

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION, :

Petitioner, :

v. : No. 126 M.D. 2017

GRANT TOWNSHIP OF INDIANA COUNTY :
and THE GRANT TOWNSHIP SUPERVISORS, :

Respondents. :

[PROPOSED] ORDER

NOW, _____, upon consideration, Respondents' Application in
the Nature of a Motion to Dismiss Petitioner's Claims for Mootness is GRANTED.

, Judge

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DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION,	:	
	:	
Petitioner,	:	
	:	
v.	:	No. 126 M.D. 2017
	:	
GRANT TOWNSHIP OF INDIANA COUNTY	:	
and THE GRANT TOWNSHIP SUPERVISORS,	:	
	:	
Respondents.	:	

**RESPONDENTS’ APPLICATION IN THE NATURE OF A
MOTION TO DISMISS PETITIONER’S CLAIMS FOR MOOTNESS**

Pursuant to Pennsylvania Rules of Appellate Procedure 123 and 1972(a)(4), Respondents Grant Township of Indiana County and the Grant Township Supervisors (“Grant Township” or “Respondents”), hereby respectfully move this Court to dismiss the Commonwealth of Pennsylvania Department of Environmental Protection’s (“Petitioner” or “Department”) Petition for Review in the Nature of Complaint Seeking Declaratory and Injunctive Relief (“Petition”). Because there is no longer an actual controversy that is ripe for consideration, this Court should dismiss the Department’s Petition as moot. In support of their Application, Respondents are filing an accompanying Memorandum of Law and also state as follows:

1. Pennsylvania Rule of Appellate Procedure 1972(a)(4) provides that, “[e]xcept as otherwise prescribed by this rule, subject to Pa.R.A.P. 123, any party may move... (4) To dismiss for mootness.” Pa.R.A.P. 1972(a)(4); *see also Harris v. Rendell*, 982 A.2d 1030, 1035 (Pa. Cmwlth. 2009).
2. On March 27, 2017, the Department issued a permit to Pennsylvania General Energy Company, LLC (“PGE”) authorizing the change-in-use of the Yanity well for frack waste disposal in Grant Township. On the same date, the Department commenced the instant matter by filing its Petition.
3. In its Petition, the Department asks the Court for declaratory and injunctive relief.
4. On May 8, 2017, Grant Township filed its Answer to the Petition, which included new matter and counterclaims. The Department filed Preliminary Objections to the new matter and counterclaims.
5. On May 2, 2018, the Court issued a Memorandum Opinion which granted in part, and denied in part, DEP’s Preliminary Objections. The Court’s Opinion rejected DEP’s argument that Grant Township should have pursued other available remedies with regard to Counterclaims 3 and 4, which are based on the Environmental Rights Amendment, Article I, §27 of the Pennsylvania Constitution. (May 2, 2018 Opinion, pp. 12-13, 16).

6. On December 3, 2018, DEP filed its Application for Summary Relief to Dismiss Grant Township’s Constitutional Claims Because Statutory Relief is Available. Following briefing and oral argument, the Court denied the Department’s Application to Dismiss as an impermissible collateral attack in its March 2, 2020 Opinion.

7. Just over two weeks later, on March 19, 2020, the Department rescinded PGE’s permit for the Yanity well, citing the Charter as applicable law:

The Pennsylvania Department of Environmental Protection hereby rescinds Well Permit No. 37-063-31807-00-00 issued for the “Yanity” well in Grant Township, Indiana County (“Injection Permit”). Operation of the injection well pursuant to the Injection Permit, issued on March 27, 2017 and amended on April 3, 2018, would violate a local law that is in effect. 58 Pa. C.S. S 3211(e.1)(1). Specifically, Section 301 of Grant Township’s Home Rule Charter bans the injection of oil and gas waste fluids. Therefore, the operation of the Yanity well as an oil and gas waste fluid injection well would violate that applicable law.

Exhibit A, rescission letter.¹

8. Because no case or controversy remains, Petitioner’s claims are moot and its Petition should be dismissed.

9. Furthermore, this Court no longer has jurisdiction over Counts I-IV of the Petition under the Pennsylvania Declaratory Judgments Act, 42 Pa. Cons. Stat. § 7531 *et seq.*, because without an actual controversy the issues are not ripe for judicial determination.

¹ Letter is mis-dated March 19, 2018.

10. With the Department's rescission of its permit to PGE, uncertainty no longer exists between the positions of Grant Township and the Department. The Department conceded in its rescission letter that the Charter was an applicable law. See Exhibit A.

11. Because Petitioner no longer has a legally cognizable interest in the outcome of this case and any potential ruling on the issues would have no meaningful effect, the Petition should be dismissed for mootness.

WHEREFORE, Grant Township respectfully requests that this Honorable Court dismiss the Department's Petition in its entirety.

Dated: September 21, 2020

Respectfully submitted,

/s/ Karen Hoffmann

Karen Hoffmann, Esq.

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FOR RESPONDENTS GRANT
TOWNSHIP OF INDIANA COUNTY
AND THE GRANT TOWNSHIP
SUPERVISORS

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: September 21, 2020

Respectfully submitted,

/s/ Karen Hoffmann

Karen Hoffmann, Esq.