IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

HUNTLEY & HUNTLEY, INC., Appellee
v.
BOROUGH COUNCIL OF THE BOROUGH OF OAKMONT AND THE BOROUGH OF OAKMONT, J. BRYANT MULLEN, MICHELLE MULLEN, MITCHELL J. PATTI, CHRISTINE M. PATTI, DIANE M. HAMILTON, LEO P. BIDULA AND MAUREEN M. BIDULA, Appellants
Docket Nos. 30 WAP 2008 and 31 WAP 2008,

Appeal From The Commonwealth Court Order Of July 27, 2007, Reversing the Decision of the Court of Common Pleas of Allegheny County of December 8, 2006

RANGE RESOURCES - APPALACHIA, LLC (FORMERLY GREAT LAKES ENERGY PARTNERS), PENNCO OIL COMPANY, CB ENERGY, INC., AND INDEPENDENT OIL AND GAS ASSOCIATION OF PENNSYLVANIA, Appellees
v.
SALEM TOWNSHIP, Appellant
Docket No. 29 WAP 2008

Appeal From The Commonwealth Court Order Of August 9, 2007, Affirming the Decision of the Court of Common Pleas of Westmoreland County of September 8, 2006

BRIEF OF AMICI CURIAE, NOCKAMIXON TOWNSHIP, THE DELAWARE RIVERKEEPER, DELAWARE RIVERKEEPER NETWORK, AMERICAN LITTORAL SOCIETY, AND DAMASCUS CITIZENS ALLIANCE FOR SUSTAINABILITY IN SUPPORT OF APPELLANTS

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STATEMENT OF INTEREST OF AMICI CURIAE

The following respectfully appear as amici curiae: Nockamixon Township, the Delaware Riverkeeper, the Delaware Riverkeeper Network, and the American Littoral Society (hereinafter, "Amici"). Amici appear in support of Appellants' position, seeking reversal of the decisions of the Commonwealth Court in the Borough of Oakmont and Salem Township cases.

Nockamixon Township is a rural municipality in Northern Bucks County. Pursuant to the Municipalities Planning Code and consistent with its responsibilities under Article I, Section 27 of the Pennsylvania Constitution, Nockamixon has amended its zoning ordinance to designate districts in which oil and gas drilling, like other land uses in the Township, is permitted as a conditional use. Certain corporate oil and gas well developers have pursued development of properties within Nockamixon for oil and gas drilling without regard for the Township's zoning ordinance provisions and without respecting the Township's permitting process. These developers – who report having 240 oil and natural gas leasehold interests within Nockamixon Township -- have recently sued the Township in the Court of Common Pleas of Bucks County seeking, *inter alia*, to have relevant provisions of Nockamixon's ordinances declared invalid. The resolution of the present appeals will substantially impact the future of Nockamixon Township.

The Delaware Riverkeeper is a full-time privately funded ombudsman who is responsible for the protection of the waterways in the Delaware River Watershed. The Delaware Riverkeeper advocates for the protection and restoration of the ecological, recreational, commercial and aesthetic qualities of the Delaware River, its tributaries and habitats.

Delaware Riverkeeper Network ("DRN") is an affiliate of the American Littoral Society. DRN was established in 1988 to protect and restore the Delaware River, its tributaries and

habitats. To achieve these goals, DRN organizes and implements streambank restorations, a volunteer monitoring program, educational programs, environmental advocacy initiatives, recreational activities, and environmental law enforcement efforts throughout the entire Delaware River Watershed - an area which includes portions of New York, New Jersey, Pennsylvania and Delaware. DRN is a membership organization with 6,500 members throughout the Watershed. DRN members canoe, birdwatch, hike and participate in other recreational activities throughout the Delaware River Watershed.

American Littoral Society ("ALS") is a non-profit organization with offices in Monmouth, Ocean, and Cape May Counties, New Jersey. ALS was established to promote the study and conservation of marine life and its habitat, specifically in coastal zones. For over 40 years, ALS has served as a lead organization in developing public support for the preservation of coastal habitat, including wetlands, uplands, dunes, seashore and other types of coastal lands. ALS has approximately 5100 members nationally, 2200 of whom reside in New Jersey.

Damascus Citizens for Sustainability ("DCS") is a grassroots organization started in Damascus, Pennsylvania. DCS concerns itself with the health and welfare of the entire Delaware River Basin. DCS engages in advocacy to protect private property, the public health and the integrity of the Upper Delaware River Basin; public action to organize local communities into activists and to form partnerships to achieve collective goals; legal action to enforce the Pennsylvania Constitution and the "Wild and Scenic Rivers" Act; public education; and monitoring by volunteers in the Upper Delaware River region.

STATEMENT OF QUESTIONS INVOLVED

In two cases before the Court, the Court is considering the extent to which the state Oil and Gas Act, 58 P.S. § 601.101 *et seq*. (the Act) preempts local ordinances.

In Huntley & Huntley v. Borough Council of the Borough of Oakmont, Nos. 395 WAL 2007 and 368 WAL 2007, the questions for review are:

> a. By holding that the Oil and Gas Act unconditionally preempts and supersedes a municipality's right to determine the appropriate zoning districts in which gas drilling operations can be located and the manner of municipal review, whether the Commonwealth Court improperly ignored the long-recognized distinction between operational and locational aspects of certain land uses and deprived municipalities of a fundamental component of municipal zoning authority?
>
> b. Whether the Commonwealth Court erred in holding that a municipality which, under its zoning ordinance, provides for the reasonable development of minerals within its municipality, is, nevertheless, mandated to use verbatim the definition of minerals employed in the MPC, precluding the reasonable differentiation of the various types of minerals?

In Range Resources - Appalachia, LLC. v. Salem Township, No. 394 WAL 2007, the questions for review are:

> a. If Salem Township may regulate aspects of oil and gas well surface activities that are not "features of oil and gas well operations" under the Oil and Gas Act (such as slope and grading of wells or other activities that do not flow directly from the operation of the well), whether the Commonwealth Court erred in concluding that provisions of the Township ordinance regulating the location, slope and grading of access roads, the location, depth and grading of gas transmission lines, the location of water cleaning ponds, the entry of excess maintenance agreements for the protection of public roads and other surface disturbance activities and provisions of the ordinance were "features of oil and gas well operations" preempted from local regulation by the Oil and Gas Act?
>
> b. Whether the Commonwealth Court erred in failing to find that, in order to be preempted from regulation by the Oil and Gas Act as a "feature" of oil and gas well operations, the surface activity subject to regulation must relate to the technical operations of the oil and gas industry, flow directly from the operation of the well and be unique to the oil and gas industry?

