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Digest of Hydraulic Fracturing Cases

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DIGEST OF HYDRAULIC FRACTURING CASES

Smita Walavalkar
Columbia Center for Climate Change Law
Columbia Law School
January 2013

NOTE: This digest includes cases challenging local regulations on preemption grounds, challenges under federal environmental statutes, and civil suits sounding in tort and contract. A list of cases reported in the press, but for which copies of documents filed with the court could not be obtained, is included in the Appendix to this document.

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[CLASS ACTION SUIT, AIR POLLUTION]

Named Plaintiffs filed for class certification in suit against Frontier Gas Services, and other natural gas production service providers, alleging air, groundwater, soil, and noise pollution from natural gas compressor and transmissions stations. FED. R. CIV. P. 23(a). Petitioners proposed the class of Arkansas citizens living or owning property within one mile of Defendants' compressor stations in bringing tort claims sounding in nuisance, trespass, negligence, and strict liability. The District Court denied class certification citing Plaintiffs' failure to establish that class action litigation satisfied the predominance and superiority requirements under the Federal Rules of Civil Procedure. FED. R. CIV. P. 23(b)(3).

Petitioners' proposed class met the threshold requirements for class certification in establishing that all legal and factual questions arose from the alleged impact on surrounding properties of emissions and noise pollution from compressor stations owned by Defendants. FED. R. CIV. P. 23(a). However, the court held that a prima facie showing of the underlying elements of liability would require highly individualized evidence of causation and damages. As distinguished from toxic-tort claims arising from a single incident in which a sole proximate cause applies equally to each potential class member, Plaintiffs' claims stem from a long term toxic tort requiring individual assessments which predominate over common issues. The need to assess individual evidence was held to defeat the efficiency goals implicit to the superiority requirement of FED. R. CIV. P. 23(b)(3).

Tucker v. Southwestern Energy Co**.**, 2012 U.S. Dist. Lexis 20697, No.1:11-cv-44-DPM, No.1:11-cv-45-DPM, (E. D. Ark., Feb. 17, 2012) (consolidating ***Berry v. Southwestern Energy Co.***, 11CV0045 (E.D. Ark., May 17, 2011).
[CLASS ACTION SUIT; STRICT LIABILITY; LONE PINE ORDER]

Plaintiffs seek damages and injunctive relief pursuant to motion for class certification for tort claims arising out of alleged groundwater contamination from Defendants' oil and gas production activities. Petitioners' tort claims sound in nuisance, trespass, negligence, and strict liability. Groundwater testing showing contamination with alpha methylstyrene, methane, and hydrogen sulfide provided evidence for trespass and nuisance claims alleging fluid migration from hydraulic fracturing operations. An amended complaint was filed following the District Court's decision that Plaintiffs' complaint failed to plead facts with sufficient definiteness and particularity to meet plausibility standard. *Tucker v. Southwestern Energy Co.,* 2012 U.S. Dist. Lexis 20697, No.1:11-cv-44-DPM (E. D. Ark., Feb. 17, 2012) citing pleading standard of *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Pl.'s Amended Compl.

The February 2012 decision denied Defendants' motion to dismiss Plaintiffs' strict liability claim on the grounds that the factual record was not adequately developed to determine whether hydraulic fracturing was ultra hazardous as a matter of law. *Citing Fiorentino v. Cabot Oil & Gas Corp.,* 750 F. Supp. 2d. 506 (M.D. Pa. 2012) and *Berish v. Southwestern Energy Production Co,* 763 F. Supp. 2d 702 (M. D. Pa. 2011). In its July 2012 decision the court also dismissed Southwestern Energy's motion for a Lone Pine order. Final action pending.

Hill v. Southwestern Energy Co., No.12-600, 2012 U.S. Dist. Ct. Pleadings 12912, 2012 Dist. Ct. Pleadings Lexis 248 (E. D. Ark., Oct. 4, 2012).
[CLASS ACTION SUIT; TRESPASS, SDWA]

Plaintiffs filed complaint against oil and gas development corporations operating oilfield waste wells permitted under the SDWA as Class II Disposal Wells. Petitioners allege that horizontal migration of disposed hydraulic fracturing flowback water throughout rock formation reservoirs constitutes a permanent trespass against property owners owning surface land above the reservoir space. The proposed class includes all property owners within a three mile radius of the disposal wells. Petitioners also claim that hydraulic fracturing waste fluids are of a toxic and hazardous nature warranting strictly liability.

Plaintiffs' RICO claims against Defendants argue that Southwestern Energy, Chesapeake Energy, and XTO Energy formed an "association in fact" conspiring to defraud Arkansas citizens of the proper value of land. 18 U.S.C. 1951. Petitioners allege that, despite Defendants' knowledge that standard oil and gas leases do not contemplate the injection and permanent storage of oilfield wastes upon lands of the lessor, the association failed to make appropriate payments. Each named plaintiff seeks two million dollars in compensatory damages and fifteen million dollars in punitive damages.

Petitioners seek injunctive relief in the form of monitoring oilfield waste wells for fluid migration, replevin of profits, and damages on behalf of the proposed class of Arkansas citizens, residents, and property owners living or owning property within three mile radius of disposal wells. The action is pending.

Scoggins v. Cudd Pumping Services, Inc., No. 4-11 cv678 JMM-BD, 2011 WL 4217619 (E.D. Ark. filed Sep. 12, 2011).
[AIR POLLUTION]

Plaintiff, Tina Scoggins on behalf of two minor grandchildren, filed suit with claims sounding in tort against Defendants Cudd Pumping Services and other natural gas development service companies for air contamination as a result of hydraulic fracturing operations. Petitioner alleges that contamination stems from Defendant's use of the carcinogenic or poisonous compounds benzene, xylene, and methylene chloride in

hydraulically fracturing three natural gas wells within two-hundred and fifty feet of the Scoggins residence. Scoggins brings tort claims sounding in strict liability, nuisance, trespass, and negligence. The complaint seeks injunctive relief, in the form of medical monitoring for cancer, twenty-million dollars in damages for acute susceptibility of minor children to cancer stemming from benzene exposure, and fifty-million dollars in punitive damages. Action pending.

Hiser v. XTO Energy Inc., 2012 WL 3542009, No. 4:11-cv-00517 KGB (E.D. Ark., Aug. 14, 2012).
[SEISMIC VIBRATIONS]

Plaintiff Hiser filed suit against XTO Energy bringing tort claims for damages to her home allegedly caused by vibrations from Defendants nearby drilling operations. Defendants' motion for summary judgment was denied by the court which held that Hiser had provided sufficient circumstantial evidence in the form of lay testimony to meet pleading burden on claims of negligence, nuisance, and trespass.

CALIFORNIA

Community Health Councils, Inc. v. County of Los Angeles**,** No. BS118018, (CA Super. Ct. Los Angeles County Jul. 15, 2011) Settlement Agreement and Mutual Release. *Consolidating City of Culver v. County of Los Angeles*, No. BS118023; *Concerned Citizens of South Central Los Angeles v. County of Los Angeles*, No. BS118039; *Citizen's Coalition for a Safe Community v. County of Los Angeles*, No. BS118056.
[MUNICIPAL ZONING POWERS]

Environmental advocacy organizations filed suit for review of Los Angeles County's approval of Baldwin Hills Community Zoning Code Amendments, and related Final Environmental Impact Report, for proposed oil and gas development on Inglewood oil field. Settlement Agreement entered into by the environmental organizations, Los Angeles County, and Plains Exploration & Production Company (PXP) imposes environmental and procedural requirements on PXP's horizontal drilling operations and development generally. In addition, the settlement requires the County to regulate technical aspects of well drilling and capping, the total number of wells, and complete a Health Assessment and Environmental Justice study. Settlement Agreement and Mutual Release (Jul. 15, 2011) *online access* at Planning.LACounty.gov/assets/upi/project/bh_settlement-agreement_20110715.pdf .

COLORADO

Colorado Oil and Gas Conservation Commission v. City of Longmont, No. 2012-0730 (Colo. Dist. Ct. Boulder County, filed Jul. 30, 2012).
[PREEMPTION]

Petitioner Colorado Oil and Gas Conservation Commission (COGCC) filed for declaratory relief against portions of the City of Longmont's Oil and Gas Ordinance claiming preemption by the Colorado Oil and Gas Conservation Act . CITY OF LONGMONT, COLO., ORDINANCES O-2012-25; CRS §34-60-100 et. seq. (as amended 2007). The COGCC's complaint alleges that provisions establishing standards and requirements which exceed those set by COGCC regulations are preempted. Challenged provisions regulate well spacing, the use of horizontal drilling, setbacks, chemical disclosures, and water and wildlife protection standards. The COGCC argues that the City's assertion of authority to impose additional operational requirements on drillers defeats the substantive resource conservation and environmental goals of the Oil and Gas Conservation Act and is therefore preempted. Action pending.

***Evenson v. Antero Resources Inc.*,** 11CV5118 (Colo. Dist. Ct. Aug. 17, 2012).
[CLASS ACTION]

Petitioners, multiple homeowners in the Battlement Mesa Planned Unit Development, sought class action certification for all property owners and residents of the Battlement Mesa PUD in filing for injunctive relief blocking Antero Resources planned oil and gas development within Battlement Mesa.

The Colorado District Court in Denver County granted Defendant's motion to dismiss for lack of subject matter jurisdiction citing Plaintiffs' failure to state a remediable claim. COLO. R. CIV. P. 12(b)(5). Plaintiffs' failure to exhaust statutorily prescribed administrative remedies before the Colorado Oil and Gas Conservation Commission prior to filing suit in court was fatal to their claim for injunctive relief. C.R.S. §24-4-106; C.R.S. §34-60-114. Petitioners' tort claims were dismissed for failure to properly plead a claim for the alleged release of fumes from an incident at a well pad site in 2010.

