



nature of a complaint seeking declaratory judgment filed by Petitioner in the above-captioned matter, and to assert defenses thereto in the form of a New Matter, and Counterclaims.

In response to the averments made in the Petition for Review, Grant Township answers as follows:

**I. PARTIES**

1. ADMITTED in part, DENIED in part. It is ADMITTED that the Department is an agency of the Commonwealth of Pennsylvania, possessing both the duty and the authority to administer and enforce the cited legislation. It is DENIED that the Department adequately enforces those state laws. It is further DENIED that the Department is the sole body that may legislate on matters contained within the cited legislation pursuant to Article I, Section 27 of the Pennsylvania Constitution. Pa. Const. Art. I, § 27.

2. ADMITTED.

3. ADMITTED in part, DENIED in part. It is ADMITTED that the Grant Township Board of Supervisors are the elected body designated to represent the interests and protect the rights of Grant Township citizens. It is DENIED that the Grant Township Supervisors are the sole repository of governing authority in the Township, as it must be recognized that all governing authority stems from the people themselves.

**II. JURISDICTION**

4. ADMITTED in part, DENIED in part. It is ADMITTED that this Court has jurisdiction over this matter under Section 7532 of the Pennsylvania Declaratory Judgment Act, Act of April 28, 1978, P.L. 202, No. 53, as amended, 42 Pa.C.S. § 7532 and Section 761(a) of the Judicial Code, 42 Pa.C.S. § 761(a), but DENIED that Pa.R.A.P. 3761 applies.

5. ADMITTED.

### **III. BACKGROUND**

6. Whether or not Paragraph 6 of the Petition contains an accurate quotation of the referenced Act, the text of the Act constitutes the best evidence of the proffered statement, and therefore the paragraph is DENIED.

7. Whether or not Paragraph 7 of the Petition contains an accurate quotation of the referenced Act, the text of the Act constitutes the best evidence of the proffered statement, and therefore the paragraph is DENIED.

8. Whether or not Paragraph 8 of the Petition contains an accurate quotation of the referenced Act, the text of the Act constitutes the best evidence of the proffered statement, and therefore the paragraph is DENIED.

9. Paragraph 9 contains arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

10. Whether or not Paragraph 10 of the Petition contains an accurate quotation of the referenced Act, the text of the Act constitutes the best evidence of the proffered statement, and therefore the paragraph is DENIED.

11. Whether or not Paragraph 11 of the Petition contains an accurate quotation of the referenced Act, the text of the Act constitutes the best evidence of the proffered statement, and therefore the paragraph is DENIED.

12. Paragraph 12 contains arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

13. Whether or not Paragraph 13 of the Petition contains an accurate quotation of the referenced Act, the text of the Act constitutes the best evidence of the proffered statement, and therefore the paragraph is DENIED.

14. Whether or not Paragraph 14 of the Petition contains an accurate quotation of the referenced Act, the text of the Act constitutes the best evidence of the proffered statement, and therefore the paragraph is DENIED.

15. Paragraph 15 contains arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

16. Whether or not Paragraph 16 of the Petition contains an accurate quotation of the referenced Act, the text of the Act constitutes the best evidence of the proffered statement, and therefore the paragraph is DENIED.

17. ADMITTED in part, DENIED in part. It is ADMITTED that the Department believes it is charged with regulating waste fluids from oil and gas activities on and off of well sites. It is DENIED that the Department successfully or effectively engages in that task. It is further DENIED that such an activity is the exclusive domain of the Department.

18. Respondents lack knowledge or information sufficient to form a belief about the truth of any facts alleged in Paragraph 18 of the Petition, and therefore Respondents DENY the allegations and demand proof.

19. ADMITTED insofar as that on June 3, 2014, the people of Grant Township, through their municipal elected officials, adopted a Community Bill of Rights Ordinance establishing a local bill of rights and prohibiting activities that would violate those rights. However, as to whether or not Paragraph 19 of the Petition contains an accurate quote of the Ordinance, the text of the Ordinance constitutes the best evidence of the proffered statement, and therefore the paragraph is DENIED.

20. ADMITTED.

21. Whether or not Paragraph 21 of the Petition contains an accurate portrayal of the

effect of the referenced letter, the text of the letter constitutes the best evidence of the proffered statement, and therefore the paragraph is DENIED.

22. Whether or not Paragraph 22 of the Petition contains an accurate summary of the cited Memorandum Opinion, the text of the Memorandum Opinion constitutes the best evidence of the proffered statement, and therefore the paragraph is DENIED.

#### **IV. THE HOME RULE CHARTER**

23. ADMITTED.

24. Whether or not Paragraph 24 of the Petition contains an accurate quotation of the referenced Charter, the text of the Charter constitutes the best evidence of the proffered statement, and therefore the paragraph is DENIED.

25. Whether or not Paragraph 25 of the Petition contains an accurate quotation of the referenced Charter, the text of the Charter constitutes the best evidence of the proffered statement, and therefore the paragraph is DENIED.

26. Whether or not Paragraph 26 of the Petition contains an accurate quotation of the referenced Charter, the text of the Charter constitutes the best evidence of the proffered statement, and therefore the paragraph is DENIED.

27. Whether or not Paragraph 27 of the Petition contains an accurate quotation of the referenced Charter, the text of the Charter constitutes the best evidence of the proffered statement, and therefore the paragraph is DENIED.

28. Whether or not Paragraph 28 of the Petition contains an accurate quotation of the referenced Charter, the text of the Charter constitutes the best evidence of the proffered statement, and therefore the paragraph is DENIED.