SUMMARY OF ARGUMENT

The Oil and Gas Act explicitly provides for only limited preemption and leaves, by its specific provisions, a role for municipalities to regulate under the Municipalities Planning Code (MPC) and Flood Management Act.

If, contrary to the rules of statutory interpretation, the rulings below are upheld, there will be nothing left of local ordinances as they relate to development of properties with oil and gas wells; this would disregard the clear letter of the statute. Indeed, in the context of other environmental legislation our courts have historically applied preemption analysis in a manner which recognizes a continuing role for local land use regulations and protections.

Fundamental principles of zoning and the dictates of the MPC also support the viability of local land use regulations governing property development of oil and gas wells. It is the very essence of zoning to designate certain areas for different uses. If an individual municipality cannot designate which areas in its own community are appropriate for development of specific uses, it will lose the ability to carry out its basic powers under state law including its ability to "give consideration to the character of the municipality, the needs of the citizens and the suitabilities and special nature of particular parts of the municipality." 53 P.S. §10603(a).

It is axiomatic that the Oil and Gas Act must be read in a manner consonant with the Pennsylvania Constitution, including Article I, Section 27, known as the Environmental Rights Amendment. To do so, room must be given to allow greater -- not less -- protection of our community's environmental, historic and aesthetic resources. Indeed, this Court has repeatedly relied on Section 27 in giving the state's environmental statutes a broad interpretation, strengthening oversight of practices that pose a risk to the Commonwealth's natural and historic resources.

At the same time, there have been a series of lower court decisions narrowing the role of various state agencies when it comes to fulfilling the mandates of Section 27, and fostering a framework of diffuse, shared responsibility for implementing the Amendment. Any decision here which cuts off municipalities from playing their constitutionally mandated role in environmental protection would leave a gap in regulatory protection that would be counter to the dictates of the Environmental Rights Amendment.

In light of these considerations, Amici respectfully request that the Court reverse the decisions of the Commonwealth Court and uphold the ordinances of Salem Township and the Borough of Oakmont.

ARGUMENT

In the discussion which follows, Amici will address the following: 1) the provisions of the Oil and Gas Act provide for a local regulatory role; 2) the rules of statutory construction support a local regulatory role; 3) other preemption caselaw has sustained the regulatory authority of municipalities; 4) municipalities must be allowed to meet their obligations under the Municipalities Planning Code ; 5) the Act must be read to be consonant with the Environmental Rights Amendment to the Pennsylvania Constitution; 6) the Environmental Rights Amendment requires reading the Oil and Gas Act in a manner that respects local regulation; and 7) courts have repeatedly found that environmental protection responsibilities are shared. As such, Amici ask that the Court uphold the local ordinances that are at issue herein.

I. The Provisions of the Oil & Gas Act Provide for a Local Regulatory Role

The language of the Oil and Gas Act contemplates only limited preemption. Section 602 of the Oil and Gas Act provides as follows:

> Except with respect to ordinances adopted pursuant to the act of July 31, 1968 (P.L. 805, No. 247), known as the Pennsylvania Municipalities Planning Code, and the act of October 4, 1978 (P.L. 851, No. 166), known as the Flood Plain Management Act, all local ordinances and enactments purporting to regulate oil and gas well operations regulated by this act are hereby superseded. No ordinances or enactments adopted pursuant to the aforementioned acts shall contain provisions which impose conditions, requirements or limitations on the same features of oil and gas well operations regulated by this act or that accomplish the same purposes as set forth in this act. The Commonwealth, by this enactment, hereby preempts and supersedes the regulation of oil and gas wells as herein defined.

58 P.S. §601.602.

Thus, local ordinances under the Municipalities Planning Code and Flood Management Act are not preempted except to the extent that they "impose conditions, requirements or

limitations on the same features of oil and gas well operations regulated by this act or that accomplish the same purposes as set forth in this act."

Other provisions of the Oil and Gas Act reflect a legislative intent to preserve other regulations, rights and remedies. For example, 58 P.S. § 601.207(a) says, "To ***aid*** in the protection of fresh groundwater, the well operator shall control and dispose of brines produced from the drilling, alteration or operation of an oil or gas well in a manner consistent with ....The Clean Streams Law, or any rule or regulation promulgated thereunder." (emphasis added). The use of the word "aid" clearly implies that there are other sources of protection contemplated.[1]

More explicitly, 58 P.S. § 601.208 (f) states that "[n]othing herein shall prevent any landowner or water purveyor who claims pollution or diminution of a water supply from seeking any other remedy that may be provided at law or in equity." An expansive reading of the preemption clause would wipe out remedies that exist under local regulations that protect groundwater and prevent degradation of our communities' natural and historic resources.

Similarly, the bonding section of the Act includes a clause which states that "[n]o action taken pursuant to this section shall waive or impair any other remedy or penalty provided in law." 58 P.S. § 601.215(e). Compare Mars Emergency Medical Services, Inc. v. Township of Adams, 559 Pa. 309, 315, 740 A.2d 193, 196 (1999)(finding no preemption; relying on statutory

[1] The Clean Streams Law itself contains language that makes it clear that municipalities maintain a right to suppress nuisances and abate pollution. The law states that "the purpose of this act is to provide additional and cumulative remedies to abate the pollution of the waters of this Commonwealth, and nothing in this act contained shall in any way abridge or alter rights of action or remedies now or hereafter existing in equity, or under the common law or statutory law, criminal or civil, nor shall any provision of this act, or the granting of any permit under this act, or any act done by virtue of this act, be construed as estopping the Commonwealth, persons or municipalities, in the exercise of their rights under the common law or decisional law or in equity, from proceeding in courts of law or equity to suppress nuisances, or to abate any pollution now or hereafter existing, or enforce common law or statutory rights." 35 P.S. § 691.701 (2007).

language which contemplated entities other than state agency would be involved in effectuating the purposes of the Act). If the legislature intended the Oil and Gas Act to be the sole source of law governing the development of properties with oil and gas drilling there would be no reference to "any other remedy or penalty provided in law."