Strudley v. Antero Resources Corp., No. 2011CV2218 (Colo. Dist. Ct. May 9, 2012).
[LONE PINE ORDER; GROUNDWATER CONTAMINATION]

Strudley family filed suit in tort alleging air and water contamination from Defendants, gas production company and well service providers, operation of gas wells within one mile of Strudley residence and water supply well. Petitioners relocated

roughly five months from start of well construction and cited contamination from Defendants' improper drilling methods, ineffective well casings, and flaring of toxic and hazardous gases as prompting their relocation. The Strudleys brought claims for negligence, negligence per se, nuisance, strict liability, and sought medical monitoring trust fund. On Defendants' motion, the court issued a Modified Case Management Order requiring Strudleys make a prima facie showing of exposure and causation prior to discovery. In weighing the burden of a Lone Pine showing against efficiency concerns the court cited the Colorado Oil and Gas Conservation Commission's investigation concluding that the Strudleys' water supply well was not affected by oil and gas operations and Defendants' testimony that operations were in compliance with applicable regulations.

Following submission pursuant to Lone Pine order, the District Court dismissed the case with prejudice for Plaintiffs' failure to establish prima facie elements of exposure, injury, and general and specific causation. *Lore v. Lone Pine Corp.,* No. L-33606-85 1986 WL 635707 (N.J. Sup. Ct. Nov. 18, 1986). Although Plaintiffs' experts concluded that the environmental and health evidence merited further substantive discovery, the court ruled that the lack of data or expert analysis establishing "with any level of probability that a causal connection" exists between alleged injuries and exposure to Defendants' drilling activities was fatal to Strudleys' request for additional discovery.

Central to the ruling that Plaintiffs failed to make a prima facie showing on the element of exposure was the conflict between the timing of the water sample used by the COGCC and the Plaintiffs. In ruling that Plaintiffs had not made a prima facie showing of the elements of causation, the court highlighted that experts had not established whether the alleged hazardous substances can cause the types of illnesses affecting Plaintiffs to show general causation; had not established the dose, duration, and location of Plaintiffs' exposure; or identified Plaintiffs' injuries according to medically recognized diagnoses.

NEW YORK

***Jeffrey v. Ryan*, No. CA2012-001254 (N.Y. Sup. Ct. Binghamton Co. Oct. 2, 2012).**
[MORATORIUM; PREEMPTION]

Petitioners, with various development and land interests in oil and gas development, sought administrative review of and declaratory relief from Binghamton City Council's adoption of Local Law 11-006 banning oil and gas exploration and extraction for a period of two years. BINGHAMTON, N.Y., ORDINANCES ch. 250 (2011). Plaintiffs characterized 11-006 as either a procedurally deficient zoning regulation or, alternatively, an illegitimate moratorium on development. Defendant City of Binghamton claimed that 11-006 was not a zoning regulation but rather a legitimate exercise of municipal police powers to protect public health and safety. The Binghamton County Supreme Court granted Plaintiffs' motion for summary judgment on the claim for declaratory relief holding 11-006 to be an illegitimate moratorium. In ruling against the City the court drew a clear distinction between the illegitimate form of Local Law 11-006 and the legitimacy of general municipal land use regulation.

Judge Lebous approvingly cited the decisions in *Anschutz Exploration Corp. v. Dryden*, 940 N.Y.S.2d 458 (2012) and *Cooperstown Holstein Corp. v. Town of Middlefield,* 943 N.Y.S.2d 722 (2012) for holding that state Environmental Conservation Law 23-0303(2) does not supersede local governments' right to regulate land use. N.Y. ENVTL. CONSERV. (1981). Elements of the procedural history and the content of 11-006 led Judge Lebous to characterize the law as a moratorium distinct from zoning regulations of the type upheld in Dryden and Middlefield. and not a zoning regulation.

The court held that the three part test for a moratorium was not met by the City of Binghamton. First, Binghamton City was unable to demonstrate dire necessity as state regulations necessary for gas E& E activity to commence had not been published. Second, statements made by City representatives during the passage of 11-006, and the City's failure to present evidence of a dire threat to the court, demonstrated that gas drilling was not known by the City to present a serious threat to health or safety. Third, Binghamton failed to articulate a plan to alleviate or study the supposed threat of gas drilling. In the absence of a plan to alleviate or investigate the supposed threat of natural gas drilling, Judge Lebous found the designated two year sunset period arbitrary and considered it to be conclusive evidence that the threat perceived by City representatives was not sufficiently grave to justify the exercise of municipal police powers through a moratorium.

***Anschutz Exploration Corp. v. Dryden*, 940 N.Y.S.2d 458 (N.Y. Sup. Ct. 2012).**
[PREEMPTION; MUNICIPAL LAND USE POWERS]

Plaintiff Anschutz Exploration Company, O&G developer holding mineral leases in Dryden, sought declaratory relief for amendments to the Dryden Zoning Ordinance

prohibiting oil and gas development. DRYDEN, N.Y., ZONING ORDINANCE art. XXI § 2104, app. A (Aug. 2, 2010) [hereinafter Zoning Amendments]. Anschutz claimed that the Zoning Amendments violated the supersession clause of the state Oil, Gas, Solution, and Mining Law. N.Y. ENVTL. CONSERV. LAW §23-0303(2) (1981). In a case of first impression, the Tompkins County Supreme Court upheld the Zoning Amendments as a legitimate exercise of municipal land use powers not intended to be preempted by state regulation of oil and gas operations.

Judge Rumsey followed precedent established in judicial interpretation of the New York Mined Land Reclamation Law's preemption clause which contained language that closely paralleled the language in the supersession clause at issue. *Matter of Frew Run Gravel Prods. v. Town of Carroll*, 71 N.Y.2d 126 (1987), N.Y. ENVTL. CONSERV. LAW §23-2703(2) (1976). Applying the distinction drawn in *Matter of Frew Run* between ordinances that regulate property uses generally versus ordinances regulating operations of a particular industry, Judge Rumsey held that the Zoning Amendments legitimately regulated land uses pursuant to municipal police powers and did not fall within the scope of preemption intended by 23-0303(2).

Cooperstown Holstein Corp. v. Town of Middlefield, 943 N.Y.S.2d 722 (N.Y. Sup. Ct. 2012).
[PREEMPTION; MUNICIPAL LAND USE POWERS]

Petitioner Cooperstown Holstein Corporation, O&G Developer, sought declaratory relief against a Local Law amending the Middlefield Zoning Ordinance to prohibit O&G E&E. A Local Law Repealing the Town of Middlefield Zoning Ordinance and Adopting the Town of Middlefield Zoning Law (Jun. 14) [hereinafter Zoning Law] (codified at MIDDLEFIELD, N.Y., TOWN OF MIDDLEFIELD ZONING LAW art. V §A, art. II §B(7)-B(8) (2011)). Cooperstown alleged that the Zoning Amendments violated the supersession clause of the state Oil, Gas, Solution, and Mining Law. N.Y. ENVTL. CONSERV. LAW §23-0303(2) (1981). The Otsego County Supreme Court upheld the Local Law as a legitimate municipal land use regulation not preempted by state regulation of oil and gas operations.

Judge Cerio looked to legislative history of ECL 23-0303(2) in concluding that the regulation of oil and gas development, vested in the Department of Environmental Conservation, was intended to be limited to control over the manner and method of mineral extraction. The court characterized state versus municipal control over oil and gas development as following a "how vs. where" distinction which allowed municipalities to control where drilling occurred through land use regulations.

Weiden Lake Property Owners v. Klansky, No. 3885-09 (N.Y. Sup. Ct. Sullivan County, Aug. 2011).
[PROTECTIVE COVENANTS]

Weiden Lake Property Owners Association filed for declaration of rights and legal relations seeking to bar natural gas development by Cabot Oil and Gas Corporation in the Weiden Lake Community pursuant to lease with Defendant, property owner in the Community, Klansky. Plaintiffs argued that Klansky violated two Protective Covenants, entered into by all property owners in the Community, banning commercial activity and limiting development to single-family residential use, agriculture, and recreation. The Supreme Court in Sullivan County held that the Protective Covenants banned drilling for natural gas and permanently enjoined Cabot Oil from development on Klansky's parcel. Cabot's cross-motions against Klansky seeking rescission of the lease were dismissed with the court citing evidence that Cabot was on notice of the unambiguous Protective Covenants barring development which governed Klansky's land at time of leasing.

U.S. Energy Development Corp., No.11-57, R9-20111104-150 (N.Y. Department of Environmental Conservation, filed Jan. 24, 2012) (requesting adjudicative hearing before administrative law judge of Office of Hearings and Mediation Services).
[GROUNDWATER CONTAMINATION]

New York Department of Environmental Conservation filed for adjudication for continuing violations of Orders on Consent entered into with U.S. Energy Development Corporation for water pollution violations in New York stemming from interstate effects of oil and gas drilling operations in Pennsylvania. ENVTL. CONSERV. LAW arts. 3,17. Action pending.

Sierra Club v. Village of Painted Post, No. 2012-0810 (N.Y. Sup. Ct. Steuben County filed Jun. 25, 2012).
[NEPA]

Sierra Club and other environmental organizations petitioned for administrative review of the Village of Painted Post's property lease with transporter Wellsboro & Corning Railroad for railroad facility intended to transport Village well water to hydraulic fracturing operations. Petitioners claim violations of the New York State Environmental Quality Review Act, failure to obtain a Water Transport Permit from the New York State Department of Environmental Conservation, failure to obtain permits from the Federal Railroad Administration, and NEPA violations. Action pending.