29. Whether or not Paragraph 29 of the Petition contains an accurate summary of the referenced Permit, the text of the Permit constitutes the best evidence of the proffered statement, and therefore the paragraph is DENIED.

**Count I - Declaratory Judgment - Express Preemption**

30. Respondents repeat and incorporate all of their responses above herein.

31. Whether or not Paragraph 31 of the Petition contains an accurate quotation, the text of the referenced Act is self-evident, and constitutes the best evidence of the content of the law, and therefore the paragraph is DENIED. Paragraph 31 also makes arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

32. Whether or not Paragraph 32 of the Petition contains an accurate quotation, the text of the referenced Charter is self-evident, and constitutes the best evidence of the content of the law, and therefore the paragraph is DENIED. Paragraph 32 also makes arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

33. Whether or not Paragraph 33 of the Petition contains an accurate quotation, the text of the referenced Charter is self-evident, and constitutes the best evidence of the content of the law, and therefore the paragraph is DENIED. Paragraph 33 also makes arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

34. Whether or not Paragraph 34 of the Petition contains an accurate quotation, the text of the referenced Charter is self-evident, and constitutes the best evidence of the content of the law, and therefore the paragraph is DENIED. Paragraph 34 also makes arguments of law, and

is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

35. Paragraph 35 makes arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

36. Paragraph 36 makes arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

Answering the “WHEREFORE” clause following Paragraph 36, Respondents Grant Township of Indiana County and the Grant Township Supervisors DENY that Petitioner is entitled to the requested relief, and respectfully request that this Honorable Court dismiss Petitioners’ Petition for Review.

**Count II - Declaratory Judgment - Implied Preemption**

37. Respondents repeat and incorporate all of their responses above herein.

38. Paragraph 38 makes arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

39. Paragraph 39 makes arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

Answering the “WHEREFORE” clause following Paragraph 39, Respondents Grant Township of Indiana County and the Grant Township Supervisors DENY that Petitioner is entitled to the requested relief, and respectfully request that this Honorable Court dismiss Petitioners’ Petition for Review.

**Count III - Declaratory Judgment - Violation of Home Rule Charter Act**

40. Respondents repeat and incorporate all of their responses above herein.

41. Whether or not Paragraph 41 of the Petition contains an accurate summary of the cited Act, the text of the referenced Act is self-evident, and constitutes the best evidence of the content of the law, and therefore the paragraph is DENIED. Paragraph 41 also makes arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

42. Whether or not Paragraph 42 of the Petition contains an accurate summary of the cited Act, the text of the referenced Act is self-evident, and constitutes the best evidence of the content of the law, and therefore the paragraph is DENIED. Paragraph 42 also makes arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

43. Paragraph 43 makes arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

Answering the “WHEREFORE” clause following Paragraph 43, Respondents Grant Township of Indiana County and the Grant Township Supervisors DENY that Petitioner is entitled to the requested relief, and respectfully request that this Honorable Court dismiss Petitioners’ Petition for Review.

**Count IV - Declaratory Judgment - Sovereign Immunity**

44. Respondents repeat and incorporate all of their responses above herein.

45. Whether or not Paragraph 45 of the Petition contains an accurate quotation, the referenced text of the Pennsylvania Constitution is self-evident, and constitutes the best evidence of the content of the law, and therefore the paragraph is DENIED.

46. Whether or not Paragraph 46 of the Petition contains an accurate summary of the Pennsylvania Constitution, the referenced text of the Pennsylvania Constitution is self-evident,

and constitutes the best evidence of the content of the law, and therefore the paragraph is DENIED. Paragraph 46 also makes arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

47. Whether or not Paragraph 47 of the Petition contains an accurate summary of the Pennsylvania Constitution, the referenced text of the Pennsylvania Constitution is self-evident, and constitutes the best evidence of the content of the law, and therefore the paragraph is DENIED.

48. Whether or not Paragraph 48 of the Petition contains an accurate summary of the Charter, the referenced text of the Charter is self-evident, and constitutes the best evidence of the content of the law, and therefore the paragraph is DENIED.

49. Paragraph 49 makes arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

50. Paragraph 50 makes arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

Answering the “WHEREFORE” clause following Paragraph 50, Respondents Grant Township of Indiana County and the Grant Township Supervisors DENY that Petitioner is entitled to the requested relief, and respectfully request that this Honorable Court dismiss Petitioners’ Petition for Review.

**Count V - Injunctive Relief**

51. Respondents repeat and incorporate all of their responses above herein.

52. Paragraph 52 makes arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

53. Paragraph 53 makes arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

54. Paragraph 54 makes arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

55. Paragraph 55 makes arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

56. Paragraph 56 makes arguments of law, and is therefore DENIED. Respondents reserve the right to make contrary or other arguments of law at the appropriate time.

57. ADMITTED to the extent that the Department does seek the referenced relief.

Answering the “WHEREFORE” clause following Paragraph 57, Respondents Grant Township of Indiana County and the Grant Township Supervisors DENY that Petitioner is entitled to the requested relief, and respectfully request that this Honorable Court dismiss Petitioners’ Petition for Review.

**NEW MATTER**

Pursuant to Pennsylvania Rule of Civil Procedure 1030, Grant Township asserts the following affirmative defenses and certain material facts.

58. The DEP lacks standing for all or part of its claims, including, but not limited to, because DEP has not suffered a direct, immediate and substantial injury.