II. Rules of Statutory Construction Support A Local Regulatory Role

The rules of statutory construction favor a reading of the Oil and Gas Act which maintains a role for municipalities in regulating the development of properties with oil and gas drilling.

For example, it is a fundamental rule of statutory construction that "[e]very statute shall be construed, if possible, to give effect to all its provisions." 1 Pa.C.S. §1921(a). As the discussion in the preceding section demonstrates, in order to give effect to all the provisions of the Oil and Gas Act, the Act must be construed to allow local agencies to maintain regulations and remedies.

"When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. §1921(b). While all of the language of the Oil and Gas Act may not be free from ambiguity, it is clear and unambiguous that local ordinances under the Municipalities Planning Code and Flood Management Act are not completely preempted by Section 602 of the Act. If the rulings of the Commonwealth Court are upheld, however, there will be nothing left of local ordinances as they relate to development of properties with oil and gas wells. This would disregard the clear letter of the statute.

While some of the language of the Act is clear and free from ambiguity, one can find ambiguity in clauses such as "same features of oil and gas well operations regulated by this act" and "accomplish the same purposes as set forth in this act." 58 P.S. §601.602.

> When the words of the statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters: (1) The occasion and necessity for the statute. (2) The circumstances under which it was enacted. (3) The mischief to be remedied. (4) The object to be attained. (5) The former law, if any, including other statutes upon the same or similar subjects. (6) The consequences of a particular interpretation. (7) The contemporaneous legislative history. (8) Legislative and administrative interpretations of such statute.

1 Pa.C.S. § 1921(c).

Further, as stated in 1 Pa.C.S. § 1922,

> In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used: (1) That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable. (2) That the General Assembly intends the entire statute to be effective and certain. (3) That the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth. (4) That when a court of last resort has construed the language used in a statute, the General Assembly in subsequent statutes on the same subject matter intends the same construction to be placed upon such language. (5) That the General Assembly intends to favor the public interest as against any private interest.

1 Pa.C.S. § 1922 (2007).

To apply these principles further, one must consider how the Courts have historically applied preemption analysis in the context of other land use and environmental cases, the nature and role of ordinances under the Municipalities Planning Code, and, most importantly, the mandates of the Environmental Rights Amendment to the Pennsylvania Constitution, Article I, Section 27. These considerations will be addressed, in turn, in the sections which follow.

III. Other Preemption Caselaw Has Sustained the Regulatory Authority of Municipalities

As this Court stated in Western Pennsylvania Restaurant Association v. Pittsburgh, 366 Pa. 374, 77 A.2d 616 (1951),

> There are statutes which expressly provide that nothing contained therein should be construed as prohibiting municipalities from adopting appropriate ordinances, not inconsistent with the provisions of the act or the rules and regulations adopted thereunder, as might be deemed necessary to promote the purpose of the legislation. On the other hand, there are statutes which expressly provide that municipal legislation in regard to the

> subject covered by the State act is forbidden. Then there is a third class of statutes which, regulating some industry or occupation, are silent as to whether municipalities are or are not permitted to enact supplementary legislation or to impinge in any manner upon the field entered upon by the State; in such cases the question whether municipal action is permissible must be determined by an analysis of the provisions of the act itself in order to ascertain the probable intention of the legislature in that regard. It is of course self-evident that a municipal ordinance cannot be sustained to the extent that it is contradictory to, or inconsistent with, a state statute: Bussone v. Blatchford, 164 Pa. Super. 545, 67 A.2d 587 (1949). But, generally speaking "it has long been the established general rule, in determining whether a conflict exists between a general and local law, that where the legislature has assumed to regulate a given course of conduct by prohibitory enactments, a municipal corporation with subordinate power to act in the matter may make such additional regulations in aid and furtherance of the purpose of the general law as may seem appropriate to the necessities of the particular locality and which are not in themselves unreasonable." Natural Milk Producers Association v. City and County of San Francisco, 20 Cal. 2d 101, 109, 124 P.2d 25, 29 (1942).

366 Pa. at 380-381, 77 A.2d at 619-620 (footnotes omitted) (quoted in Mars Emergency Medical Services, Inc. v. Township of Adams, 559 Pa. 309, 740 A.2d 193 (1999)). The statute at issue here appears to be a hybrid, containing some preemption language, and some express limitations on preemption.

As noted in Mars, the Court has been reluctant "to find that local legislation is preempted by state statutes." 559 Pa. at 314, 740 A.2d at 195 (citing Council of Middletown Township v. Benham, 514 Pa. 176, 180-182, 523 A.2d 11, 313-14 (1987). Indeed, in the environmental law context, the courts have frequently recognized a continuing role for local protections.

In the context of the Solid Waste Management Act, 35 P.S. §6018.101, et seq., the courts have limited preemption, recognizing that the issuance of a DEP landfill permit does not relieve the landowner of its obligations to secure local zoning approval. Hydropress Environmental Services, Inc. v. Township of Upper Mount Bethel, 836 A.2d 912 (Pa. 2003) (zoning ordinance not preempted by SWMA); Southeastern Chester County Refuse Authority v. Zoning Hearing Bd. of London Grove Twp., 898 A.2d 680 (Pa. Cmwlth. 2006) (upholding setback and height regulations); Sunny Farms, Ltd. v. North Codorus Township, 81 Pa. Cmwlth. 371, 474 A.2d 56

(1984) (upholding buffer requirements); Greene Township v. Kuhl, 32 Pa. Cmwlth. 592, 379 A.2d 1383 (1977); Kuhl v. Commonwealth, 78 Pa. Cmwlth. 328, 467 A.2d 912 (1983).

Likewise, this Court has held that the Sewage Facilities Act, 35 P.S. § 750.1, et seq. does not preempt local regulation of private on-site sewage facilities. Council of Middletown Township v. Benham, 514 Pa. 176, 523 A.2d 311 (1987).

The Court has reached a similar result in the context of the Surface Mining Conservation and Reclamation Act, 52 P.S. § 1396.1, et seq., and the Non-Coal Surface Mining Conservation and Reclamation Act, 52 P.S. § 3301, et seq.. See Miller & Son Paving Inc. v. Wrightstown Twp., 451 A.2d 1002 (Pa. 1982), and Warner Co. v. Zoning Hearing Board of Tredyffrin Twp., 612 A.2d 589 (Pa. Cmwlth. 1992) (upholding zoning district and setback regulations), respectively.