Environmental Working Group v. New York State Department of Environmental Conservation, No. 5159-12 (N.Y. Sup. Ct. Albany County filed Sep. 17, 2012).
[FREEDOM OF INFORMATION REQUESTS]

The Environmental Working Group petitions to challenge denials of Freedom of Information Law (FOIL) requests by the New York Department of Environmental

Conservation and Governor Cuomo's Office. PUBLIC OFFICERS LAW § 89(4)(b) providing for judicial review of agency's action. Petitioners allege that Respondents withheld records that must be released under FOIL documenting communications between oil and gas development companies and Defendants regarding hydraulic fracturing and proposed regulations. Environmental Working Group (EWG) cites evidence from records received in response to initial FOIL requests to demonstrate that industry members were given undue influence on the regulatory process. The complaint cites evidence that natural gas drilling industry representatives received draft regulations weeks before the public and that documents received in response to the initial FOIL request demonstrate that a diligent search for requested documents had not been performed. EWG seeks invalidation of respondents denials of FOIL requests and related appeals, a declaration that records were withheld by respondents, and court order requiring production of specific documents identified by petitioner. Action pending.

In Re: Chesapeake Appalachia LLC, 839 F. Supp.2d 544, No. 3:11-CV-308 (N.D. N.Y. Mar. 20, 2012).
[FORCE MAJEURE]

Plaintiffs, two-hundred and fifty-nine landowners in New York, petitioned for declaratory judgment against Chesapeake Appalachia and Statoil clarifying the terms of oil and gas leases, separately entered into, with Defendants. Petitioners claimed that leases had expired and could not be extended through application of the force majeure clause and that Defendants failed to make prescribed payments. Defendants' motion to compel arbitration, pursuant to a clause included in the lease agreements, was granted by the District Court. The court held that the arbitration clause was valid and that Defendants alleged failure to make payments, as well as other disputed issues, were within the scope of the clause.

Aukema v. Chesapeake Appalachia, LLC, 2012 WL 5522832, No. 3:11-CV-00489 (N.D. N.Y., Nov. 15, 2012)
[FORCE MAJEURE]

Plaintiffs, representing fifty oil and gas leases entered into with Defendant production companies, sought a declaratory judgment that lease terms have not been extended by de facto moratorium on hydraulic fracturing imposed by New York EIS process. Defendants argued that the de facto moratorium constituted a force majeure that extends the primary lease term or alternatively that the moratorium justified extension of lease terms according to the doctrine of frustration of purpose. The District Court held that Defendants' inability to conduct hydraulic fracturing operations did not frustrate the purpose of the leases and that force majeure was neither applicable nor served to extend the leases. Plaintiffs received declaratory judgment that the leases terminated at the end of their primary term and that Defendants cannot invoke force majeure or the doctrine of

frustration of purpose as leases covered all forms of oil and gas exploration and the moratorium was limited to horizontal high volume hydraulic fracturing.

Wiser v. Enervest Operating, LLC, 803 F. Supp. 2d 109 (N.D. N.Y., Mar. 20, 2011).
[FORCE MAJEURE]

Plaintiffs, property owners party to oil and gas leases with Defendants, sought declaratory judgment that lease terms have not been extended, nor delay rental payments excused, by virtue of de facto moratorium on hydraulic fracturing. Defendants moved for summary judgment arguing that the de facto moratorium on hydraulic fracturing instituted by the New York EIS process constituted a force majeure extending the lease terms and excused contractually required delay rental payments. The District Court granted Plaintiffs' motion for summary judgment holding that Defendants' failure to make delay rental payments invalidated lease agreements.

PENNSYLVANIA

***Range Resources v. Salem Township*, 964 A.2d 869 (Pa., 2009).**

[PREEMPTION; MUNICIPAL OIL AND GAS REGULATIONS]

Appellant Salem Township sought review of lower courts' interpretation of the preemptive scope of the Oil and Gas Act resulting in the wholesale invalidation of the Township's Ordinance regulating oil and gas well operations and associated surface and land development. SALEM TOWNSHIP, PA., ZONING ORDINANCE, Appendix B (2006) (adopting regulations into Zoning Ordinance*); Great Lakes Energy Partners v. Salem Township*, 931 A.2d 101 (Pa. Commw. Ct., 2007)(en banc) holding Ordinance preempted by Pennsylvania Oil and Gas Act under express and conflict preemption doctrine; Act of December 19, 1984, P.L. 1140 (as amended, 58 P.S. §601.602)(hereinafter Oil and Gas Act). Appellees, oil and gas producers, maintained that the Ordinance was preempted by the Oil and Gas Act for overlap with the Act's regulatory features and goals. On appeal the Township requested review of each Ordinance provision individually, arguing that the regulation of aspects of oil and gas development which do not flow directly from well operations such as access road, gas transmission lines, and water disposal requirements, are not preempted by the Oil and Gas Act. The Pennsylvania Supreme Court upheld the wholesale invalidation of the Ordinance as preempted by the Oil and Gas Act under both express and conflict preemption doctrine.

The court characterized the Ordinance as an attempt to comprehensively regulate oil and gas development in the municipality in violation of the express preemptive language of §602 and in conflict with the comprehensive regulatory scheme of the Oil and Gas Act. Although some regulatory features of the Ordinance did not overlap with the Oil and Gas Act, the court held that these provisions were bound with Salem Townships illegitimate assertion of unlimited discretion over oil and gas development in violation of conflict preemption doctrine. The court distinguished the Zoning Ordinance upheld in companion case *Huntley & Huntley v. Borough of Oakmont* stating that Oakmont's zoning ordinance was limited to controlling the location of wells in line with established municipal land use powers.

***Huntley & Huntley Inc. v. Borough Council of the Borough of Oakmont,* 964 A.2d 855 (Pa., 2009).**

[PREEMPTION; MUNICIPAL LAND USE POWERS]

Appellant Borough of Oakmont petitioned the Pennsylvania Supreme Court for review of the invalidation of portions of the Borough's Zoning Ordinance regulating well site locations. BOROUGH OF OAKMONT, PA., Zoning Code (hereinafter Zoning Ordinance); *Huntley & Huntley v. Borough Council of Borough of Oakmont*, 929 A.2d. 1252 (Pa. Commw. 2007) *holding* Pennsylvania Oil & Gas Act preempts portions of Borough of Oakmont's Zoning Ordinance restricting well site locations). The central issue on appeal was whether provisions of the Zoning Ordinance requiring local approval

for natural gas drilling in residential zones was preempted by the Pennsylvania Oil and Gas Act's preemption clause. Act of December 19, 1984, P.L. 1140 (as amended, 58 P.S. §§601.602) (hereinafter Act). Appellee Huntley & Huntley argued that the Act expressly preempted municipal regulation of technical features of oil and gas operations, including well site location, and that local regulations seeking to accomplish the same purposes as the Act were implicitly preempted under conflict preemption doctrine. In a companion case to *Range Resources v. Salem Township*, the Supreme Court upheld the Zoning Ordinance's limitations on mineral extraction in residential zones against Huntley's claim that the Oil and Gas Act preempted local regulation on express and conflict preemption grounds.

The court held that the preemption clause was not total. While municipal regulation of the technical aspects of oil and gas well operations, such as well permitting and site restoration, are foreclosed the preemption clause did not reach traditional municipal restrictions on well site location. Despite some overlap between the goals of the Zoning Ordinance and the goals enumerated in the Act the traditional municipal zoning interests in preserving the character of residential neighborhoods and encouraging compatible land uses was seen as sufficiently different from Pennsylvania's interest in efficient and unified development.

Robinson Township v. Commonwealth of Pennsylvania, 52 A.3d 463 (Pa. Commw. Ct., Jul. 26, 2012).

[PREEMPTION; MUNICIPAL LAND USE POWERS]

Plaintiffs filed for pre-enforcement declaratory and injunctive relief against Pennsylvania's Act 13. 58 Pa. C.S. §§2301-3504 (2012). Petitioners alleged that the requirement that municipal zoning ordinances be amended to allow oil and gas operations in all zoning districts violates substantive due process by forcing municipalities to act in derogation of comprehensive zoning plans. U.S. CONST. amend. XIV, § 1; 58 Pa. C.S. §3304. Plaintiffs also sought relief from a provision preempting municipal regulation of environmental issues related to oil and gas development, a provision allowing corporations to take property for natural gas storage reservoirs, and a provision delegating authority to grant waivers to setback requirements to the Department of Environmental Protection. 58 Pa. C.S. §§3303, 3214(a), 3215(a) (2012). The Commonwealth Court granted summary judgment for Plaintiffs on four counts enjoining the State from requiring municipalities to allow oil and gas development in all zoning districts and invalidated the delegation of setback waiver authority to the DEP.

The majority characterized the §3304 requirement that municipalities allow oil and gas development in all zoning districts as akin to a "spot use" for oil and gas development. Requiring local governments to allow incompatible land uses was held to violate the substantive due process rights of neighboring property owners who made investments in reliance on protections afforded by comprehensive zoning plans. U.S. CONST. amend. XIV, § 1; citing *City of Edmonds v. Oxford House, Inc.,* 514 U.S. 725 (1995). The court also invalidated §3215(b) for failing to provide adequate guidance for

the exercise of authority delegated to the DEP to waive setback requirements. PA. CONST. art. II, §1; *Eagle Envtl. II, L.P. v. Commonwealth*, 884 A.2d. 867 (Pa. 2005).