59. The Court lacks jurisdiction over all or part of DEP’s claims.

60. The Complaint fails to state a claim upon which relief can be granted.

61. The DEP does not possess any legal rights, privileges, powers, authority or protections that can interfere with, or otherwise trump, the rights and prohibitions enumerated in the Charter.

62. DEP's claims are precluded by Section 306 of the Charter which provides that: "All laws adopted by the legislature of the State of Pennsylvania, and rules adopted by any State agency, shall be the law of Grant Township only to the extent that they do not violate the rights or prohibitions recognized by this Charter."

63. DEP is not entitled to the relief requested, as it would violate the fundamental and unalienable rights of the citizens and residents of Grant Township.

64. The Charter is a valid local law enacted pursuant to the right of local community self-government.

65. The DEP's assertion of express and implied preemption violates the people of Grant Township's right of local, community self-government.

66. The Charter is a valid local law enacted pursuant to Article I, § 27 of the Pennsylvania Constitution.

67. The DEP has failed and is failing to protect the people's health, safety and welfare, including their right to clean air, water, and soil, and in its duty to preserve the natural, scenic, historic and esthetic values of the environment. Recent investigations summarize DEP's failures. (See Troutman, Melissa, et al. "*Hidden Data Suggests Fracking Created Widespread, Systemic Impact in Pennsylvania*", Public Herald, dated Jan. 23, 2017, available at <http://publicherald.org/hidden-data-suggests-fracking-created-widespread-systemic-impact-in-pennsylvania>, visited May 7, 2017; Troutman, Melissa, et al., "*To Hell With Us*", *Records of Misconduct Found Inside Pa. Drinking Water Investigations*, Public Herald, dated Feb. 14 2017, available at <http://publicherald.org/to-hell-with-us-records-of-misconduct-found-inside-pa-drinking-water-investigations>, visited May 7, 2017).

68. In light of PGE's past and current violations of environmental regulations, DEP's decision to grant PGE a permit to dispose of fracking waste in Grant Township is yet another failure by DEP to protect the people's health, safety and welfare, including their right to clean air, water, and soil, and of its duty to preserve the natural, scenic, historic and esthetic values of the environment.

69. Even if preemption could be applied to the Charter, which it cannot, the DEP has waived any right to assert the doctrine of preemption by failing to protect the health, safety, and welfare of the people of Grant Township, including by failing to prevent the disposal of fracking waste.

70. Even if preemption could be applied to the Charter, which it cannot, the DEP is estopped from asserting the doctrine of preemption because it has failed to protect the health, safety, and welfare of the people of Grant Township, including by failing to prevent the disposal of fracking waste.

71. The DEP is estopped from arguing, and has waived any right to argue, that it has exclusive authority pursuant to Article I, § 27 of the Pennsylvania Constitution because it has failed, and continues to fail, to protect the people's right to a clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.

72. DEP's claims are barred, in whole or in part, by the doctrine of unclean hands.

73. The Home Rule Act does not restrict the people of Grant Township's power and authority pursuant to the right of local, community self-government.

74. Preemption does not apply because the Charter has a status equal or greater to the status of the state laws that DEP contends preempt it.

75. The people of Grant Township's enactment of the Charter is necessary to secure their right to local, community self-governance, their right to clean air, water, and soil, to health, safety, and welfare, their right to a sustainable energy future, and their rights to pure water and to the preservation of the natural, scenic, historic and esthetic values of the environment.

76. The doctrine of sovereign immunity does not apply to DEP's violation of the people of Grant Township's fundamental and constitutional right to local, community self-government.

77. The doctrine of sovereign immunity does not apply to DEP's violation of Article I, § 27 of the Pennsylvania Constitution.

78. The Oil and Gas Act, and regulations thereunder, do not preempt the Charter.

79. The Solid Waste Management Act, and regulations thereunder, do not preempt the Charter.

80. The Oil and Gas Act, and regulations thereunder, violate the people of Grant Township's right of local, community self-government.

81. The Solid Waste Management Act, and regulations thereunder, violates the people of Grant Township's right of local, community self-government.

82. Any state or federal law which purports to preempt the Charter violates the people of Grant Township's right of local, community self-government.

83. DEP failed to exercise its independent judgment and was unduly influenced by corporate interests in issuing the Permit and in initiating this legal action.

84. Grant Township reserves the right, upon completion of its discovery and investigation or otherwise, to assert such additional defenses as may be appropriate.

WHEREFORE, Grant Township respectfully prays for the following relief:

1. That all relief requested in the Complaint be denied with prejudice;
  2. That Plaintiff take nothing by its action;
  3. That Judgment be entered in Grant Township's favor;
  4. That Grant Township be awarded all costs of suit, including reasonable attorneys' fees;
- and
5. Such further and other relief as the Court deems just and proper.

#### **JURY DEMAND**

Grant Township demands a jury trial on all issues so triable.

#### **COUNTERCLAIM**

Grant Township and the Grant Township Board of Supervisors (collectively, "Grant Township"), by and through its undersigned counsel, hereby asserts the following Counterclaim, pursuant to Pennsylvania Rule of Civil Procedure 1031, against Petitioner/Counter-Respondent the Commonwealth of Pennsylvania, Department of Environmental Protection:

#### **I. Parties**

1. Respondent Grant Township, Indiana County, Pennsylvania is a home rule municipality located in Indiana County, Pennsylvania with a business address of 100 East Run Road, Marion Center, PA 15759 (hereinafter, "Grant Township").
2. Respondent the Grant Township Board of Supervisors is the governing body of the Township (hereinafter, "Grant Township" or "Supervisors").
3. Grant Township represents the people of the Township.