In Commonwealth v. Whiteford, 884 A.2d 364, rehrg en banc denied (Pa. Cmwlth 2005), the Commonwealth Court found that a municipality's enforcement action against a would-be gas well operator was not preempted. In Whiteford, the municipality engaged in enforcement action – ordering Whiteford to cease operation at the gas well site – because Whiteford failed to secure a grading permit and improperly disrupted soil at the site. Even though Whiteford had conditional approval from DEP for drilling a gas well, the Commonwealth Court found no preemption, noting that, in contrast to the local regulations at issue, "[t]he Oil and Gas Act deals with activities that flow directly from the operation of the well, such as casing requirements, 58 P.S. § 601.207; protection of water supplies, 58 P.S. §601.208; safety devices, 58 P.S. §601.209; and plugging of wells, 58 P.S. §601.210." 884 A.2d at 368.

As these cases reflect, in the context of environmental legislation, the courts have consistently recognized the continuing role of local land use regulations.

IV. Municipalities Must Be Allowed to Meet Their Obligations Under the Municipalities Planning Code

An analysis of fundamental zoning principles and the dictates of the Municipalities Planning Code supports the viability of local land use regulations governing those aspects of oil and gas development that are not specific to the purely technical aspects of oil and gas well drilling.

The Municipalities Planning Code (MPC) provides the framework on which zoning ordinances are built. As stated in the MPC, "Zoning ordinances should reflect the policy goals of the statement of community development objectives …, and give consideration to the character of the municipality, the needs of the citizens and the suitabilities and special nature of particular parts of the municipality." 53 P.S. §10603 (a) (2007).

Among the permissible areas of regulation, "[z]oning ordinances may contain … provisions to promote and preserve prime agricultural land, environmentally sensitive areas and areas of historic significance." 53 P.S. §10603 (c)(7) (2007). Also, "[z]oning ordinances may include provisions regulating the siting, density and design of residential, commercial, industrial and other developments in order to assure the availability of reliable, safe and adequate water supplies to support the intended land uses within the capacity of available water resources." 53 P.S. §10603 (d) (2007).

53 P.S. § 10604 states, in part,

> The provisions of zoning ordinances shall be designed: (1) to promote, protect and facilitate any or all of the following: the public health, safety, morals, and general welfare; coordinated and practical community development and proper density of population; emergency management preparedness and operations, airports, and national defense facilities, the provisions of adequate light and air, access to incident solar energy, police protection, vehicle parking and loading space, transportation, water, sewerage, schools, recreational facilities, public grounds, the provision of a safe, reliable and adequate water supply for domestic, commercial, agricultural or industrial use, and other

public requirements; as well as preservation of the natural, scenic and historic values in the environment and preservation of forests, wetlands, aquifers and floodplains.

The Municipalities Planning Code also identifies mandatory requirements for zoning ordinances. For example, "[z]oning ordinances shall protect prime agricultural land and ….shall provide for protection of natural and historic features and resources." 53 P.S. §10603 (g)(1), (2) (2007).

The MPC states these requirements separate and apart from the earlier section, 53 P.S. § 10603(b), which identifies types of regulations that can be enacted except to the extent preempted by specified laws, including the Oil and Gas Act. If the legislature had intended these mandatory provisions to be subject to the preemption analysis, it would have included them in the same section.

Furthermore, if the legislature had intended to require the allowance of oil and gas development throughout each zoning district in every municipality, it would have stated so explicitly. Indeed, the MPC specifically requires that forestry activities be permitted in all zoning districts. As stated at 53 P.S. §10603(f),

> Zoning ordinances may not unreasonably restrict forestry activities. To encourage maintenance and management of forested and wooded open space and promote the conduct of forestry as a sound and economically viable use of forested land throughout this Commonwealth, forestry activities, including, but not limited to, timber harvesting, shall be a permitted use by right in all zoning districts in every municipality.

Because the legislature did not single out oil and gas drilling in the same way as forestry activities it can be concluded that the legislature did not intend to require that oil and gas drilling be a permitted use by right in all zoning districts in every municipality.

Furthermore, the Municipalities Planning Code, 53 P.S. §10101, et seq., requires municipalities to provide for reasonable development of natural gas. See 53 P.S. §§ 10107,

10603(i). This requirement would be superfluous if municipalities had no role in determining the location of natural gas drilling activities in their communities.

The "very essence of zoning is the designation of certain areas for different use purposes." Swade v. Zoning Board of Adj. of Springfield Twp., 392 Pa. 269, 140 A.2d 597, 598 (1958). If an individual municipality cannot designate which areas in its own community are appropriate for the development of oil and gas wells, it will lose the ability to carry out its basic powers under state law, and to "give consideration to the character of the municipality, the needs of the citizens and the suitabilities and special nature of particular parts of the municipality." 53 P.S. §10603 (a) (2007).

V. The Act Must Be Read to be Consonant with the Environmental Rights Amendment to the Pennsylvania Constitution

"It is a cardinal principle that ambiguous statutes should be read in a manner consonant with the Constitution." Harford Accident and Indemnity Co. v. Insurance Commissioner of the Commonwealth of Pennsylvania, 505 Pa. 571, 585, 482 A.2d 542, 549 (1984). In order to read the Oil and Gas Act in a manner consonant with the Constitution, and particularly the Environmental Rights Amendment, the Act must be read to allow local regulation of land development including the non-technical aspects of oil and gas well drilling.

The Environmental Rights Amendment to the Pennsylvania Constitution provides:

> "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of the people."

Pa. Const., Article I, Section 27.

"There can be no question that the Amendment itself declares and creates a public trust of public natural resources for the benefit of all the people (including future generations as yet unborn) and that the Commonwealth is made the trustee of said resources, commanded to conserve and maintain them." Payne v. Kassab, 361 A.2d 263, 272 (Pa. 1976); see Del-AWARE, Unlimited, Inc. v. Commonwealth Dep't of Envtl. Res., 508 A.2d 348 (Pa. Cmwlth. 1986); Pa. Envtl. Mgt. Serv., Inc. v. Commonwealth Dep't of Envtl. Res., 503 A.2d 477, 479-80 (Pa. Cmwlth. 1986).