Section 3303, preempting municipalities from enacting environmental regulations related to oil and gas development, was upheld as a legitimate limitation on municipal powers under the Municipal Powers Code. 53 P.S. §10301(a)(6). The court dismissed Plaintiffs' takings claims on jurisdictional and procedural grounds. 26 Pa. C.S. §306 exclusive method to challenge power to take property is the filing of a preliminary objection to a declaration of taking.

Penneco Oil Company Inc. v. County of Fayette, 4 A.3d 722 (Pa. Commw. Ct., 2010).
[PREEMPTION; MUNICIPAL LAND USE POWERS]

Appellants, oil and gas producers, petitioned for invalidation of the Fayette County Zoning Ordinance for violating the preemption clause in Pennsylvania Oil and Gas Act. FAYETTE COUNTY, PA., Zoning Ordinance (2006). Petitioners challenged a Zoning Ordinance requirement that oil and gas wells in certain zones receive a permitted use or special exception certificate arguing the certificate paralleled state regulation through well permits in contravention of the express preemption clause of the Oil and Gas Act. The Commonwealth Court held that the Fayette County Ordinance did not violate either the express preemption clause of the Act or conflict preemption doctrine under precedent established by the Pennsylvania Supreme Court in *Huntley & Huntley Inc. v. Borough Council of the Borough of Oakmont.* 965 A.2d. 869 (2009).

The court held that the few provisions of the Zoning Ordinance which related to oil and gas wells were sufficiently broad and sufficiently constrained the County's discretionary authority over oil and gas development to avoid characterization as a comprehensive regulatory scheme. Despite some overlap with the purposes of the Oil and Gas Act, the central objective of the Zoning Ordinance to encourage beneficial and compatible land uses was upheld as consistent with municipal land use powers not in derogation of the preemption clause of the Oil and Gas Act.

MarkWest Liberty Midstream & Resources LLC v. Cecil Township, No. 430 MD 2012 (Pa. Commw. Ct. filed June 29, 2012).
[ACT 13; PREEMPTION]

Plaintiff MarkWest Liberty Midstream & Resources filed for declaratory and injunctive relief under Act 13 against Cecil Township's Unified Development Ordinance, and related Zoning Hearing Board decision to deny special exception permit, for blocking MarkWest's proposal to build natural gas compression station in a light industrial zone. Action pending.

Rodriguez v. Krancer (M.D. Pa. filed July 27, 2012).
[ACT 13; FIRST AMENDMENT]

Plaintiff Dr. Rodriguez seeks declaratory relief from what petitioner calls the Medical Gag Rule contained in Act 13 due to violations of the First and Fourteenth Amendments. U.S. CONST. amend. I, XIV. The provision at issue requires heath professionals, upon request by O&G development company, to enter into confidentiality agreements prior to receiving information regarding the chemical composition of fracking fluid. Under the terms of the provision, the confidentiality agreements may reach doctors communications with patients. Plaintiff alleges the regulation is an overbroad regulation on speech which forces him to violate ethical and professional obligations of his Pennsylvania medical license. Action pending.

Range Resources- Appalachia, LLC vs. Blaine Township, No. 09-355 (W.D. Pa., Oct. 29, 2009).
[ACT 13; PREEMPTION]

Range Resources Appalachia petitioned for damages, injunctive and declaratory relief against Ordinances passed by Blaine Township. BLAINE TOWNSHIP, PA, An Ordinance by the Second Class Township of Blaine Township, Washington County, Pennsylvania, Eliminating Legal Powers and Privileges from Corporations Doing Business Within Blaine Township to Vindicate the Right to Democratic Self-Governance, O-007-2008 (Jul. 21, 2008) (hereinafter Corporate Rights Ordinance); Blaine Township Corporate Disclosure and Environmental Protection Order, O-002-2008 (Apr. 21, 2008) (hereinafter Disclosure Ordinance); A Resolution of the Blaine Township Board of Supervisors to Enact a $300.00 Permit Fee for Each Temporary Structure, Storage or Office Trailer Used at All Work Sites, R-001-2008 (Mar. 17, 2008) (hereinafter Temporary Structure Fee Resolution). Range Resources alleged that Blaine Township's Ordinances violate Constitutional provisions, constitute an impermissible exercise of police power, and are preempted by state law.

The District Court granted Plaintiff's motion for judgment on the pleadings and invalidated all three Ordinances. The Disclosure Ordinance, requiring Corporations to disclose information regarding operations within the Township and barring Corporations on basis of previous criminal or civil violations, was invalidated as preempted by the Pennsylvania Oil and Gas Act. Act of December 19, 1984, P.L. 1140 (as amended, 58 P.S. §§601.602). Specifically, the court cited application of the Disclosure Ordinance to require that Range Resources disclose information regarding streets used in operations, subcontractors, and hours of operations as evidence that the Ordinance imposed additional requirements drilling operations. In addition to violating field preemption implied by the Oil and Gas Act, the Disclosure Ordinance, also defeated the uniformity goals of the Act. Citing *Range Resources v. Salem Township*, 964 A.2d 869 (Pa., 2009) and *Huntley & Huntley Inc. v. Borough Council of the Borough of Oakmont,* 964 A.2d 855 (Pa., 2009). The District Court also invalidated the Corporate Rights Ordinance for

violating the Supremacy Clause and the Temporary Fee Structure for unconstitutional vagueness. Citing decision in *Penn Ridge Coal, LLC v. Blaine Township*, No. 08-1452 (W.D. Pa. Sep. 16, 2009) invalidating Blaine Township Corporate Rights Ordinance.

Berish v. Southwestern Energy Production Co.**,** 2012 U.S. Dist. LEXIS 61943 (M.D. Pa., May 3, 2012).
[GROUNDWATER CONTAMINATION]

Plaintiffs allege that oil and gas development companies involved in building and operating a gas well within two thousand feet of water supply well are responsible for the contamination of their water supply. *Berish v. Southwestern Energy Prod. Co*., 2012 U.S. Dist. LEXIS 61943 (M.D. Pa., May 3, 2012) granting Plaintiffs' motion to file amended complaint adding four Defendants. Specifically, Plaintiffs allege that discharges resulting from improper and insufficient well casing and spills contaminated Plaintiffs' property, and underlying aquifers, with hazardous chemicals and industrial waste used in the hydraulic fracturing process. Petitioners' remaining claims include: negligence per se, nuisance, strict liability, and trespass. *Berish v. Southwestern Energy Co*., 763 F. Supp. 2d 702 (M.D. Pa., Feb. 3, 2011) denying Defendants' motion to dismiss strict liability claim prior to discovery process.

Petitioners seek injunctive relief barring Defendants from drilling and production activities and requiring abatement of alleged nuisances, compensatory damages, punitive damages, and costs of health monitoring for latent harms. Final disposition pending.

Dillon v. Antero Resources, No. 2:11-cv-01038, 2012 U.S. Dist. LEXIS 95014 (W.D. Pa. Jul. 10, 2012) consolidated with *Becka v. Antero Resources*, No.2:11-cv-01040 (W.D. Pa. Jul. 10, 2012).
[GROUNDWATER CONTAMINATION]

Plaintiffs Dillon family and Becka family, filing separate cases now consolidated before the District Court, allege claims sounding in negligence, strict liability and trespass against Antero Resources for groundwater pollution stemming from hydraulic fracturing operations. Action pending.

Hallowich v. Range Resources Corporation**,** 2012 Pa. Super. 234U, (Pa. Super. Ct. Dec. 7, 2012) *vacating* Judgment of January 31, 2012, C-63-CV-201003954 (C.P. Washington County Jan. 31, 2012) denying petitions of the Observer Publishing Company and PG Publishing Company to intervene and to unseal the record.
[SEALED RECORD]

Underlying matter involved Plaintiff Hallowich's tort claims against Range Resources Corporation for damages resulting from hydraulic fracturing operations. In

accordance with procedural rules governing settlement on behalf of minors, parties reached a settlement agreement containing confidentiality provisions following a hearing before the court. Parties also filed a joint motion to seal the record. Appellants in this action, newspapers the Observer-Reporter and Post-Gazette, petitioned to intervene and unseal the record. The newspapers argued that the sealing of the record violated the constitutional presumption of openness in judicial proceedings and common law requirements for a party to show that a parties interest in secrecy outweighs the traditional presumption of openness. U.S. CONST. AMEND. I, PA. CONST. ART. I, §11, PA Childcare LLC, 887 A.2d 311. The trial court denied Appellants' petition on untimeliness grounds arguing that the case had settled and was therefore no longer pending and subject to intervention. PA. R. CIV. P. 2327.

The Pennsylvania Superior Court vacated the trial court's denial of Appellants petition to intervene and remanded for reconsideration. Citing scheduling inconsistencies by the trial court that made the filing of a timely intervention impracticable, the Superior Court held that the lower court should have liberally construed the timeliness rule and accepted Appellants' petitions to intervene.

***Fiorentino v. Cabot Oil and Gas Corp*.,** 2011 U.S. Dist. Lexis 119292 (M.D. Pa., Oct. 14, 2011) ; *Fiorentino v. Cabot Oil & Gas Corp.,* F. Supp. 2d 506 (M.D. Pa. 2010).
[GROUNDWATER CONTAMINATION; STRICT LIABILITY; MEDICAL MONITORING]

Plaintiffs, property owners in Dimock Pennsylvania, filed suit against Defendant natural gas producers for injunctive relief and damages alleging contamination of land and groundwater with methane, natural gas, and other toxins. Petitioners' claims include negligence, private nuisance, strict liability, breach of contract, fraudulent misrepresentation, gross negligence, a claim under the Pennsylvania Hazardous Sites Cleanup Act, and the establishment of medical monitoring trust funds. Defendants filed a motion to dismiss HSCA, strict liability, medical monitoring trust fund, and gross negligence claims and a motion to strike certain allegations in the complaint. The District Court denied Defendants' motion to dismiss all claims except for gross negligence, which is not recognized under Pennsylvania law, and denied Defendants' motion to strike allegations regarding damages. *Fiorentino v. Cabot Oil and Gas Corp*., 2011 U.S. Dist. Lexis 119292 (M.D. Pa., Oct. 14, 2011).

