Home Rule Charter and Optional Plans Law specifically denies home rule charter municipalities from exercising power or authority contrary to, or in limitation or enlargement of, powers granted by applicable statutes including the MPC. *See* 53 Pa. Con. Stat. § 2962(a)(10).

64. Monroeville's refusal to allow Geokinetics the requested permission is in practice a ban on seismic testing on Monroeville roads and rights-of-way which violates the limitations of the MPC and is an impermissible exercise of legislative authority under the Pennsylvania Home Rule Charter and Optional Plans Law.

65. Additionally, pursuant to Pennsylvania law, Geokinetics' seismic tests are "oil and gas operations." 58 Pa. Con. Stat. § 3301.

66. Except with respect to local ordinances adopted pursuant to the Pennsylvania Municipalities Planning Code and the Flood Plain Management Act, all local zoning ordinances purporting to regulate oil and gas operations are superseded by state law. 58 Pa. Con. Stat. § 3302.

67. "[T]he plain terms of Act 13¹ indicate that a local ordinance purporting to regulate oil and gas operations must be adopted pursuant to MPC and the Flood Plain Management Act." *Seneca Resources Corp. v. Highland Twp.*, 2017 WL 4354710, at *6 (W.D. Pa. Sept. 29, 2017).

68. Monroeville's refusal to allow Geokinetics the requested permission purports to regulate oil and gas operations. Therefore, it violates the Oil and Gas Act.

¹ Act 13 is a Pennsylvania law regulating the oil and gas industry enacted in 2012 which, among other things, repealed parts of the existing Oil and Gas Act of 1984 codified in Title 58 of the Pennsylvania Consolidated Statutes and created six new chapters therein, including Chapters 32 and 33 referenced herein.

69. Consequently, Monroeville's vote to deny Geokinetics' Proposed Permit is an illegal exercise of legislative authority by Monroeville and is therefore invalid and unenforceable.

70. As a result of Monroeville's action, Geokinetics has suffered and will continue to suffer irreparable injury and damages. Geokinetics has no adequate remedy at law.

COUNT V
Exclusionary Zoning
(Improper Denial of Permit)

71. The above paragraphs are incorporated as if fully set forth herein.

72. The Monroeville Council's action denial of Geokinetics' Proposed Permit to use Monroeville roads and rights-of-way to conduct seismic testing, passed at a regular Council meeting, is legislative in nature or character.

73. Under Pennsylvania law, a municipal law may not completely exclude a legitimate use.

74. Geokinetics' seismic operations are a legitimate use.

75. Therefore, Monroeville's action constitutes illegal exclusionary zoning under Pennsylvania law and is invalid and unenforceable.

76. As a result of Monroeville's action, Geokinetics has suffered and will continue to suffer irreparable injury and damages. Geokinetics has no adequate remedy at law.

COUNT VI
Substantive Due Process and Equal Protection Violations
(Invalid Ordinance)

77. The above paragraphs are incorporated as if fully set forth herein.

78. The Ordinance should be declared invalid as violating the Substantive Due Process and Equal Protection Clauses of the United States Constitution, Amendments V and

XIV.

79. Monroeville has enacted an arbitrary, capricious, overbroad, onerous and unreasonable ordinance with the intent to completely prohibit seismic testing everywhere in Monroeville.

80. Monroeville treated Geokinetics differently from others similarly situated and did so intentionally. There was no rational basis for the difference in treatment. The decision of Monroeville Council significantly and materially devalues Geokinetics' legal rights and interests.

81. Section 2 of the Ordinance makes it unlawful to "Conduct any Energy Source Operations within the Municipality, including without limitation, explosive charges, weight drops, vibrating machinery or vehicles, or any other equipment that causes vibrations and seismic activity without first obtaining a Permit for such activities from the Municipality." This overbroad language not only regulates seismic testing on Monroeville roads and public lands, but requires a permit for operations on privately-owned property.

82. Section 3 of the Ordinance requires that an application for a permit include an inordinate and unreasonable "non-refundable Permit fee of One thousand Dollars (\$1,000.00)."

83. Section 5 of the Ordinance provides Monroeville with arbitrary and capricious discretionary power to limit the areas of seismic testing operations and to require the engineer that an applicant must hire to be on the job-site during the entire testing period.

84. In section 6, Monroeville requires vague, overbroad and onerous notice requirements. Applicants are required, not less than thirty (30) days prior to the commencement of operations, to notify "all property owners within one-hundred (100) feet of the planned Energy Source Operations, or a greater distance if required by law, of the Permit Holder's

anticipated date of commencement of such operations an, and the type of testing to be utilized.” It is unclear why “all property owners” need to be notified even if no structures are contained on the property and the requirement is onerous. It is unclear why every property owner needs to be notified at least 30 days prior to commencement of Geokinetics’ operations, and the provision unreasonably restricts normal and necessary operational flexibility.

