

Bond Case Briefs

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LAND USE - PENNSYLVANIA

ION Geophysical Corp. v. Hempfield Tp.

United States District Court, W.D. Pennsylvania - April 10, 2014 - Slip Copy - 2014 WL 1405397

ION Geophysical Corporation brought a Declaratory Judgment action against Hempfield Township, seeking permission to conduct seismic testing in Hempfield Township and prohibiting the Township from interfering with ION's operations in conducting seismic testing in connection with natural gas exploration and extraction.

The basic issue was whether a township can prohibit seismic testing on a township road.

The District Court granted ION's motion for a preliminary injunction, concluding that ION had shown a reasonable probability that it would succeed on the merits on its claim that the Township's conduct violates ION's substantive and procedural due process rights and ION's equal protection rights under the United States Constitution.

"Had the Township entered into a Seismic Agreement with ION, such an action would be an implicit approval of seismic testing on Township roads. Any agreement entered into would then be the result of a reasoned and informed negotiation in which both sides' interests were taken into account and addressed. Similarly, if the Township had passed an ordinance with regard to seismic testing, then the ordinance could not be vague, arbitrary, or unreasonable. Moreover, any ordinance purporting to regulate seismic testing would have to be in compliance with the preemption provision of Pennsylvania's oil and gas law as set forth in Title 58 of the Pennsylvania Consolidated Statutes."

"We agree with ION that the Township's ban on seismic testing on its roads is an attempt to regulate seismic testing by omission, in the absence of any ordinance regulating seismic testing. By refusing to pass a relevant ordinance or otherwise engage with ION, the Township's conduct is unreasonable and arbitrary and deprives ION of any avenue to seek accommodation or review of the Township's 'regulation by inaction.'"