The District Courts rejection of Defendants' motion to dismiss was significant for their strict liability holding. While Pennsylvania case law has held that activities such as operation of a pipeline are not abnormally dangerous activities that warrant strict liability, the court argued that extension of such reasoning to gas-well drilling could not be undertaken without the development of a more complete factual record. *Id. citing Smith v. Weaver*, 665 A. 2d. 1215 (Pa. Super. 1995) for holding operation of an underground storage tank at gasoline station not to be abnormally dangerous activity and *Melso v. Sun Pipe Line Co.*, 576 A.2d 999 (Pa. Super. 1990) for holding that operation of a petroleum pipeline is not abnormally dangerous activity. Plaintiff's response to Defendants' motion to dismiss argues for a distinction between the storage and transmission of gas and

petroleum products, classified under Pennsylvania common law as activities that are not abnormally dangerous, and gas-well drilling and operations.

The court also ruled that Plaintiffs sufficiently alleged plausible facts necessary to support claim for medical monitoring funds in providing evidence of elevated levels of dissolved methane in well water, pollutants and industrial waste discharged into ground and waters near Plaintiffs' homes and wells, the spilling of diesel fuel, drilling mud discharged into diversion ditches near Plaintiffs' homes and water wells, and three significant spills of pollutants within the Dimock gas well area within a ten day period. Plaintiffs also provided evidence of neurological, gastrointestinal, and dermatological symptoms and blood samples consistent with toxic exposure.

Roth v. Cabot Oil & Gas Corp., No.3:12-CV-00898 (M.D. Pa. Oct. 15, 2012)
[LONE PINE ORDER]

Plaintiffs, Mr. and Mrs. Roth, filed suit alleging property damage and groundwater contamination from Defendants' oil and gas operations in Dimock Township and Springville Township. In addition to claims sounding in tort (negligence, negligence per se, nuisance, trespass, and strict liability) Plaintiffs also allege violations of the Pennsylvania Hazardous Sites Cleanup Act, breach of contract, and fraudulent misrepresentation. 35 PA. CONS. STAT. ANN. § 602.101 et. seq. Central to claims are allegations that Cabot Oil & Gas misrepresented their testing, prevention, and remediation obligations regarding Plaintiffs' water supply in executing a 2008 oil and gas lease. Petitioners cite the release of methane gas into drinking water supply from hydraulic fracturing operations and improperly constructed waste wells, the contamination of groundwater with hazardous flowback water, DEP citations for improper waste handling and well casing, and the DEP's 2011 finding that elevated levels of dissolved methane rendered the Roth's water supply unsafe for human consumption.

Defendants moved for Lone Pine case management order arguing that Plaintiffs' counsels involvement in the substantially similar case, *Fiorentino v. Cabot Oil & Gas*, pending in the Middle District of Pennsylvania since 2009 suggested they should be able to produce evidence for claims at this stage in the litigation. The District Court rejected Defendants' motion for Lone Pine case management as the small number of plaintiffs and the nature of the claims at issue here could be distinguished from the complex toxic tort allegations involving multiple parties where discovery is likely to be particularly protracted and expensive.

A key distinction recognized by the court is the use of Lone Pine orders in toxic tort cases where complexity arises from plaintiffs medical claims and not from the number of parties involved. *Citing Strudley v. Antero Res. Corp.*, No. 2011-cv-2218 (Colo. Dist. Ct. Denver County May 9, 2012) Lone Pine order issued where Plaintiff alleged health injuries from exposure to natural gas operations. In opposing Defendants' motion, Plaintiffs highlight that their Amended Complaint did not contain personal injury claims

and was limited to property-related tort claims substantiated by DEP documentation of Defendants operational defects and contamination.

Armstrong v. Chesapeake Appalachia, LLC, No. 10CV000681, (C.P. Bradford County, Jul. 29, 2012); Pl.'s Amended Complaint, No. 10-2453 (M.D. Pa., Jan. 20, 2011); Pl.'s Mot. to Remand, 2010 U.S. Dist. Ct. Motions 2453; 2011 Dist. Ct. Motions LEXIS 836 (M.D. Pa., Mar. 4, 2012) citing lack of complete diversity jurisdiction.
[GROUNDWATER CONTAMINATION]

Plaintiffs, property owners in Sugar Run Pennsylvania, filed suit alleging groundwater contamination from Defendants' natural gas extraction activities. Petitioners aver that their potable water supply well was rendered unfit for use and that hazardous contamination of property forced Plaintiffs to evacuate their homes. Plaintiffs allege violations of the Pennsylvania Hazardous Sites Cleanup Act and seek relief for tort claims sounding in negligence, nuisance, strict liability, and trespass. The suit, initially removed to federal District Court on Defendants' motion, was recently remanded to the Court of Common Pleas in Bradford County for lack of complete diversity of parties subsequent to the joinder of two Defendants in Plaintiffs' Amended Complaint. 28 U.S.C. 1447(e); Pl.'s Amended Complaint, 2010 U.S. Dist. Ct. Pleadings 2453 (Jan. 20, 2011). Action pending.

Zimmerman v. Atlas America, LLC, No.2009-7564 (Ct. Comm. Pl. Washington County, filed Sep.9, 2009).
[GROUNDWATER CONTAMINATION]

Plaintiffs, George and Lisa Zimmerman, filed suit against Atlas America alleging contamination of property in violation of an earlier Amended Settlement Agreement and seeking damages for violations in tort. This action followed the Zimmerman's earlier effort to obtain an injunction barring Atlas America from accessing their property pursuant to a mineral lease agreement. *Zimmerman v. Atlas America, LLC*, No.2008-5760, Ct. Comm. Pl. Washington County, Oct. 2008). The previous action culminated with an Amended Settlement Agreement containing a Confidentiality Provision.

Plaintiffs' Original Complaint complains of burning eyes, visible water pollution downstream of natural gas well sites, and dead fish and animals. Zimmerman's cite the release of flowback water into rivers, burying of contaminated tarpaulin, and bubbling of liquids in water pool adjacent to natural gas well casing. A 2008 report of water and soil samples taken from the Zimmerman's property revealed concentrations for arsenic and tetrachloroethene in great excess of the EPAs Screening Levels for dangerous contaminants. Pl.'s Compl. ¶20. Petitioners have alleged the following claims sounding in tort: negligence, res ipsa loquitor, trespass, nuisance, and negligence per se. The Zimmermans also claim Atlas America's breach of contract warrants compensatory damages, calculated pursuant to the terms of the settlement agreement at $16,000.00 for

each acre disturbed, plus the loss of profits from farm and the loss of property value. Pl.'s Compl. ¶67, 73. Action pending.

Kamuck v. Shell Energy Holdings GP, No. 4:11-CV-1425, 2012 WL 1463594 (M.D. Pa., Mar. 19, 2012).
[STRICT LIABILITY]

Plaintiff, landowner Edward Kamuck, filed suit against Shell Energy and related Defendants for harms allegedly caused by hydraulic fracturing operations on neighboring property. Defendants' motion to dismiss was granted for all of Kamuck's contract claims and for some tort claims. However, the court maintained Kamuck's claims sounding in negligence, private nuisance, and strict liability. *Citing Fiorentino v. Cabot Oil and Gas Corp*., 2011 U.S. Dist. Lexis 119292 (M.D. Pa., Oct. 14, 2011); *Berish v. Southwestern Energy Production Co.*, 2012 U.S. Dist. LEXIS 61943 (M.D. Pa., May 3, 2012); and *Tucker v. Southwestern Energy Co.*, 2012 U.S. Dist. Lexis 20697, No.1:11-cv-44-DPM, No.1:11-cv-45-DPM (E. D. Ark., Feb. 17, 2012) for proposition that strict liability claim requires factual analysis following adequate development of the record. In maintaining the private nuisance claim, the court cited the release and spraying of toxic hydraulic fracturing fluids.

Citizens for Pennsylvania's Future v. Ultra Resources, Inc., No. 4:11-CV-1360 (M.D. Pa. Sep. 24, 2012)
[CITIZEN SUIT; CLEAN AIR ACT]

Plaintiff Citizens for Pennsylvania's Future filed citizen suit under the Clean Air Act (CAA) against Ultra Resources Inc. for failing to receive a Nonattainment New Source Review permit prior to building multiple compressor stations. 42 U.S.C. §7604(a)(3); 25 Pa. Code §127.201. Citizens for Pennsylvania's Future argue that compressor stations must be considered in the aggregate to constitute a Major Emitting Facility for NO_x emissions. Defendant Ultra Resources maintains that each compressor station is properly authorized pursuant to receiving GP-5 general permits for construction of natural gas facilities from the Pennsylvania Department of Environmental Protection. 35 P.S. § 4006.1. The District Court's September 2012 interim order found subject-matter jurisdiction over Plaintiff's citizen suit claim that Defendant failed to obtain a required permit under part D of the Clean Air Act. *Citing Ogden Projects v. New Morgan Landfill Co*., 911 F. Supp.863 (E.D.Pa. 1966) and *Weiler v. Chatham Forest Products, Inc.,* 392 F.3d 532 (2d Cir. 2004) *holding* complaint alleging failure by Defendant to obtain a class C or D permit for a major emissions facility sufficient for subject-matter jurisdiction.