4. The people of Grant Township possess the inherent and federal, state, and locally-secured constitutional right of local, community self-government.

5. The people of Grant Township's right of local, community self-government is guaranteed by the American Declaration of Independence, the Pennsylvania Constitution, the federal constitutional framework, and the Grant Township Home Rule Charter (hereinafter "Home Rule Charter" or "Charter").

6. The people of Grant Township exercised their right of local, community self-government to adopt the Home Rule Charter by popular vote.

7. Petitioner/Counter-Respondent, the Commonwealth of Pennsylvania, Department of Environmental Protection (hereinafter "DEP") is an agency of the Commonwealth of Pennsylvania.

8. DEP purports to regulate, and to have the authority to regulate, oil and gas operations, including the depositing of fracking waste.

9. Section 301 of the Charter prohibits the depositing of fracking waste, which includes issuance of a permit by a government agency to allow for the depositing of fracking waste.

10. DEP issued a permit to Pennsylvania General Energy, LLC ("PGE") that purports to allow for the depositing of fracking waste in Grant Township in violation of the Charter.

11. DEP filed a Petition for Review in the Nature of a Complaint Seeking Declaratory and Injunctive Relief in this action in an effort to invalidate and nullify the Charter.

12. DEP has violated, and continues to violate, the people of Grant Township's right of local, community self-government by seeking to invalidate and nullify the Charter and taking action, in the form of issuing a permit to PGE, in violation of the Charter.

13. DEP asserts that state laws and regulations, in particular the Oil and Gas Act, Act of February 14, 2012, P.L. 87, No. 13, 58 Pa.C.S. §§ 3201-3309 (“Oil and Gas Act”), the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, as amended, 35 P.S. §§ 6018.101-Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17 (“Solid Waste Management Act”), and the rules and regulations promulgated thereunder, preempt the Charter.

14. The Oil and Gas Act and the Solid Waste Management Act and regulations promulgated thereunder, and DEP’s arguments under the preemption doctrine, violate the people’s right of local, community self-government, including Sections 102 and 103 of the Charter.

## **II. Jurisdiction**

15. This Court has jurisdiction over this matter under Section 7532 of the Pennsylvania Declaratory Judgment Act, Act of April 28, 1978, P.L. 202, No. 53, as amended, 42 Pa. C.S. § 7532; Section 761(a) of the Judicial Code, 42 Pa.C.S. § 761(a); and 231 Pa. Code § 1602.

16. This action is brought pursuant to the Pennsylvania Declaratory Judgments Act, 42 Pa. C.S. Stat. § 7531 et seq., to determine the legal rights and obligations of the parties, and involves an actual controversy that is ripe for consideration, as appears more fully hereinafter.

17. An actual controversy has arisen and exists between DEP and Grant Township because DEP has challenged the Home Rule Charter enacted pursuant to the people’s fundamental right of local, community self-government, and Grant Township maintains that the Charter is a valid law.

18. This action is brought against DEP pursuant to 42 Pa.C.S. § 761(a) because DEP has violated, and is violating, the Charter.

19. Grant Township, and the people of Grant Township, will suffer a direct, immediate, and substantial injury if the Charter is invalidated.

20. Grant Township, and the people of Grant Township, have suffered a direct, immediate, and substantial injury by DEP's issuance of a permit to PGE to deposit fracking waste in Grant Township in violation of the Charter.

21. To the extent Grant Township seeks declaratory and injunctive relief, there is no adequate remedy at law.

### **III. Factual Background**

#### **A. History of the People of Grant Township's Fight to Protect their Right to Local, Community Self-Government, and their Right to Clean Air, Water, and Soil**

22. On March 30, 2015, Pennsylvania General Energy Company, LLC ("PGE") applied to the DEP for a change-in-use well permit to convert an existing natural gas well located in Grant Township, Indiana County, into an underground injection disposal well for the disposal of brine and other oil and gas wastes ("Permit Application").

23. On June 3, 2014, the people of Grant Township, through the Township, adopted a Community Bill of Rights Ordinance that prohibited the depositing of waste from oil and gas extraction, including the issuance of a permit to allow these activities.

24. At the time it adopted the Ordinance, Grant Township was a Township governed by the Second Class Township Code.

25. On August 8, 2014, PGE filed a complaint in the United States District Court, Western District of Pennsylvania, Docket Number 1:14-cv-00209-JFM, challenging the Ordinance's validity.

26. Instead of denying PGE's Permit Application because it was in violation of the Ordinance, on August 12, 2015, DEP wrote a letter to PGE stating that it was suspending its review of the Permit Application pending outcome of the litigation regarding the Ordinance.

27. On October 14, 2015, United States District Court Judge Baxter issued a Memorandum Opinion granting in part and denying in part PGE's motion for judgment on the pleadings.

28. Judge Baxter ruled that the Ordinance violated the Second Class Township Code and the Limited Liability Companies Law and was unlawfully exclusionary.

29. Significantly, Judge Baxter also expressly ruled that the Oil and Gas Act did not preempt the Ordinance.

30. The federal case between PGE and Grant Township is ongoing.

31. Judge Baxter's ruling regarding the Ordinance, which relied primarily on Grant Township's Second-Class Township status and PGE's corporate status, does not apply to the Charter.

32. Since that time, the people of Grant Township have passed a Home Rule Charter and Grant Township is no longer a Second Class Township.

33. On March 27, 2017, DEP granted PGE's Permit Application and issued a permit to PGE purporting to allow it to dispose of fracking waste in Grant Township.

