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Lawyers behind oil and gas bans smacked with court sanctions

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Environmental lawyers with an unconventional approach to opposing oil and development are on the hook for thousands of dollars in new federal court sanctions.

The U.S. District Court for the Western District of Pennsylvania on Friday reprimanded two lawyers associated with the Community Environmental Legal Defense Fund (CELDF), ruling that they acted in bad faith and pushed "implausible" legal theories to defend a local ban on oil and gas wastewater disposal.

Magistrate Judge Susan Paradise Baxter found that CELDF Executive Director Thomas Linzey and attorney Elizabeth Dunne, who has worked with the group, must pay more than \$50,000 to cover part of a Pennsylvania energy firm's legal bills from litigation over the ban.

"An attorney's zealous advocacy for the protection of a client's interests is certainly appropriate; however, the legitimate pursuit of justice imposes important obligations on counsel to ensure that the Court is not a mechanism of harassment or unbridled obstruction," she wrote.

The decision is a deep blow to the "local control" approach championed by CELDF and others that want communities to have veto power over hydraulic fracturing, injection wells and other development within their borders.

CELDF Associate Director Mari Margil slammed the sanctions as a win for corporations over communities.

"At a time when Americans more and more are looking to the courts for reason and justice, today we find neither, as corporate forces once again have been able to wield our institutions of government to punish those working to elevate the rights of communities over fossil fuel corporations," she said in a statement.

At issue in this case is one company's plans to dispose of oil and gas wastewater in an injection well in Grant Township, about 80 miles northwest of Pittsburgh. Pennsylvania General Energy Co. had a permit from U.S. EPA to store wastewater there, but township leaders in 2014 approved a ban on the practice.

The CELDF-backed measure, styled as a "community bill of rights," prohibited oil and gas wastewater disposal within township borders.

It also purported to strip corporations of constitutional rights and recognize independent legal standing for the environment and various elements of nature. In other words, lawyers could file lawsuits on behalf of a forest or a waterway, instead of an affected individual or group.

Such "rights of nature" are recognized in a handful of jurisdictions around the world but are generally considered highly unconventional. Linzey has used CELDF to push the legal concept — with little legal success — in town ordinances and courtrooms across the country ([Energywire](#), Jan. 7, 2015).

While supporters have touted the community ordinances as exercises of self-governance, others have raised serious constitutional concerns.

Pennsylvania General Energy sued Grant Township in 2014, prompting Baxter to nix several parts of the ordinance. A few remaining issues in the case are still pending.

'Not well-intentioned zeal'

In the meantime, PGE has worked to recover much of its legal expenses, seeking more than \$500,000 in attorneys' fees and costs related to "frivolous, unfounded, harassing" legal filings from the CELDF lawyers representing Grant Township.

The company also pushed for sanctions against a third CELDF attorney, Lindsey Schromen-Wawrin, who tried to advance the "rights of nature" theory in the case by seeking to intervene on behalf of the Little Mahoning Creek Watershed — along with, more traditionally, a grass-roots group.

Baxter ruled that it was too late for PGE to seek sanctions against Schromen-Wawrin, but she slammed the attorney for causing what she deemed a waste of judicial resources.

"Such an approach is unreasonable under any circumstance, but especially in light of the expense and resources borne by PGE, this Court, and the [3rd U.S. Circuit Court of Appeals] to resolve what is otherwise a plainly frivolous attempt to intervene in pending litigation for purposes unrelated to the just litigation of a claim," Baxter wrote.

The court ruled that the claims against Linzey and Dunne for frivolous litigation moves, on the other hand, were timely. Friday's opinion rebuffed the lawyers' claims that their unconventional legal arguments were in the same vein as landmark cases involving school integration and gay marriage.

"However, sanctions may be imposed ... where, as here, counsels' conduct results from bad faith and not well-intentioned zeal," Baxter wrote.

She repeated previous admonitions that the lawyers offered no meaningful case law or constitutional provisions to support their unusual position. She added that they should have known their legal approach was unreasonable when a CELDF-backed ban in Highland Township, Pa., and several similar ordinances were struck down in previous cases.

"The most recent cases, including the instant action, find identical arguments reasserted, but not advanced in any material manner by distinguishing facts, analogy, or supporting case law from any court of coordinate or superior jurisdiction," she wrote.

She stopped far short of granting the full \$500,000 requested by PGE, concluding instead that only \$52,000 in legal costs was directly linked to legal work responding to opposing the other side's alleged misconduct. Linzey and Dunne have four months to pay the company.

Baxter also referred Linzey to the Disciplinary Board of the Supreme Court of Pennsylvania for further review.

Industry advocates praised the news, calling it a victory against misinformation.

"The Community Environmental Legal Defense Fund (CELDF) has been targeting communities all over the country for years with misinformation campaigns and has proven to be nothing more than a litigation factory, as this recent federal judge has confirmed," Jackie Stewart, senior director for energy and natural resources at Energy in Depth, said in an email, adding that CELDF has caused great legal expenses for the communities it has worked with.

CELDF is currently pushing a ballot initiative in Ohio that would make it easier for local governments to pass measures similar to the one in Grant Township.

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