Municipalities, as agents of the Commonwealth, share duties as trustees to conserve and maintain Pennsylvania's public natural resources for the benefit of the people. United Artists Theater Circuit v. City of Phil., 635 A.2d 612 (Pa. 1993); United Artists Theater Circuit v. City of Phil., 595 A.2d 6, 8-9 (Pa. 1991); Community College of Delaware County v. Fox, 20 Pa. Cmmw. 335, 342 A.2d 468, 482 (1975)("municipal agencies have the responsibility to apply the Section 27 mandate as they fulfill their respective roles in the planning and regulation of land use, and they, of course, are not only agents of the Commonwealth, too, but trustees of the public natural resources as well, just as certainly as is the DER").

Indeed, this Court has recognized that the judiciary also shares responsibility under Section 27. In Commonwealth v. Parker White Metal Co., 515 A.2d 1358 (Pa. 1986), the Court stated:

> In declaring sections 606(a) and 606(b) of the Solid Waste Management Act unconstitutional, the lower court has given little, if any, consideration to the strong and fundamental presumption of constitutionality that must attend judicial review of a legislative enactment. That presumption is further strengthened in this case by the explicit purpose of the Act to implement Article I, section 27 of the Pennsylvania Constitution, a remarkable document expressing our citizens' entitlement and "right to clean air, pure water, and -- to the preservation of the natural, scenic, historic and esthetic values of the environment." The courts of this Commonwealth, as part of a co-equal branch of government, serve as "trustees" of "Pennsylvania's public natural resources," no less than do the executive and legislative branches of government…. As one of the trustees of the

> public estate and this Commonwealth's natural resources, we share the duty and obligation to protect and foster the environmental well-being of the Commonwealth of Pennsylvania. Failure to act with vigilance "so as best to achieve and effectuate the goals and purposes" of the Solid Waste Management Act would be detrimental to the public health, safety and welfare, and would be a breach of the public trust.

515 A.2d at 1370-71.

As one commentator has noted,

> Article I, Section 27 imposes responsibility on the legislature. Because Article I, Section 27 gives certain rights to the "people," it follows that each branch of government has a responsibility to ensure that those rights are protected. When the legislature acts in ways that result in greater protection of those rights, therefore, it is reasonable to conclude that it is fulfilling its constitutional responsibility, whether or not the legislation identifies implementation of Article I, Section 27 as one of its purposes. Thus, when there is any doubt about the meaning of a legislative provision, there is a strong argument that the doubt should be resolved on behalf of the interpretation that protects the environmental rights or public natural resources identified in Article I, Section 27.

Prof. John C. Dernbach, "Natural Resources and the Public Estate", Chap. 29, §29.3[c], p. 699, *The Pennsylvania Constitution, A Treatise on Rights and Liberties* (Bisel, 2004), citing Commonwealth v. Parker White Metal Co., 515 A.2d 1358, 1370-71 (Pa. 1986); Hartford Accident & Indem. Co. v. Ins. Comm'r, 482 A.2d 542 (Pa. 1984); See also Payne v. Kassab, 361 A.2d 263, 273 (Pa. 1976)(recognizing the state's duties under Article I, Section 27); Commonwealth v. National Gettysburg Battlefield Tower, Inc., 302 A.2d 886 (Pa. Commw. Ct. 1973), aff'd, 311 A.2d 588 (Pa. 1973).

"Because Article I Section 27 is placed in the state constitution… it obliges the state and other decision makers to reconcile environmental protection and property rights. Thus, Article I, Section 27 moves the state constitution from an orientation toward conventional development at the environment's expense to one of environmentally sustainable development." Dernbach, Taking the Pennsylvania Constitutional Seriously When it Protects the Environment: Part I – An

Interpretive Framework for Article I, Section 27, 103 Dick. L. Rev. 693, 718-19 (Summer 1999) (citations omitted).

There should be no question that the resources adversely impacted by oil and gas drilling are protected under the Environmental Rights Amendment, including "clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment."

The Environmental Rights Amendment provides a "starting point for understanding how particular problems should be addressed, and provides a basis for determining how well the statute is protecting the environment….The number and complexity of statutes and regulations have generated claims of overregulation and have sometimes made it difficult for both the public and lawyers to understand what is at stake. The Amendment provides a directional compass over this complex landscape." Id. at 731-733.

The prominence of environmental concerns in land use regulations has increased even since the 1971 ratification of the Environmental Rights Amendment. As this Court noted in Dolington Land Group v. Zoning Hearing Board, 576 Pa. 519, 527, 839 A.2d 1021, 1027 (2003),

> In the period since our [1977] decision in *Surrick*, factors previously of little or no concern have assumed preeminence. These include but are not limited to an increased awareness of the environmental sensitivity and public value of undisturbed wetlands, floodplains, slopes, and woodlands; the growing national and state-wide awareness of the true costs of sprawl and of the need to implement contrary land use policies; and the growing recognition of the importance of agricultural lands and activities and of prime agricultural soils. Each of these factors acts to counterbalance to some extent the desire for intense development and each of these factors can properly serve in an appropriate municipal or multimunicipal context as a legitimate justification for the imposition of carefully tailored restrictions of the type, design, location, and intensity of permitted development.

See also, September 1998 Report, 21st Century Environment Commission at 20 (noting need to respect tradition of local government and to strengthen the ability and authority of community officials to plan for their growth), cited in Dolington, 576 A.2d at 531-532, 839 Pa. at 1028-29.

In reading the Oil and Gas Act in the light provided by the Environmental Rights Amendment, we can see that room must be given to allow greater -- not less -- protection of our community's environmental, historic and aesthetic resources.

VI. The Environmental Rights Amendment Requires Reading the Oil and as Act in a Manner that Respects Local Regulation

An analysis of the cases applying Article I, Section 27 of the Pennsylvania Constitution, also known as the Environmental Rights Amendment supports the role of local ordinances and places the preemption debate in a broader context. The Environmental Rights Amendment commands that the Commonwealth, as trustee of natural resources, conserve and maintain them. See, Section V, *supra*.

Pennsylvania courts -- and this Court in particular -- have previously relied upon Section 27 to affirm the environmentally protective aspects of a variety of Commonwealth statutes. Amici respectfully submit that this Court, in the cases *sub judice*, must uphold its duties under Section 27 by reading the Act's provision regarding local ordinances in light of Section 27 and affirm the ordinances of the Borough of Oakmont and Salem Township. This outcome is warranted, as the Act provides for only limited preemption of local law in Section 602.