34. DEP should have, but chose not to, deny PGE's Permit Application because the requested permit violates the Charter.

35. Alternatively, and at the very least, DEP could have, but chose not to, suspend its review of PGE's Permit Application because the requested permit violates the Charter.

36. DEP's decision to grant the Permit violates the Charter, and the people of Grant Township's right of local, community self-government, and the people of Grant Township and Grant Township's rights as secured by the Pennsylvania Constitution's Environmental Rights Amendment.

**B. Home Rule Charter**

37. On November 3, 2015, the people of Grant Township, by popular vote, voted to pass a Home Rule Charter.

38. Prior to the Charter, Grant Township was a political subdivision organized and existing under the Pennsylvania Second Class Township Code, 53 P.S. § 65101 *et seq.* The popular adoption of the Charter terminated the previous municipality, with the new municipality superseding the old one in all respects.

39. The Charter, among other things, secures the people's right of local, community self-government, the people and natural community's right to clean, air, water, and soil, the right to a sustainable energy future, and the right to be free of activities that violate those rights, including the depositing of fracking waste.

40. The people enacted the Charter pursuant to their right of local, community self-government, the principle of government legitimacy, and the Home Rule Charter and Optional Plans Law, 53 Pa. C.S.A. § 2901 *et seq.* (See Charter at §101 (“[a]ll legitimate governments in the United States owe their existence to the people of the community that those governments serve, and governments exist to secure and protect the rights of the people and those communities”) and §102 (“collective and individual right of self-government in their local community, the right to a system of government that embodies that right, and the right to a

system of government that protects and secures their human, political, civil, and collective rights”).)

41. The adoption of a home rule charter is a direct expression of the will of the sovereign people of the community, and a direct exercise of that will. As noted by the Pennsylvania Supreme Court in *In re Addison*, where a home rule charter is “adopted by a constitutionally empowered electorate, it affords an example of pure democracy--the sovereign people legislating directly and not by representatives in respect of the organization and administration of their local government.” *In re Addison*, 385 Pa. 48, 56-7, 122 A.2d 272, 275-76 (1956).

42. Under the Pennsylvania Constitution and Pennsylvania statutory law, home rule municipalities, such as Grant Township, enjoy broader powers than do second class townships. *See* Penn. Const., Art. IX, § 2 (“A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.”); 53 Pa.C.S.A. § 2961 (“A municipality which has adopted a home rule charter may exercise any powers and perform any function not denied by the Constitution of Pennsylvania, by statute or by its home rule charter. All grants of municipal power to municipalities governed by a home rule charter under this subchapter, whether in the form of specific enumeration or general terms, shall be liberally construed in favor of the municipality.”).

43. The preemption doctrine establishes a priority between potentially conflicting laws enacted by various levels of government. *Huntley & Huntley v. Borough Counsel of Borough of Oakmont*, 964 A.2d 855, 862-63 (Pa. 2009).

44. “A home rule charter has the force and status of an enactment of the legislature.” *Spencer v. City of Reading Charter Bd.*, 97 A.3d 834, 840 (Pa. Commw. Ct. 2014) (citing *In re Addison*, 385 Pa. 48, 122 A.2d 272 (1956)).

45. Because a home rule charter has the force and status of an enactment of the legislature, and because it was enacted pursuant to the fundamental and inherent right of local, community self-government, the preemption doctrine does not apply to the Home Rule Charter.

### **C. The Right of Local, Community Self-Government**

46. The people enacted the Charter pursuant to their right of local, community self-government to change their system of local government.

47. The right of local, community self-government is an inherent, fundamental, and inalienable right held by each individual that resides within Grant Township, and is exercised collectively by the citizens of Grant Township. It is a right that has been recognized as having a value essential to the individual and collective liberties in our society, and is deeply rooted in our nation’s history and tradition.

48. The right of local, community self-government is a fundamental and unalienable right secured by the American Declaration of Independence, the U.S. Constitution, the Pennsylvania Constitution, the Home Rule Charter, in particular Sections 101, 102 and 103, and case law (*see, amongst others, Com. v. McElwee*, 327 Pa. 148, 193 A. 628 (1937)).

49. The United States Constitution secures the right of local, community self-government, both by incorporating the principles of the Declaration of Independence in the Preamble and its structure, and by securing the right of local, community self-government through the Ninth Amendment.

50. The American Declaration of Independence secures the right of local, community self-government by recognizing four principles of law essential to American governments: first, that people possess certain fundamental civil and political rights; second, that governments are created to secure those rights; third, that governments owe their existence to, and derive their power exclusively from, the community of people which creates and empowers them; and fourth, that if government becomes destructive of those ends, the people have both a right and a duty to alter or abolish that system of government, and replace it with a system of government that recognizes self-governing authority and that protects the people's civil and political rights.

51. Article I, Sections 2 and 25 of the Declaration of Rights of the Pennsylvania Constitution, and the robust history of the right of local, community self-government within the Commonwealth and the Nation, secure the right of local, community self-government.

52. Article I, Section 2 of the Declaration of Rights of the Pennsylvania Constitution provides: "Political powers. All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper."

53. By adopting the Charter and creating a form of government that recognizes the people's right to pass laws that increase protections for their civil, political, and environmental rights, the people have decided to alter and reform their government.

54. By adopting the Charter, the people of Grant Township recognized that their municipal system of governance under the Second Class Township Code failed to incorporate majority self-governance and failed to protect their civil, political and environmental rights, individually or collectively.

55. Article I, Section 25 of the Declaration of Rights of the Pennsylvania Constitution provides: “Reservation of powers in people. To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.”