The court declined to exercise Burford abstention, arguing that as Plaintiff's claim did not require review of the State regulatory scheme but rather requested review of a particular discretionary act Burford abstention was inapplicable. The court also held that Plaintiff was not required to exhaust state administrative remedies before bringing the

claim in federal court. Following *Weiler v. Chatham* supra.; *distinguished from Sierra Club v. Wellington Dev., LLC,* No.0893 (W.D. Pa May 13, 2008).

A key factual inquiry not yet addressed is whether emissions from Ultra Resources compressor stations, each of which emits less than the one hundred ton per year threshold for Major Emitting Sources under the CAA, should be aggregated into one Major Emitting Facility and subject to a NNSR or regulated separately by state issued permits as in the status quo.

Clean Water Action v. Municipal Authority of The City of McKeesport, No. 2:2011cv00940 (W.D. Pa., 2011)
[CITIZEN SUIT; CLEAN WATER ACT]

Plaintiffs Clean Water Action and Three Rivers Waterkeeper filed citizen suit under the Clean Water Act against Municipal Authority of McKeesport (MACM) for the discharge of oil and gas wastewaters without a required permit and for violations of MACM's existing NPDES permit and pretreatment violations. 33 U.S.C. § 1365; 33 U.S.C. §1311(a); Permit No. PA0026913; 33 U.S.C. §1317. Defendant MACM, a sewage treatment facility regulated as a publicly owned treatment works under the CAA, was alleged to discard industrial wastes from natural gas drilling operations without seeking NPDES modifications for the resulting change in waste stream pollutants. 33 U.S.C. §1342(k)(2011). 40 C.F.R §§122.62,122.63, 123.25(a)(25).

Parties settled April 10, 2012 with MACM stating that, although they no longer took natural gas well waste water, they would seek an NPDES permit before handling coal bed methane or shale gas wastewaters in the future. Patrick Cloonan, "Settlement Ends Shale Water Legal Fight" McKeesport Daily News (May 2, 2012).

Ohio

Boggs v. Landmark 4, LLC, No. 1:12CV614 (N.D. Ohio, Mar. 12, 2012);(consolidating Mangan v. Landmark 4, LLC, *Boggs v. Landmark 4, LLC*, 2012 WL 3485288 (N.D. Ohio, Aug. 13, 2012). Pl.'s Compl. 2012 WL 960913.
[Groundwater Contamination]

Plaintiffs, William and Stephanie Boggs, allege groundwater contamination with toxic and hazardous chemicals as a result of Defendant Landmark 4 LLC's natural gas wells located within 2,500 feet of the Boggs's residence. The complaint cites the insufficient cement casing of wells and discharges and spills of industrial waste resulting from Landmark's negligence as sources of contamination with barium, manganese, and strontium. In addition to permanent and preliminary injunctive relief, Plaintiffs seek compensatory damages, punitive damages, and the costs of future health monitoring. Plaintiffs' complaint cites the following causes of action: negligence, strict liability, nuisance, negligence per se, unjust enrichment, battery, and intentional fraudulent concealment, and negligent misrepresentation. Defendant prevailed on a motion to dismiss claims for intentional fraudulent concealment and battery. *Boggs v. Landmark 4, LLC*, 2012 WL 3485288 (N.D. Ohio, Aug. 13, 2012). Action pending.

TEXAS

Mitchell v. Encana Oil & Gas USA, Inc., No. 10-2555 (N.D. Tex.);
2012 U.S. Dist. Motions 2555; 2011 U.S. Dist. Ct. Motions LEXIS 841 (N.D. Tex., Apr. 14, 2011). Pl. Comp., 2010 U.S. Dist. Ct. Pleadings 2555; 2010 U.S. Dist. Ct. Pleadings LEXIS 5979 (N.D. Tex., Dec. 15, 2010).
[WASTE DISPOSAL RESERVE PITS; SETTLEMENT]

Plaintiff, Grace Mitchell, filed suit against Encana Oil & Gas and subsidiaries of Chesapeake Energy alleging groundwater contamination from Defendants' hydraulic fracturing operations and disposal activities in vicinity of her property. Mitchell cited groundwater tests revealing contamination with various chemicals, including diesel range hydrocarbons, in support of her claim that well water is not fit for household use or consumption. Pl. Comp., 2010 U.S. Dist. Ct. Pleadings 2555; 2010 U.S. Dist. Ct. Pleadings LEXIS 5979 (N.D. Tex., Dec. 15, 2010). Mitchell's First Amended Complaint asserted the following claims: nuisance, trespass, negligence, and exposure to toxic chemicals warranting medical monitoring damages. 2012 U.S. Dist. Motions 2555; 2011 U.S. Dist. Ct. Motions LEXIS 841 (N.D. Tex., Apr. 14, 2011).The case was dismissed December 27, 2011 pursuant to settlement.

Scoma v. Chesapeake Energy Corp., No. 10-CV-1385 (N.D. Tex. Aug. 11, 2010). Settled December 9, 2011.
[WASTE DISPOSAL RESERVE PITS]

Plaintiffs, Mr. and Mrs. Scoma, filed suit against Chesapeake Energy alleging contamination from drilling waste disposal injection wells and other disposal sites. The Scomas' complaint reports they were no longer able to use their supply well due to contamination and cited water testing results showing increased concentration of the petroleum byproducts benzene, toluene, ethylbenzene, xylene, barium, and iron. Pls.' Second Amended Compl. Aug. 11, 2010. Claims for nuisance, negligence, and trespass were dismissed pursuant to settlement.

Harris v. Devon Energy Production Company, 2012 WL 6082415; No.12-40137 (5th Cir. Dec.7, 2012) affirming dismissal but modifying to be with prejudice, *Harris v. Devon Energy Production Company*, No. 4:10cv708; 2012 WL 220212 (E.D. Tex., Jan. 25, 2012) granting Plaintiffs Motion to Dismiss Without Prejudice subsequent to Recommendations of United States Magistrate Judge, 2011 WL 7092649 (E.D. Tex. Dec. 9, 2011).
[GROUNDWATER CONTAMINATION]

Plaintiffs, Doug and Diana Harris, filed suit against Defendant Devon Energy Production alleging trespass and negligence resulting in contamination of Plaintiffs' groundwater. The Harris's Amended Complaint cited the presence of a gray substance

containing chemicals and substances typically found in drilling mud, pointing in particular to a commercial compound called "bentonite", as evidence of Devon Energy Production's responsibility. Pl.s' Amended Compl. at 6, docket # 24. Following Defendant's second motion for summary judgment in November 2011, Plaintiffs moved for voluntary dismissal without prejudice stating "even though testing showed toxic contamination in Plaintiffs' well water when this lawsuit was filed in December 2010, recent testing showed that the contamination is no longer at a toxic level for human consumption.". FRCP 41(a)(2).

The District Court granted Plaintiffs' motion for dismissal without prejudice. Devon Energy prevailed on an appeal to the Fifth Circuit Court of Appeals for modification of the judgment to be with prejudice. In an en banc decision, the Court of Appeals ruled that the unconditional dismissal of the suit caused Defendant prejudice by preventing Devon from obtaining a ruling on its motion for summary judgment. Devon's second motion for summary judgment presented evidence that a Texas Railroad Commission investigation had failed to find contamination of the well prior to the filing of the suit, a down hole video of Harris's water well showing that well casing had deteriorated and allowed aquifer sediment to flow into the well, and expert evidence that its activity could not have caused contamination of the well. In responding to an order to respond to the motion for summary judgment, the Harris's conceded that they could not prove that Devon was the cause of alleged contamination. The Court of Appeals cited the weakness of Plaintiffs' original evidence and the Harris's concession that they could not prove contamination as reasons to conclude that their motion for voluntary dismissal was intended to avoid an imminent adverse result of summary judgment and was sufficient to amount to plain legal prejudice against Defendant.

Lipsky v. Range Resources et. al., NO. CV11-0798 (Dist. Ct. Parker County)
Lipsky v. Range Resources et. al. v. Rich, NO. CV11-0798 (filed July 14, 2011) *Lipsky v. Range Production Company*, No. 02-12-00098-CV, 2012 WL 3600014 (Ct. App. Tex. Aug. 23, 2012) rejecting appeal of dismissal of Plaintiffs Anti-Slapp Motion to Dismiss Range's Counter Claims for lack of jurisdiction..
[GROUNDWATER CONTAMINATION; DEFAMATION]

Plaintiffs, Steven and Shlya Lipsky, filed suit sounding in tort against Range Resources and other Defendants allegedly responsible for well water contamination through hydraulic fracturing operations on two natural gas wells. A related Imminent and Substantial Endangerment Order enforcement action against Range, brought by the EPA under the Safe Drinking Water Act, was dismissed pursuant to a joint motion for dismissal following EPA's withdrawal of the Endangerment Order. *U.S. v. Range Production Company*, No. 3:11-CV-00116-F (N.D. Tex. Mar. 30, 2012) granting joint dismissal without prejudice.

The case is notable for conspiracy and defamation counter-claims brought by Range against Lipsky's and third-party, anti-fracking activist, Alisa Rich. Range's petition alleges a conspiracy between Lipsky's and Rich to skew contamination testing

results and induce EPA action against Range. Range has requested three million in damages and additional punitive damages for loss of reputation to their business as a result of negative media coverage. Final disposition of both Lipsky's underlying suit and Range's countersuit is pending.

Plaintiffs filed a First Amended Complaint in November 2012 and the suit remain on the Parker Country trial court's docket. Rich and Lipskys' motion to dismiss Range Resrouces counterclaims for violation of the Texas statute against Strategic Lawsuits Against Public Participation was rejected by the trial court and an appellate court that declined jurisdiction over the appeal. *Lipsky v. Range Production Company*, No. 02-12-00098-CV, 2012 WL 3600014 (Ct. App. Tex. Aug. 23, 2012) rejecting Plaintiffs' appeal of trial courts dismissal of Anti-Slapp Motion to Dismiss Range's Counter Claims for lack of jurisdiction; TEX. CIV. PRAC. & REM. CODE ANN. §27.003(a) (West Supp. 2012).