The Oil and Gas Act Makes Explicit Reference to the Environmental Responsibly of Government under Section 27

The Pennsylvania Oil and Gas Act, 58 P.S. § 601.101 *et seq.,* contains the following Declaration of Purpose:

> "The purposes of this act are to: (1) Permit the optimal development of the oil and gas resources of Pennsylvania consistent with the protection of the health, safety, environment and property of the citizens of the Commonwealth. (2) Protect the safety of personnel and facilities employed in the exploration, development, storage and production of natural gas or oil or the mining of coal. (3) Protect the safety and property rights of persons residing in areas where such exploration, development, storage or

production occurs. *(4) Protect the natural resources, environmental rights and values secured by the Pennsylvania Constitution.*" 58 P.S. § 601.102. (Emphasis added)

The soundness of the Legislature's deference to Article 1, Section 27 becomes evident when one considers both the potential environmental impacts and the potential health effects of oil and gas development if not carefully regulated.[2]

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[2] The potential environmental and health effects of natural gas drilling are serious and varied. In particular, there are concerns about the environmental impacts on water resources, both quantity and quality, and on habitat. Natural gas drilling and fracking processes require water resources in the millions of gallons; they may introduce large volumes of water and additives such as friction reducers, biocides, surfactants, scale inhibitors, and hydrochloric acid into the well; and they may also disturb, distribute, and bring to the surface chemicals from various rock formations, including normally occurring radioactive materials (NORMS). Chemicals including benzene, toluene, ethylbenzene and xylenes (BTEX), formaldehyde, plyacrylamides, chromates, diesel fuels, and metals are used in the fracking fluids, drilling muds or are released through diesel exhaust, venting or flaring. It is estimated that 20%-50% of the fracking fluids and the chemicals they contain can remain underground and can spread into deep aquifers. Increases in infrastructure may require traffic and dust controls. Stormwater also presents a threat, as gas drilling operations are exempt from the Clean Water Act's requirements for construction activities to reduce polluted runoff. In eastern Pennsylvania, the scope and nature of natural gas extraction may have an indelible negative impact on the outstanding natural resources of the Upper Delaware Wild and Scenic River, the water supply of approximately 15 million people and the communities of the Delaware River Watershed. Delaware Riverkeeper Network, Fact Sheet: Natural Gas Well Drilling And Production In the Upper Delaware River Watershed, at http://tiny.cc/aGpcV (last visited July 7, 2008); Lisa Sumi, Shale Gas: Focus on the Marcellus Shale, Oil and Gas Accountability Project/Earthworks, May 2008, at Sec. 1; http://tiny.cc/l6HgG; Earthworks, Oil and Gas Pollution Fact Sheet, http://tiny.cc/cdgfJ; Susquehanna River Basin Commission, Gas Well Drilling and Development, Marcellus Shale, Commission Meeting, Elmira, New York, June 12, 2008, at: http://tiny.cc/UpKdg; Alexandra Fuller, Recovering from Wyoming's Energy Bender, The New York Times, April 20, 2008, at http://tiny.cc/E0O4b (last visited July 7, 2008).

Health effects and animal mortality related to substances used in natural gas drilling in the Western and Southern United States have been documented by both interest groups and the news media. This concern is heightened as gas drilling operations are exempt from provisions of the federal Safe Drinking Water Act that regulate underground injection of chemicals. *See*, TDEX, Crosby 25-3 Well – Windsor Energy, Park County Wyoming, Analysis of Products Used for Drilling, February 25, 2008; Earthworks, Oil and Gas Pollution Fact Sheet, http://tiny.cc/cdgfJ; Peter Gorman, An aquifer is at risk – along with property values, livestock, and dreams – after gas wells move in, Fort Worth Weekly, April 30, 2008, at http://tiny.cc/p2zg2 (Last visited July 8, 2008); Alexandra Fuller, Recovering from Wyoming's Energy Bender, The New York Times, April 20, 2008, at http://tiny.cc/E0O4b (last visited July 7, 2008).

The Oil and Gas Act is just one of several Commonwealth statutes to treat the Environmental Rights Amendment as the cornerstone of its purpose. Indeed, the Clean Streams Law, 35 P.S. § 691.1 *et seq.*, Solid Waste Management Act, 35 § 6018.101, *et seq*., Air Pollution Control Act, 35 P.S. § 4001 *et seq*., and Sewage Facilities Act, 35 P.S. § 750.1 *et seq., inter alia,* make either explicit or implicit reference to the Environmental Rights Amendment in their respective purposes. The fulfillment of those purposes counsels in favor of upholding local ordinances

Clean Streams Law, 35 P.S. § 691.1 et seq.

The Supreme Court has repeatedly relied on Section 27 in support of broader and more environmentally supportive interpretations of the Clean Streams Law. The Clean Streams Law's declaration of policy includes the ability of Pennsylvanians to have "adequate out of door recreational facilities in the decades ahead." 35 P.S. § 691.4. While this goal does not explicitly mention the Environmental Rights Amendment, this Court has found it appropriate to read the language of Section 27 into its interpretation of the Clean Streams Law.

In Commonwealth v. Harmar Coal Co., 306 A.2d 308 (Pa. 1973), the Court addressed whether, under the Clean Streams Law, the Sanitary Water Board could require a mine owner to treat the discharge of acid mine drainage, included drainage originating from adjacent mines, as acid mine drainage was originally exempt from regulation under CSL. 306 A.2d at 311- 312. The Court found that DER's expansion of regulation to all discharges from mines was appropriate, considering the Commonwealth's constitutional exercise of its police power and the importance of Constitution Article I, Section 27. The Court ultimately found that "an overriding public interest in acid mine drainage pollution control does exist." Id. at 317. The Court concluded that "[t]he public interest is not served if the public, rather than the mine operator, has

to bear the expense of abating pollution caused as a direct result of the profit-making, resource-depleting business of mining coal." Id. at 321.