56. Sections 101, 102 and 103 of the Charter further secure the right of local, community self-government.

57. The right of local, community self-government includes:

- a. The right to a system of government within the local community that is controlled by a majority of that community’s citizens;
- b. The right to a system of government within the local community that secures and protects the political and civil rights of every person in the community;
- c. The right to alter or abolish any system of local government that either fails to secure or enable majority governance or that fails to secure and protect the civil and political rights of citizens and residents of the community, as well as the civil and political rights of the community itself as a collective body.

58. The people’s authority to wield their right of local, community self-government is separate and distinct from the authority held by municipal corporations to enact local laws.

59. The people’s right of local, community self-government is not limited by the authority granted to Grant Township under the Home Rule Charter & Optional Plans Law, 53 Pa.C.S.A. § 2901 *et seq.*, or by any other grant of authority (or lack of grant of authority) to Grant Township by the State, nor can it be preempted by state or federal law.

60. Fundamental liberty rights include both rights enumerated in the Constitution, as well as unenumerated rights. An unenumerated fundamental right may draw on more than one

Constitutional source, the idea being that certain rights may be necessary to enable the exercise of other rights, whether enumerated or unenumerated. This understanding of fundamental liberty rights allows for the ongoing development of jurisprudence, in the interest of justice, either by recognizing previously unenumerated rights, or by reclaiming enumerated rights that were eroded over time.

**D. Rejection of Certain Unconstitutional Legal Doctrines**

61. To vindicate the right of local, community self-government, the new municipal system of governance (established through the adoption of the Charter) does not recognize certain legal doctrines, including: certain constitutional “rights” illegitimately claimed and asserted by corporations seeking to engage in activities prohibited by the Charter; certain types of state and federal preemption that would interfere with the Charter’s rights and prohibitions; and certain state authority that would otherwise constrict the exercise of the right of local, community self-government.

62. The Charter, and the people of Grant Township through their adoption of the Charter, recognized that these doctrines, and the application of these doctrines to the Charter, are incompatible with the people’s right of local, community self-government.

***Rejection of Preemption that Constricts Local, Community Self-Government***

63. The doctrine of preemption, when exercised to constrict or impede the assertion of the right of local, community self-government to expand people’s rights, violates that right and provisions of the Charter.

64. Section 306 of the Charter (Enforcement of State Laws) remedies the interference of the doctrine of preemption with the expansion of rights by providing: “All laws adopted by the legislature of the State of Pennsylvania, and rules adopted by any State agency, shall be the law

of Grant Township only to the extent that they do not violate the rights or prohibitions recognized by this Charter.”

***Rejection of State Authority that Constricts Local, Community Self-Government***

65. Requiring prior state legislative authorization before a community can enact local laws pursuant to the right of local, community self-government is unconstitutional, and violates that right and the Charter.

***Rejection of Corporate “Rights”***

66. Section 401 of the Charter rejects corporate “rights” by providing, in part: “Corporations that violate this Charter or the laws of the Township, or that seek to violate the Charter or those laws, shall not be deemed to be ‘persons’ to the extent that such treatment would interfere with the rights or prohibitions enumerated by this Charter or those laws, nor shall they possess any other legal rights, powers, privileges, immunities, or duties that would interfere with the rights or prohibitions enumerated by the Charter or those laws, . . . .”

67. Applying the doctrine of corporate “rights” to invalidate certain provisions of the Charter would elevate the “rights” of corporations above the rights of people and the environment and thereby would violate the inherent right of the people of Grant Township to local, community self-government.

**E. Charter’s Prohibitions to Protect and Advance Rights Secured by the Charter**

68. Article III of the Charter, entitled Prohibitions and Enforcement, prohibits certain activities in furtherance of the rights articulated in Article I, entitled Bill of Rights.

69. Section 301 of the Charter prohibits the depositing of waste from oil and gas extraction, which includes the issuance of a permit that purports to allow these activities.

70. Section 302 of the Charter provides, in part, that permits issued in violation of the Charter are invalid.

71. Under Section 303, because DEP issued PGE such a permit, it is “guilty of an offense and, upon conviction thereof, shall be sentenced to pay the maximum fine allowable under State law for that violation.”

72. Under Section 306 of the Charter, to the extent the Oil and Gas Act, the Solid Waste Management Act, and regulations promulgated thereunder, are found to violate the people’s rights as secured by the Charter or to preempt the Charter’s prohibition against the depositing of fracking waste, they are not the law of Grant Township.

**F. Environmental Rights Amendment**

73. The people enacted the Charter pursuant to Article I, § 27 of the Pennsylvania Constitution, commonly known as the Environmental Rights Amendment.

74. Article I, § 27 of the Pennsylvania Constitution, the Environmental Rights Amendment provides: “Natural resources and the public estate. 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 all the people.”

75. Rights parallel to the rights enumerated in the Environmental Rights Amendment are codified at Sections 104, 105, 106, and 107 of the Charter.

76. Those rights are secured and enforced, in part, by Section 301 of the Charter, which prohibits the depositing of waste from oil and gas extraction, including DEP’s issuance of permits to allow such activities.

77. The Charter is a constitutionally valid exercise of the people's right to clean air, pure water, and to preservation of the natural, scenic, historic and esthetic values of the environment pursuant to the Environmental Rights Amendment.

78. The Charter is also a valid exercise of Grant Township's power, authority and duties as a municipal trustee under Article I, § 27 of the Pennsylvania Constitution.

79. DEP, as a public trustee, also has a duty to protect and advance the rights enumerated in the Environmental Rights Amendment.