WEST VIRGINIA

***Northeast Natural Energy, LLC v. City of Morgantown*, No. 11-C-411 (W. Va. Cir. Ct. Monongalia Co., Aug. 12, 2012).**
[PREEMPTION; MUNICIPAL LAND USE POWERS]

Plaintiffs Northeast Natural Energy and Enrout Properties filed suit alleging the West Virginia Oil and Gas Act preempted Morgantown City's Ordinance banning the use of hydraulic fracturing methods to extract oil or gas within one mile of the City limits. W. VA. CODE §22-1-1, et seq. (1994); MORGANTOWN, W. VA., ORDINANCES 721.01 et seq. (June 21, 2011) (hereinafter Ordinance). Morgantown City defended the Ordinance as a legitimate response to nuisances endemic to the hydraulic fracturing process within the scope of Home Rule powers conferred by the state. W.VA. CODE §8-12-2 (1969). The Circuit Court in Monongalia County invalidated Morgantown's Ordinance on preemption grounds and hold that the state Oil and Gas Act comprehensively regulated the field of Oil and Gas development with no exception carved out for municipalities to act in conjunction with the state.

Guided by West Virginia precedent narrowly circumscribing municipal powers except where there has been a clear delegation of authority, the court held that the comprehensive regulatory framework of the Oil and Gas Act and the lack of an explicit exception for local regulation of nuisances demonstrated the legislature's intent to preempt municipal regulation such as Morgantown City's Ordinance.

***Teel v. Chesapeake Appalachia, LLC*, No.5:11CV5; 2012 U.S. Dist. LEXIS 153509; 43 ELR 20230 (N.D. W. Va., Oct. 25, 2012)**
[WASTE DISPOSAL RESERVE PITS; TRESPASS]

Teel family sought injunctive and compensatory relief for surface contamination allegedly stemming from subsurface owner Chesapeake Appalachia's disposal of drill cuttings, mud, and process fluids from natural gas well operations in waste pits. At the time of the District Court's final disposition of the case only Teel's claim for trespass remained. The central question in settling the trespass claim was whether, as a matter of law, Chesapeake Appalachia's disposal of waste in drilling pits constituted a fairly necessary use of the surface estate in the appropriate exercise of subsurface rights pursuant to the mineral lease and not imposing a substantial burden on surface owner. The District Court held that Chesapeake was not liable for trespass

The court held that, although not dispositive of Plaintiffs' common law claims, West Virginia drilling permits and applicable regulations allowing the use of waste disposal pits on-site suggests that Chesapeake's disposal activities were necessary and reasonable. W. Va. Code § 22-6-30(a), 22-6A-1 et. seq. (specifically, citing 2(a)(3) for its discussion of pits to contain waste) (West Virginia Horizontal Well Control Act).

Although Plaintiffs demonstrated that closed-loop disposal systems were a reasonable alternative, and had recently been adopted as standard practice by Chesapeake, the court rejected the expansion of common law holding that permanent waste disposal pursuant to mineral extraction constituted a trespass on surface owner's land. Citing *Whiteman v. Chesapeake Appalachia*, LLC, No. 5:11CV31, 2012 U.S. Dist. LEXIS 78876 (N.D. W. Va., Jun. 7, 2012) and *Kartch v. EOG Res., Inc.,* 845 F. Supp. 2d 995, 2012 WL 661978 (D. N.D. 2012).

Hagy v. Equitable Production, No. 2:10-cv-01372, 2012 U.S. Dist. LEXIS 91773 (S.D. W. Va., Jun. 29, 2012)

[GROUNDWATER CONTAMINATION]

Hagy family filed suit alleging property damage and personal injury from contamination with hazardous chemicals during Defendants', oil and gas production companies and service providers, drilling and operation of wells on Plaintiffs property. As of June 2012, Plaintiffs claims of negligence, nuisance, strict liability and trespass against all four Defendants had been dismissed on motions for summary judgment or settlement agreements. Defendant Equitable Production (EQT), owner of the wells in question, prevailed on a motion for summary judgment on the grounds that Plaintiffs relinquished all claims pursuant to two releases entered into with EQT. *Hagy v. Equitable Production,* No. 2:10-cv-01372, 2012 U.S. Dist. LEXIS 69438 (S.D. W. Va., May 17, 2012) The first release, providing consideration of nineteen thousand dollars, released Equitable Production from all property claims arising out of drilling operations. Id. Agreement and Release of October 22, 2007. The second settlement agreement, providing ten thousand dollars in consideration, was signed in April 2008 after the Hagy family first began to observe changes in their well water and resulting physical symptoms. Second Agreement and Release of April 23, 2008. Plaintiffs aver that tests performed following degradation in quality and quantity of well water showed increase in levels of iron and manganese. Pls.' Resp. Opp. Mot. Summ. J. at 4. In granting Defendant BJ Services motion for summary judgment on negligence and nuisance claims the court noted that claims against all four initial Defendants had been disposed of. *Hagy v. Equitable Production,* No. 2:10-cv-01372, 2012 U.S. Dist. LEXIS 91773 (S.D. W. Va., Jun. 29, 2012) granting summary judgment for insufficient evidence to create a genuine issue of material fact on negligence, trespass, and nuisance claims against BJ Services.

Coastal Oil & Gas Corp. v. Garza Energy Trust, 268 S.W.3d 1 (Tex. 2008).

[TRESPASS]

Plaintiff Salinas family, mineral lessor owning land situated above the Vicksburg T formation, filed suit against lessee Coastal Oil & Gas Corporation for damages allegedly resulting from drainage from hydraulic fracturing operations on a neighboring parcel. Following Coastal Oil's appeal from unfavorable trial and appeals court decisions, the Texas Supreme Court reviewed Coastal Oil's liability and damages verdicts on claims

for subsurface trespass, breach of implied covenant to protect against drainage, breach of implied development covenant, and bad faith pooling.

The Texas Supreme Court held that the rule of capture precludes trespass claims for hydraulically fractured wells alleged to drain gas beneath Plaintiff's property. While mineral lessors were held to have cognizable interests, either in the form of loss of value to the reversion or reduced royalty revenues, warranting standing for trespass claims such claims were preempted by the rule of capture and Texas Railroad Commission Regulations. The court also rejected the finding that Coastal Oil was liable for implied covenant to protect from drainage for lack of evidence that a reasonably prudent operator should have prevented draining. Coastal Oil's liability for breach of implied development covenant and bad faith pooling was upheld. A new trial was ordered as the jury's expansive assessment of damages was seen as evidence of harmful prejudice against Coastal Oil as a result of Plaintiff's submission of an internal memorandum containing a discriminatory statement.

ACTIONS INVOLVING FEDERAL AGENCIES

Summit Petroleum Corp. v. EPA, Nos. 09-4348;10-4572 (6th Cir. Aug. 7, 2012).
[CLEAN AIR ACT]

Plaintiff Summit Petroleum challenged EPA's final determination that natural gas sweetening plant, sour gas producing well sites, and flares aggregately constituted a major stationary source requiring a Clean Air Act Title V operating permit. 42 U.S.C. §§7661-7661f. Following Summit's request for a source determination the EPA interpreted relevant regulations and guidance documents to find that, despite geographic distribution of plants over roughly forty-three square miles, SO_2 and NO_x emissions should be aggregated and regulated as a single source. The parties agreed that Summit met two of three regulatory criteria for aggregation but disagreed on EPA's interpretation of "adjacent" in the requirement that pollutant emitting activities must be "located on one or more contiguous or adjacent properties." 40 C.F.R. §71.2. EPA guidance documents were interpreted in determining that the degree of interdependence between Summits' multiple emitting sites justified aggregating sites despite the lack of physical proximity. The Circuit Court denied the EPA's decision deference and ruled that the consideration of the interrelatedness of sources as a proxy for proximity contravened the unambiguous meaning of adjacent, regulatory history, and the EPA's own guidance documents.

New York v. US Army Corps of Engineers, 11-CV-2599 (E.D.N.Y Sep. 24, 2012).
[NEPA]

New York and multiple non-governmental organizations filed suit against various federal agencies, the Delaware River Basin Commission, and the Army Corps of Engineers alleging NEPA violations. With DRBC issuance of regulations regarding natural gas drilling still pending, Plaintiffs alleged that failure to complete an EIS regarding the potential impacts of natural gas drilling violated NEPA requirements as applied to DRBC and other federal agencies. The District Court granted Defendants motion to dismiss on the grounds that in the absence of final action their were neither cognizable injuries to New York's propriety rights nor to NGO members enjoyment rights.

***Coalition for Responsible Growth & Sustainable Development v. FERC*,** 12-566ag (2d Cir., Jun. 2012).
[NEPA]

Petitioners, a coalition of environmental organizations, challenged the Environmental Assessment performed by the Federal Energy Regulatory Commission prior to allowing Central New York Oil and Gas Company to build and operate a 39 mile natural gas pipeline in Pennsylvania. Natural Gas Act 15 U.S.C §717f(c). Petitioners

claimed FERC's EA inadequately assessed the cumulative impact of the project by failing to consider the impacts of the development of the Marcellus shale natural gas as part of the impacts of pipeline development. FERC's EA cited the fact that natural gas development on the Marcellus shale was not sufficiently causally related to the project to warrant consideration in the cumulative impacts. The 2nd Circuit Court of Appeals issued a summary order dismissing the action and upholding FERC's Environmental Assessment for compliance with NEPA requirements.