85. The Ordinance also requires overly burdensome pre- and post-test inspections of “all structures located on or under property.” Section 6 requires such costly tests to be done at request of the property owner for all property owners (i) within one-hundred (100) feet of vibroseis or weight drop tests and/or (ii) all property owners within three hundred (300) feet of any explosive charge tests. If requested, the permit holder is required to perform the inspections before commencing any testing.

86. Similarly, Section 7 requires pre- and post-testing inspections of all Monroeville’s “structures, including...susceptible underground utilities (water mains, sewer lines, etc.)....”

87. Section 8 of the Ordinance provides arbitrary and unreasonable restrictions on hours of operation, which will only extend the amount of time seismic testing will occur in Monroeville. The Ordinance limits seismic testing to: “8:00 AM to 6:00 PM prevailing local time on Monday through Friday, excluding holidays. No Energy Source Operations may be conducted on weekends.”

88. The Ordinance imposes punitive penalties of a fine of up to \$1,000.00 per day for violations.

89. The Ordinance has no substantial relationship to promoting the public health, safety, or welfare. In fact, courts have found that “seismic testing not only provides valuable data for the economic benefit of those who extract oil and gas, but also it provides valuable data for

use in subsequent extraction of oil and gas to prevent unsafe and dangerous circumstances from occurring.” *ION Geophysical Corp. v. Hempfield Twp.*, 2014 WL 1405397, at *10 (W.D.Pa. Apr. 10, 2014).

90. The Ordinance is *de facto* exclusionary as a result of its onerous and unreasonable provisions.

91. There is an actual case and controversy, as Geokinetics is seeking to conduct seismic testing in Monroeville, and through the Ordinance, Monroeville has prohibited such activity.

92. The Ordinance is void because it arbitrarily and capriciously grants Monroeville with completely unrestricted discretionary power to prohibit seismic testing in Monroeville, and does not substantially relate to any legitimate municipality purpose.

COUNT VII
Pennsylvania State Law Preemption
(Invalid Ordinance)

93. The above paragraphs are incorporated as if fully set forth herein.

94. As a home rule municipality, legislation passed by Monroeville cannot conflict with existing state and federal law. *See* 53 Pa. Con. Stat. § 2961.

95. The Ordinance purports to regulate the location and uses of seismic testing within the municipality and is effectively a zoning ordinance.

96. The MPC provides a comprehensive framework for municipal zoning and land use regulation. *See* 53 Pa. Stat. § 10101, *et seq.*

97. The Pennsylvania Home Rule Charter and Optional Plans Law specifically denies home rule charter municipalities from exercising power or authority contrary to, or in limitation or enlargement of, powers granted by applicable statutes including the MPC. *See* 53 Pa. Con.

Stat. § 2962(a)(10).

98. Therefore, the Ordinance is preempted by the Pennsylvania Home Rule Charter and Optional Plans Law because it was not enacted pursuant to the terms of the MPC.

99. Additionally, Pursuant to Pennsylvania law, Geokinetics' seismic tests are "oil and gas operations." 58 Pa. Con. Stat. § 3301.

100. Except with respect to local ordinances adopted pursuant to the Pennsylvania Municipalities Planning Code and the Flood Plain Management Act, all local ordinances purporting to regulate oil and gas operations are superseded by state law. 58 Pa. Con. Stat. § 3302.

101. "[T]he plain terms of Act 13 indicate that a local ordinance purporting to regulate oil and gas operations must be adopted pursuant to MPC and the Flood Plain Management Act." *Seneca Resources*, 2017 WL 4354710, at *6.

102. The Ordinance was not adopted pursuant to the MPC and it purports to regulate oil and gas operations. Therefore, it violates the Oil and Gas Act and is preempted.

103. As a result of Monroeville's actions and inactions, Geokinetics has suffered and will continue to suffer irreparable injury and damages. Geokinetics has no adequate remedy at law.

COUNT VIII
Failure to Follow Municipal Planning Code Procedural Requirements
(Invalid Ordinance)

104. The above paragraphs are incorporated as if fully set forth herein.

105. Monroeville failed to follow the MPC's procedural requirements for enactment of a zoning or land use ordinance. *See* 53 Pa. Stat. §§ 10607, 10608, 10610.