In Nat'l Wood Preservers, Inc. v. Dep't of Envtl. Resources, 414 A.2d 37 (Pa. 1980), the Court considered the applicability of Section 316 of the Clean Streams Law to pollution caused by non-mining sources. The Court found that the regulatory power of DER under Section 316 went beyond mining discharges. 414 A.2d at 40. Further, the Court found its reading of section 316 "entirely in harmony" with the legislative objective of the CSL and the Constitution's Environmental Rights Amendment. Id. It reasoned that "*any contrary or narrower reading* of Section 316 would fundamentally undermine the efforts of DER to achieve these legislative objectives, as well *as frustrate the Legislature's fulfillment of its obligation under* Article I, Section 27 of the Pennsylvania Constitution." Id. at 41 (emphasis added).

Most recently, in Adams Sanitation Co. v. Dep't of Envtl. Protection, 715 A.2d 390, 394, 395 (Pa. 1998), the Supreme Court also relied on the "legislative mandate contained in Article I, Section 27" in its interpretation of the breadth of Section 316 of the Clean Streams Law.

In contrast to Harmar, Adams Sanitation and National Wood, the cases presently before this Court involve the interplay of commonwealth and municipal regulation. Yet to achieve the purposes of Section 27, it is critical that local and state regulation operate in harmony. Just as in Harmar, Adams Sanitation and National Wood, in analyzing the ordinances at issue and the effect of the Oil and Gas Act section 602, the Court's inquiry must take a broad view in determining whether the goals of Section 27 are being fulfilled.

Solid Waste Management Act, 35 § 6018.101, et seq.

Cases involving the Solid Waste Management Act ("SWMA") also counsel for a broad application of Section 27. The SWMA's legislative findings state that "improper and inadequate

solid waste practices create public health hazards, environmental pollution, and economic loss, and cause irreparable harm to the public health, safety and welfare." Moreover, like the Oil and Gas Act, the SWMA's declaration of policy includes mandates to: "protect the public health, safety and welfare from the short and long term dangers of transportation, processing, treatment, storage, and disposal of all wastes; [and] *implement Article I, section 27 of the Pennsylvania Constitution*." 35 P.S. § 6018.102(4), (10) (emphasis added).

In Commonwealth v. Packer, 798 A.2d 192 (Pa. 2002), the Supreme Court upheld a broad interpretation of the Solid Waste Management Act's criminal liability for dumping without a permit. In imposing liability on any violator, not just those subject to permitting, the Court relied on its duty to fulfill the stated purposes of the Act, and in particular the implementation of Article I, Section 27. Id. 198-99. See also, Dep't of Envtl. Resources v. BVER Envtl., Inc., 568 A.2d 298, 300 (Pa. Comwlth. 1990).

In a similar context, in Dep't of Envtl. Res. v. Blozenski Disposal Serv., 566 A.2d 845 (Pa. 1989), the Court justified the constitutionality of certain warrantless inspection provisions of the SWMA under Section 27. 566 A.2d at 845. The Court, holding that Section 27 supported the constitutionality of governmental prosecution of environmental crimes, stated:

> [the] Solid Waste Management Act … was enacted to implement the will of the people as expressed in Article I, Section 27 of the Pennsylvania Constitution … Viewed in that light, it is apparent that the legislature is *very concerned* about the problems and risks posed by both hazardous and non-hazardous ("ordinary") waste disposal and has subjected the disposal of *all forms of solid waste* to heavy regulation. The strong presumption of constitutionality that accompanies environmental legislation in this Commonwealth requires that we give great deference to the General Assembly's assessment of the dangers and risks posed by improper and inadequate solid waste practices regarding *all* forms of solid waste.

Id. at 849 (internal citations omitted).

In the foregoing cases, this Court relied on Section 27 and upheld key SWMA provisions. As noted, the SWMA and the Oil and Gas Act both explicitly reference Section 27 in their statements of purpose. These holdings provide a useful framework in which to analyze the cases presently before this Court, as they appropriately look to Section 27 for the proper breadth of the statute at issue.

Air Pollution Control Act, 35 P.S. § 4001 et seq.

The Court has also relied on Section 27 to support a broader interpretation of the Air Pollution Control Act. The Commonwealth has declared the following, among others, to be policies of the Air Pollution Control Act:

> to protect the air resources of the Commonwealth to the degree necessary for the (i) protection of public health, safety and well-being of its citizens; (ii) prevention of injury to plant and animal life and to property; (iii) protection of the comfort and convenience of the public and the protection of the recreational resources of the Commonwealth;

35 P.S. § 4002.

In Dep't of Envtl. Res. v. Locust Point Quarries, Inc, 396 A.2d 1205 (Pa. 1979), where a quarry operator was accused of violating regulations relating to fugitive air emissions, but sought to avoid liability by relying on statutory construction, the Court relied on Section 27 to ensure the proper imposition of liability. 396 A.2d at 1206, 1209. Instead of simply relying on – and potentially dismissing – the legislative policies of the Air Pollution Control Act, the Court looked instead to Section 27 and found that it ***commits*** the Commonwealth to "the conservation and maintenance of clean air," and that "protection of air resources is a matter of highest priority in the Commonwealth." Id. at 1209.

Similarly, in Dep't of Envtl. Res. v. Bethlehem Steel Corp., 367 A.2d 222 (Pa. 1976), the Court took a broader view of the Air Pollution Control Act when it held that it had jurisdiction to enforce a consent order of DER even while review of another provision was pending. 367 A.3d

at 224. In the case, DER sought to enforce a consent order against the defendant while that defendant was appealing a provision of the consent order. The Court reasoned that depriving the judiciary of jurisdiction would go against the purpose of the Air Pollution Control Act, which "stems from the Pennsylvania Constitution" and includes the "protection of public health, safety and well-being of the citizens…" and which "makes the preservation of the quality of our air resources a matter of the highest public importance." Id. at 226, n.10. The enforceability of Consent Order was in keeping with these policies. Id. at 226-227.

Unlike the Oil and Gas Act, the Air Pollution Control Act does not specifically refer to Article 27, and yet the Court has found the Environmental Rights Amendment to inform its interpretation of the Air Pollution Control Act in the foregoing cases.

Sewage Facilities Act, 35 P.S. § 750.1 et seq.

Similarly, the Sewage Facilities Act declares that the policies of the Commonwealth of Pennsylvania include:

> (1) To protect the public health, safety and welfare of its citizens through the development and implementation of plans for the sanitary disposal of sewage waste …
> (3) To prevent and eliminate pollution of waters of the Commonwealth by coordinating planning for the sanitary disposal of sewage wastes with a comprehensive program of water quality management … [and]
> (7) To insure the rights of citizens on matters of sewage disposal as they may relate to this act and the Constitution of this Commonwealth.