Independent Petroleum Association of America v. EPA**,** No.10-1233 (D.C. Cir. 2012).
[SDWA]

Plaintiffs challenged EPA's posting on Agency website stating that wells using diesel fuels as a hydraulic fracturing additive would be considered Class II wells for regulation under the Safe Drinking Water Underground Injection Control permitting program. 40 C.F.R. §144.6 defining Class II Wells as "wells which inject fluids…[f]or enhanced recovery of oil or natural gas." Under a February 2012 settlement agreement, the EPA agreed to delete the statement that "Injection wells receiving diesel fuel as a hydraulic fracturing additive will be considered Class II wells by the UIC program" in favor of a statement referring to the EPA's draft "Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels".

Center for Biological Diversity v. Bureau of Land Management, No.11-CV-6174 (N.D. Cal., filed Dec. 8, 2011).
[NEPA]

Petitioners Center for Biological Diversity and Sierra Club seek declaratory and injunctive relief for NEPA and Mineral Leasing Act violations related to BLM's decision to lease 2,700 acres in California for oil and gas development. The complaint alleges BLM violated NEPA requirements by failing to include the impacts of oil and gas development and the hydraulic fracturing process in assessing the cumulative environmental impacts of the proposed pipeline. 42 U.S.C. §§4321. Petitioners also allege violations of the resource waste provisions of the Mineral Leasing Act for BLM's failure to regulate methane emissions from permitted gas wells. 30 U.S.C. §§181, 225.

Bear Lake Properties LLC, UIC Appeal No. 11-03 (EPA Envtl. Appeals Bd., Jun. 28, 2012).
[SDWA]

Petitioners requested review of Underground Injection Control permits issued to Bear Lake Properties by the EPA. The decision to issue the Class II permits for storage of wastewater related to oil and gas development was challenged for deficiencies in

assessing threats to water wells in the "area of review" around the proposed sites. 40 C.F.R. §146.6 setting regulatory criteria for establishing area of review. The Environmental Appeals Board remanded the permits for reconsideration and cited EPA's failure to articulate how they had satisfied all regulatory obligations related to threats to drinking water wells in the area of review around Bear Lake Properties proposed injection wells. 40 C.F.R. §§ 144.31(e)(7), 146.24(a).

Impact Energy Resources v. Salazar, 693 F.3d 1239 (10th Cir. 2012).
[NEPA]

Petitioners, companies that submitted high bids on oil and gas leases at a BLM auction of land in Utah, appeal lower court decisions upholding Secretary of the Interior Salazar's decision not to lease parcels subsequent to auction but prior to lease issuance. Contested parcels were removed from the leasing process by Secretary Salazar following D.C. District Court's issuance of a temporary restraining order on the leasing of seventy seven parcels for likely NEPA and FLPMA violations. *S. Utah Wilderness Alliance v. Allred*, 2009 U.S. Dist. Lexis 30664 (D.D.C. Jan 17, 2009). The 10th Circuit Court of Appeals upheld dismissal of the suit as time-barred under the Mineral Leasing Act. Citing 30 U.S.C. §226-2 setting ninety day window for actions contesting Secretary's decision's involving oil and gas leases.

S. Utah Wilderness Alliance v. Allred, No.: 08-2187, 2009 U.S. Dist. Lexis 30664 (D.D.C. Jan 17, 2009). *S. Utah Wilderness Alliance v. Lewis*, 845 F. Supp.2d 231 (D.D.C. 2012).
[NEPA]

Plaintiffs, non-governmental organizations, sought a temporary restraining order and preliminary injunction to prevent BLM from leasing seventy-seven parcels of land for oil and gas development. Petitioners alleged NEPA, National Historic Preservation Act, and Federal Land Policy and Management Act violations for BLM's failure to account for air pollution and other environmental effects from oil and gas development. 42 USC §4332, 16 U.S.C. §470(f), 43 U.S.C. 1712(c)(8). The DC Circuit Court granted the temporary restraining order and preliminary injunction citing the likelihood that Plaintiffs would succeed on NEPA, NHPA, and FLPMA claims. Following the decision, Secretary of the Interior Salazar withdrew the parcels at issue from the leasing process. *Impact Energy Resources v. Salazar*, No.11-4043, 11-4057(D. Utah, Feb. 17, 2010) challenging Secretary's authority to withdraw parcels following auction.

The case was transferred to the District Court for resolution of Plaintiff's underlying claims challenging three resource management plans issued by BLM for millions of acres of public lands in Utah. *S. Utah Wilderness Alliance v. Lewis*, 845 F. Supp.2d 231 (D.D.C. 2012).

Minard Run Oil Company v. United States Forest Service, 42 ELR 20190, (W.D. Pa. Sep. 6, 2012); *Minard Run Oil Co. v. U.S. Forest Service*, 670 F.3d 236 (3rd Cir. 2011) *upholding Minard Run Oil Co. v. U.S. Forest Service*, 2009 U.S. Dist. LEXIS 116520, 2009 WL 4937785 (W.D. Pa. 2009).
[NEPA]

Petitioners, private parties holding mineral rights on federal land in Alleghany National Forest, sought to make permanent a preliminary injunction enjoining the USFS from regulating actions of mineral estate holders outside of restrictions expressly stated in conveyances. The preliminary injunction issued in an earlier decision held that USFS's performance of an underlying settlement would cause Plaintiffs irreparable harm as NEPA analysis had not been completed. The 3rd Circuit Court overturned the preliminary injunction holding that as a matter of law USFS was not required to comply with NEPA. The District Court for the Western District of Pennsylvania granted summary judgment for Plaintiffs, vacated the settlement, and established precedential effect for matters of law resolved by third circuit in Minard III but denied Plaintiffs claim for permanent injunctive relief.

U.S. v. Range Production Company, No. 3:11-CV-00116-F (N.D. Tex. Mar. 30, 2012) granting joint dismissal without prejudice; *United States v. Range Production Company*, 793 F. Supp. 2d 814 (N.D. Tex. Jun. 20, 2011) staying litigation pending resolution of related action *Range Resources Corporation et. al. v. United States Environmental Protection Agency*, No. 11-60040 (5th Cir. filed Jan. 20, 2011).
[SDWA]

The EPA filed for injunctive relief and civil penalties against Range Production for failure to comply with a Safe Drinking Water Act (SDWA) Imminent and Substantial Endangerment Order stemming from Defendants' operation of two hydraulically fractured wells on the Barnett Shale. 42 U.S.C. 300i; Imminent and Substantial Endangerment Order Docket No. SDWA-06-2011-1208 (hereinafter Administrative Order). EPA's finding of health threatening levels of methane and benzene in domestic water wells belonging to Hayley and Lipsky families formed the basis of the Administrative Order and present civil enforcement action. The Texas Railroad Commission's investigation pursuant to Lipskys' complaint in August 2010 resulted in the a finding that Range did not contribute to or cause the contamination. Related civil actions include Range Resources challenge to EPA's enforcement authority before the 5th Circuit Court, the Lipskys' tort suit against Range for groundwater contamination, and Range Resources counterclaim against the Lipskys alleging improper influence on EPA officials. *Range Resources Corporation et. al. v. United States Environmental Protection Agency*, No. 11-60040 (5th Cir. filed Jan. 20, 2011). In its motion for dismissal Range argued that EPA's efforts to collect financial penalties without proving that Range actually caused well contamination, or providing Range with an opportunity to challenge the EPA's findings before a neutral arbitrator, constituted a due process violation.

The District Court rejected Defendants' motion to dismiss and issued a litigation stay pending the Fifth Circuits resolution of whether EPA's issuance of the Emergency Order was arbitrary or capricious in related action *Range Resources Corporation et. al. v. United States Environmental Protection Agency. United States v. Range Production Company*, 793 F. Supp. 2d 814 (N.D. Tex. Jun. 20, 2011). The 5th Circuit Court of Appeals heard oral arguments on Range's Petition for Review of the Emergency Order in October 2011. In March 2012 EPA withdrew the Administrative Order and parties agreed to immediately seek dismissal of both actions. *U.S. v. Range*, No. 3:11-CV-00116-F (N.D. Tex. Mar. 30, 2012) Joint Stipulation of Dismissal pursuant to FED. R. CIV. P. 41(a)(1)(A)(ii), (a)(1)(B).

<u>APPENDIX</u>

<u>Cases reported in the press but not included in this digest:</u>

American Petroleum Institute v. EPA, No. 12-1405 (D.C.C. filed Oct. 15, 2012)
*Baker v. Anschutz Exploration Corp.,No.*10-cv-61190 (W.D. NY)
Beckman v. EXCO Resources Inc., No. 11-00617 (W.D. La.)
Hearn v. BHP Billiton Petroleum Inc., No. 11CV0474(E.D. Ark.)
Heinkel-Wolfe v. Williams Production Co., No. 10-40355-362 (Tex. Dist. Ct.)
Knoll v. XTO Energy, Inc., No. 2010-10345-16 (Tex. Dist. Ct.)
Koonce v. Chesapeake Exploration LLC, No. 12-CV-0736 (N.D. Ohio)
Parr v. Aruba Petroleum, No. 11-01650 (Dallas Co. Ct, filed Mar. 8, 2011)
Sizelove v. Williams Production Co., No.10-50355-367 (Denton Co. Ct., 2010)
Smith v. Devon Energy Production, No. 4:2011cv00104 (N.D. Tex., filed Mar.7, 2011)
Southwest Royalties, Inc. v. Combs, No. D-1-GN-09-004284 (Tex. Dist. Ct., filed Apr. 30, 2012)