80. DEP has failed, and continues to fail, to do so, and has therefore violated its public trustee duties to the people.

81. DEP's duties under the Environmental Rights Amendment are not exclusive.

82. Grant Township is free to enact stricter laws to advance and protect the rights secured by the Environmental Rights Amendment.

**G. Oil and Gas Act**

83. The Oil and Gas Act is a state law with its primary purpose being "to provide a maximally favorable environment for industry operators to exploit Pennsylvania's oil and natural gas resources, including those in the Marcellus Shale Formation." *Robinson Twp, Wash. Co. v. Com.*, 623 Pa. 564, 683-85, 83 A.3d 901, 974-75 (2013) (citing 58 Pa.C.S. § 3202).

84. The Oil and Gas Act does not protect the people's health, safety and welfare, or any of the rights secured by the Charter, including the people's right to clean air, water, and soil and to a sustainable energy future. Nor does it preserve the natural, scenic, historic and esthetic values of the environment.

85. Interpretation of the Oil and Gas Act to preempt the Charter would violate the people's right of local, community self-government.

86. The Oil and Gas Act does not apply to home rule municipalities such as Grant Township.

87. Section 3302 of the Oil and Gas Act pertains to local ordinances.

88. The Charter is not a local ordinance, and therefore, Section 3302 does not apply.

#### **H. Solid Waste Management Act**

89. The Solid Waste Management Act is a state law that purports to regulate the disposal of certain industrial wastes.

90. The Solid Waste Management Act does not protect the people's health, safety and welfare, or any of the rights secured by the Charter, including the people's right to clean air, water, and soil and to a sustainable energy future. Nor does it preserve the natural, scenic, historic and esthetic values of the environment.

91. The Solid Waste Management Act does not apply to home rule municipalities such as Grant Township.

92. Interpretation of the Solid Waste Management Act to preempt the Charter would violate the people's right of local, community self-government.

#### **IV. Claims for Relief**

##### **COUNT 1**

##### **Declaratory Judgment – The Charter is a Valid Law Adopted Pursuant to the People's Right of Local, Community Self-Government**

93. Grant Township incorporates by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 92 of the Counterclaim.

94. The people of Grant Township have an inherent, fundamental, and constitutional right of local, community self-government that includes the right to alter or reform their system of government.

95. By adopting the Charter and creating a form of government that recognizes the people's right to pass laws that increase protections for their civil, political, and environmental rights, the people have decided to alter and reform their government.

96. By adopting the Charter, the people of Grant Township recognized that their municipal system of governance under the Second Class Township Code failed to provide majority self-governance and failed to protect their civil, political and environmental rights, individually or collectively.

97. Any limitations of the Home Rule Act do not apply to the Charter because it is enacted pursuant to the people's fundamental and inalienable right of local, community self-government.

98. Any violation of the Charter is a violation of fundamental, inherent, or constitutional rights to which the doctrine of sovereign immunity does not apply.

99. The doctrine of preemption does not apply to the Charter because to apply the doctrine of preemption to constrict or impede the assertion of the right of local, community self-government to expand people's rights violates that right and provisions of the Charter.

100. By arguing that the Home Rule Act, sovereign immunity, and the doctrine of preemption apply to invalidate the Charter, DEP is violating the people's right of local, community self-government.

WHEREFORE, Grant Township respectfully requests that the Court enter judgment in its favor and against DEP, declare that the Charter is a valid law adopted pursuant to the people's right of local, community self-government, enjoin DEP from violating the Charter, award nominal, compensatory and/or consequential damages, costs, and attorneys' fees pursuant to 42 U.S.C. Sections 1983 and 1988, and such other relief as the Court deems just and proper.

**COUNT 2**

**Declaratory Judgment – Interpretation of the Oil and Gas Act and the Solid Waste Management Act to Preempt the Charter Would Violate the People’s Right of Local, Community Self Government**

101. Grant Township incorporates by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 100 of the Counterclaim.

102. The people of Grant Township have an inherent, fundamental, and constitutional right of local, community self-government that includes the right to alter or reform their system of government.

103. The doctrine of preemption -- when exercised to constrict or impede the assertion of the right of local, community self-government to expand people’s rights -- violates that right and provisions of the Charter.

104. Interpretation of the Oil and Gas Act, and regulations promulgated thereunder, as preempting the Charter, in particular Sections 301, 302, 303, and 306, violates the people’s right of local-community self-government because it restricts the people’s fundamental, inherent, and constitutionally derived right to expand their civil, political and environmental rights beyond the protections afforded by state and federal law.

105. Interpretation of the Solid Waste Management Act, and regulations promulgated thereunder, as preempting the Charter, in particular Sections 301, 302, 303, and 306, violates the people’s right of local, community self-government because it restricts the people’s fundamental, inherent, and constitutionally derived right to expand their civil, political and environmental rights beyond the protections afforded by state and federal law.

106. Further, by arguing that the Oil and Gas Act and Solid Waste Management Act, and regulations promulgated thereunder, preempt the Charter, DEP is violating the people of Grant Township’s right of local, community self-government.

107. Section 306 of the Charter (Enforcement of State Laws) remedies the interference of the doctrine of preemption with the expansion of rights by providing: “All laws adopted by the legislature of the State of Pennsylvania, and rules adopted by any State agency, shall be the law of Grant Township only to the extent that they do not violate the rights or prohibitions recognized by this Charter.”