35 P.S. § 750.3.

In Comm. College of Delaware County v. Fox, 342 A.2d 468 (Pa. Comwlth. 1975), a sewage permit issued to the CCDC Authority was challenged on the basis that it was issued without analyzing the "long-range and indirect environmental impact" of construction. 342 A.2d at 472. The Court found that "when proceeding under either The Clean Streams Law or the

Sewage Facilities Act, the DER must operate within the limitations of *Article I, Section 27 of the Pennsylvania Constitution*" Id. at 473-474.

As under the Air Pollution Control Act, the Sewage Facilities Act does not specifically refer to Article 27, yet the Court has recognized the necessity of determining statutory rights and responsibilities through the lens of the Environmental Rights Amendment.

Historic Preservation

In United Artists Theater Circuit v. City of Phil., 635 A.2d 612 (Pa. 1993), the property owner argued that Philadelphia's historic preservation ordinance constituted a taking in violation of the Pennsylvania Constitution. In analyzing whether the Pennsylvania Constitution grants greater rights than the federal constitution, one of the factors the Court considered is whether there are "unique issues of state and local concern." 635 A.2d at 615. The Court found that Article I, Section 27 weighed against a decision that the ordinance effected a taking holding that the Amendment "reflects a state policy encouraging the preservation of historic and esthetic resources," that it represents "a general public interest in preserving historic landmarks," and that no other practical means existed for preserving such landmarks. 635 A.2d at 618-20.

As Professor Dernbach has observed, "Article I, Section 27 both supported extension of the police power to historic preservation, and helped defend this extension against a property-based constitutional challenge." Prof. John C. Dernbach, "Natural Resources and the Public Estate", Chap. 29, §29.3[d], p. 702-703*, The Pennsylvania Constitution, A Treatise on Rights and Liberties* (Bisel, 2004). The application of Section 27 to the Oil and Gas Act supports the local ordinances of Oakmont and Salem against preemption challenges under the Oil and Gas Act.

Section 27 requires reading the Oil and Gas Act in a manner that respects local regulation. This Court must therefore uphold the local ordinances at issue in these cases.

VII. Courts Have Repeatedly Found that Environmental Protection Responsibilities Are Shared

Following the adoption of the Environmental Rights Amendment, the Courts heard repeated challenges to the actions of administrative agencies, with environmentalists arguing that each agency should have a broader role in implementing the Amendment. In response, the lower courts have consistently sanctioned a diffuse approach to environmental regulation, with oversight responsibility being shared across various agencies and with each agency having its own limited regulatory domain. See, e.g., Community College of Delaware County v. Fox, 20 Pa. Cmmw. 335, 342 A.2d 468 (1975) (holding that the Department of Environmental Resources could not consider aspects of planning and zoning, and did not have the authority to withhold a permit on non-statutory environmental and land use criteria; instead, these are the concern and responsibility of municipal agencies); Bruhin v. Commonwealth, 320 A.2d 907, 909-911 (Pa. Commw. Ct. 1974) (rejecting an appeal from citizens who, relying on Section 27, sought to have the Department of Environmental Resources hold public hearings to consider the environmental impact of highway modifications); In re: Condemnation for Legislative Route 212, 349 A.2d 819, 822 (Pa. Commw. Ct. 1975) (agency's duties are limited to procedures set forth in regulations); Department of Envtl. Resources v. Precision Tube Co., 358 A.2d 137, 139 (Pa. Commw. Ct. 1976) (remanding to Environmental Hearing Board on holding that statutory power was necessary to invoke article I, 27 of Pennsylvania Constitution); Snelling v. Department of Transp., 366 A.2d 1298, 1303 (Pa. Commw. Ct. 1976) (Department of Transportation did not have regulatory framework to consider environmental impact); Borough of Moosic v. Pennsylvania Pub. Util. Comm'n, 429 A.2d 1237, 1239 (Pa. Commw. Ct. 1981) (Section 27 does

not expand the powers of a statutory agency); Del-AWARE, Unlimited, Inc. v. Commonwealth Dep't of Envtl. Res., 508 A.2d 348 (Pa. Cmwlth. 1986); Concerned Residents of the Yough, Inc. v. Department of Envtl. Resources, 639 A.2d 1265, 1273 (Pa. Commw. Ct. 1994) (the only aesthetic standard against which the facility was measured was whether it met the set-back requirement); See generally, Fried & Van Damme, Environmental Protection In A Constitutional Setting, 68 Temp. L. Rev. 1369 (Fall 1995).

As a result of these decisions, each individual Commonwealth agency has understood that its role in implementing Article I, Section 27 is limited and that other regulatory and enforcement entities would be carrying a share of the burden in meeting the Commonwealth's environmental protection obligations. Any decision here which reads the preemption language of the Oil and Gas Act in such a way as to cut municipal governments out of their role in implementing Section 27 would run counter to this historical trend of judicial decisions and resulting agency action. Cutting off municipalities from playing their constitutionally mandated role in environmental protection would thus leave a gap in regulatory protection that would be contrary to dictates of the Environmental Rights Amendment.

VIII. Conclusion

The Oil and Gas Act explicitly provides for only limited preemption and leaves a role for municipalities to regulate under the Municipalities Planning Code (MPC) and Flood Management Act. Municipalities have a unique authority and responsibility in the regulatory framework which must be maintained; they "give consideration to the character of the municipality, the needs of the citizens and the suitabilities and special nature of particular parts of the municipality." 53 P.S. § 10603(a). Maintaining this role of local governments is

consistent with and required by the Environmental Rights Amendment to the Pennsylvania Constitution.

For the foregoing reasons, Nockamixon Township, the Delaware Riverkeeper, Delaware Riverkeeper Network, American Littoral Society and Damascus Citizens for Sustainability respectfully request that the Court reverse the rulings of the courts below and uphold the ordinances of the Borough of Oakmont and Salem Township.

Respectfully submitted,

Date: July 8, 2008

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On Behalf of Amici Curiae Nockamixon Township, the Delaware Riverkeeper, Delaware Riverkeeper Network, American Littoral Society, and Damascus Citizens for Sustainability

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below which service satisfies the requirements of Pa.R.C.P. 121:

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