106. Monroeville failed to follow the MPC's procedures for preparing a proposed

ordinance set forth in 53 Pa. Stat. § 10607. It did not hold at least one public meeting, did not present Council with recommendations and explanatory materials, and may also have failed to prepare all necessary studies and surveys requested by the governing body. These steps are conditions precedent to the validity of an ordinance. *Id.*

107. Monroeville failed to submit the proposed ordinance to the Allegheny County Economic Development agency at least 45 days prior to public hearing regarding the Ordinance's enactment as required by 53 Pa. Stat. § 10607(e).

108. Monroeville failed to follow the publication requirements to enact a proposed ordinance set forth in 53 Pa. Stat. § 10610. It failed to publish the proposed ordinance or amendment in a newspaper of general circulation in the municipality not more than 60 days nor less than 7 days prior to passage, among other necessary steps set forth in 53 Pa. Stat. § 10610. *Id.*

109. As a result of Monroeville's actions and inactions, Geokinetics has suffered and will continue to suffer irreparable injury and damages. Geokinetics has no adequate remedy at law.

COUNT IX
Injunctive Relief

110. The above paragraphs are incorporated as if fully set forth herein.

111. Geokinetics requests that the Court enjoin Monroeville from interfering with its seismic operations on Monroeville roads and rights-of-way in connection with the Interstellar 3D Project.

112. Geokinetics is in position to immediately commence operations that constitute its regular business activity. Unless and until Monroeville is enjoined from improperly interfering with Geokinetics' seismic operations, Geokinetics will be irreparably harmed.

113. If Geokinetics cannot conduct its operations in Monroeville, the accuracy and reliability of the seismic survey will be greatly diminished. Geokinetics will be unable to complete the Interstellar 3D Project and its contractual obligations to its client, resulting in losses to Geokinetics which will be difficult to quantify. Geokinetics has no adequate remedy at law.

114. Geokinetics also requests that the Court enjoin Monroeville from applying the Ordinance to Geokinetics' seismic testing operations. Unless and until Monroeville is enjoined from applying the Ordinance to Geokinetics' seismic operations, Geokinetics will be subject to unnecessary, unreasonable and prohibitively burdensome requirements. Further, the Ordinance is preempted by Act 13 and the Home Rule Charter and Optional Plans Law given that it was not enacted pursuant to the MPC and the MPC's procedural requirements for enactment of a zoning or land use ordinance were not followed.

115. Monroeville will not be unduly harmed if injunctive relief is granted. 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.

116. 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.

WHEREFORE, Plaintiff, Geokinetics USA, Inc., respectfully requests that this Court:

- (a) declare that Monroeville Council's denial of permission to Geokinetics to conduct seismic testing on Monroeville roads and rights-of-ways to be invalid as a violation of substantive due process;
- (b) declare that Monroeville Council's denial of permission to Geokinetics to conduct seismic testing on Monroeville roads and rights-of-ways to be invalid as a violation of equal protection;
- (c) declare that Monroeville Council's denial of permission to Geokinetics to conduct seismic testing on Monroeville roads and rights-of-ways to be invalid as an invalid exercise of police power;
- (d) declare that Monroeville Council's denial of permission to Geokinetics to conduct seismic testing on Monroeville roads and rights-of-ways to be invalid as an invalid exercise of legislative power;
- (e) declare that Monroeville Council's denial of permission to Geokinetics to conduct seismic testing on Monroeville roads and rights-of-ways to be invalid as a exclusionary zoning;
- (f) declare Monroeville's Ordinance regulating seismic operations to be invalid as a violation of substantive due process and as an equal protection violation;
- (g) declare Monroeville's Ordinance regulating seismic operations to be invalid as preempted by the Oil and Gas Act and the Home Rule Charter and Optional Plans Law;
- (h) declare Monroeville's Ordinance regulating seismic operations to be invalid for failure to follow the MPC's procedural requirements for preparation and notice of the proposed ordinance;

- (i) enjoin Monroeville from interfering with its seismic operations on Monroeville roads and rights-of-way in connection with the Interstellar 3D Project;
- (j) enjoin Monroeville from applying the Ordinance to Geokinetics' operations;
- (k) award Geokinetics all fees and costs incurred in this action; and
- (l) award Geokinetics such other and further relief as the Court deems just and equitable.

STEPTOE & JOHNSON PLLC

/s/Kevin Gormly

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VERIFICATION

Under the penalty of perjury and pursuant to 28 U.S.C. § 1746.1, Henry E. Biggart hereby declare that the facts set forth in this Verified Complaint are true and correct to the best of my knowledge, information and belief.

By: _____ 

Title: Director, North America

Dated: October 9, 2017