WHEREFORE, Grant Township respectfully requests that the Court enter judgment in its favor and against DEP and enforce Section 306 of the Charter, declare that interpretation of the Oil and Gas Act, and regulations promulgated thereunder, and the Solid Waste Management Act, and regulations promulgated thereunder, to preempt the Charter would violate the people’s right of local, community self-government, enjoin DEP from violating the Charter, award nominal, compensatory and/or consequential damages, costs, and attorneys’ fees pursuant to 42 U.S.C. Sections 1983 and 1988, and such other relief as the Court deems just and proper.

**COUNT 3**

**Declaratory Judgment – The Charter is a Valid Law Pursuant to Article I, § 27 of the Pennsylvania Constitution**

108. Grant Township incorporates by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 107 of the Counterclaim.

109. The people enacted the Charter pursuant to Article I, § 27 of the Pennsylvania Constitution, commonly known as the Environmental Rights Amendment.

110. Article I, § 27 of the Pennsylvania Constitution, the Environmental Rights Amendment provides: “Natural resources and the public estate. 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 all the people.”

111. Rights parallel to the rights enumerated in the Environmental Rights Amendment are codified at Sections 104, 105, 106, and 107 of the Charter.

112. Those rights are secured and enforced, in part, by Section 301 of the Charter, which prohibits the depositing of waste from oil and gas extraction, including DEP’s issuance of permits to allow such activities.

113. The Charter is a constitutionally valid exercise of the people’s right to clean air, pure water, and to preservation of the natural, scenic, historic and esthetic values of the environment pursuant to the Environmental Rights Amendment.

114. The Charter is also a valid exercise of Grant Township’s power, authority and duties as a public trustee under Article I, § 27 of the Pennsylvania Constitution.

115. As such, purported limitations of authority in the Home Rule Act do not apply, nor does sovereign immunity or the doctrine of preemption.

116. Further, while DEP also has public trustee duties under the Environmental Rights Amendment, those duties are not exclusive. Grant Township is free to enact stricter laws to advance and protect the rights secured by the Environmental Rights Amendment.

WHEREFORE, Grant Township respectfully requests that the Court enter judgment in its favor and against DEP and declare that the Charter is a valid law adopted pursuant to Article I, § 27 of the Pennsylvania Constitution, enjoin DEP from violating the Charter, and award costs and attorneys’ fees, and such other relief as the Court deems just and proper.

**COUNT 4**  
**Violation of Article I, § 27 of the Pennsylvania Constitution**

117. Grant Township incorporates by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 116 of the Counterclaim.

118. The people enacted the Charter pursuant to Article I, § 27 of the Pennsylvania Constitution, commonly known as the Environmental Rights Amendment.

119. DEP, as a public trustee, also has a duty to protect and advance the rights enumerated in the Environmental Rights Amendment.

120. DEP has failed, and continues to fail, to protect and advance these rights, and has therefore violated its public trustee duties to the people under Article I, § 27 of the Pennsylvania Constitution.

121. Further, Article I, § 27 of the Pennsylvania Constitution secures the people's right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.

122. DEP has violated Article I, § 27 of the Pennsylvania Constitution by attempting to prevent the people of Grant Township from exercising, advancing, and protecting their rights thereunder, which they have done by adopting the Charter, in particular Sections 104, 105, 106, and 107 of the Charter, which parallel the rights enumerated in the Pennsylvania Constitution, and Article III of the Charter, which sets forth the prohibitions necessary to enforce those rights.

WHEREFORE, Grant Township respectfully requests that the Court enter judgment in its favor and against DEP and declare that DEP is violating Article I, § 27 of the Pennsylvania Constitution, enjoin DEP from violating Article I, § 27 of the Pennsylvania Constitution and the Charter, award nominal, compensatory and/or consequential damages, and award costs and attorneys' fees, and such other relief as the Court deems just and proper.

**COUNT 5**  
**Violation of Section 301 of the Charter**

123. Grant Township incorporates by reference, as if fully set forth herein, the allegations contained in paragraphs 1 through 122 of the Counterclaim.

124. Section 301 of the Charter prohibits DEP from engaging in the depositing of waste from oil and gas extraction, which includes the issuance of permits.

125. By issuing the permit to PGE, DEP violated, and continues to violate, Section 301 of the Charter.

126. Under Section 302 of the Charter, a permit in violation of the Charter is deemed invalid.

127. Under Section 303 of the Charter, DEP, by issuing the permit, is guilty of an offense and subject to penalties.

WHEREFORE, Grant Township respectfully requests that the Court enter judgment in its favor and against DEP and declare that DEP has violated, and is violating, Section 301 of the Charter, declare that PGE's permit is invalid under Section 302 of the Charter, declare the DEP is guilty of an offense and subject to penalties under Section 303 of the Charter, award nominal, compensatory and/or consequential damages, award costs and attorneys' fees, and such other relief as the Court deems just and proper.

**V. Relief Requested**

WHEREFORE, Grant Township respectfully prays for the following relief:

1. That all relief requested in the Counterclaims be granted;
2. That no relief be awarded in DEP's favor;
3. That Judgment be entered in Grant Township's favor;

4. That Grant Township be awarded all costs of suit, including reasonable attorneys' fees; and

5. Such further and other relief as the Court deems just and proper.

**JURY DEMAND**

Grant Township demands a jury trial on all issues so triable.

Dated: May 8, 2017

Respectfully submitted,

/s/ Natalie A. Long \_\_\_\_\_  
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VERIFICATION

I, Stacy Long, hereby state that I am a Supervisor on the Board of Supervisors for Grant Township, and that the facts set forth in the foregoing Answer, New Matter, and Counterclaims are true and correct to the best of my knowledge, information, and belief. I understand that any false statements made herein are subject to penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Stacy Long

Dated: May 2 2017.