

Court order blocks Hopewell officials from interfering in seismic testing

By Rachel Morgan rmorgan@timesonline.com | Posted: Tuesday, February 11, 2014 11:00 pm

HOPEWELL TWP. — Local commissioners have been pushed aside in their efforts to stop a seismic testing company from conducting what the officials consider disruptive activities.

Under a recent court order, Hopewell Township officials cannot tell residents to remove, destroy or prohibit Seitel Data Ltd. from placing receivers — or geophones — in the right of way, which in some cases can mean residents' yards.

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The order, issued Jan. 31 in Commonwealth Court, also forbids those elected officials, as well as police officers and employees, from “arbitrarily and unreasonably interfering by any means whatsoever” with Seitel’s seismic testing activities on or in a resident’s right of way.

The subsidiary of Texas-based Seitel Inc. has been in the area since last year, conducting a 157-square-mile 3-D seismic surveying project in Beaver and Allegheny counties.

The company uses seismic testing to create a map of subterranean rock layers, then sells that information to oil and gas companies, who then use it to determine the best areas in which to drill for oil and gas. A contractor for Seitel, Dawson Geophysical, is conducting the seismic testing in Hopewell.

“The essence of the injunction against Hopewell Township, which includes its elected officials, employees and police, is that the township cannot interfere by any means whatsoever with Seitel’s seismic operations in Hopewell Township and cannot communicate with township residents about seismic operations conducted on or in township rights of way,” said Mike Jones, solicitor for Hopewell, Potter and Greene townships.

But just what constitutes the right of way?

Regarding right of way, PennDOT says, “under the Constitution of the United States, it is the right of the commonwealth to acquire land for public purposes;” and under eminent

domain, states have the “inherent right of passage to acquire land when it is needed for public use.”

The right of way is commonly 33 feet wide, but can be up to 120 feet, and “extend beyond the paved road and shoulders,” according to PennDOT. The agency will execute right of way “only when it will benefit the public,” its website says.

But Shawn Gallagher of Buchanan Ingersoll & Rooney, who represents Seitel, said Tuesday the company is permitted by Section 459 of the Pennsylvania Code, which deals with seismic activity by the vibroseis method, regarding occupancy of highways by utilities. “Highway is defined as roads and rights of way,” he said.

But some have different definitions of right of way, namely, Jones.

“It has been our stated position at every Commonwealth Court proceeding over the past six months that, ordinance or no ordinance, Act 13 or no Act 13, municipalities have the right to just say ‘no’ to a nonpublic use of their rights of way,” Jones said. “Seitel has stated to us that this data is worth millions to those who have commissioned the study, namely Range Resources. Interestingly, Range Resources has stated that there is no intention to ever drill a well in the municipal boundary of Hopewell Township as this data is being collected for use in operations west of Hopewell Township.

“That is why the (Hopewell) Township Commissioners are opposed to a private use of public rights of way for private financial gain and have appealed this issue to the Supreme Court of Pennsylvania,” he said.

Jones has said in the past that Range Resources was one of the companies that commissioned Seitel’s seismic survey. Officials from Range did not return The Times’ emails for confirmation.

The relationship between Seitel and local municipalities has been a shaky one from the start.

It all began in February 2013, when Seitel sent out letters to local residents in Beaver and Allegheny counties asking for permission to conduct seismic testing on their land as part of the same surveying project.

The letters contained various permit numbers, causing some residents to question whether these permits were issued by the state Department of Environmental Protection or Seitel. The DEP confirmed at that time they were not DEP-issued permits, and Seitel later said these were reference numbers used internally.

DEP officials said Tuesday that conducting seismic testing via vibroseis trucks does not require a DEP-issued permit, but that it may be subject to local municipal ordinances.

In June, Seitel demonstrated its seismic testing equipment for local elected officials, hoping they would sign off on the data company operating on township roads. While the company at that time had state permission to conduct seismic testing on state roads, it still needed local permission to do so on township roads, Kyle Ayers, a spokesman for Seitel said at the demonstration.

But local elected officials at that time raised concerns for local infrastructure, such as home foundations, utility lines and water lines.

Then in August, Seitel sued Hopewell and Potter townships, seeking permission to conduct seismic testing on local roads. Jones said at the time that Hopewell and Potter had already adopted regulations for seismic testing within the townships, but that Seitel wanted to have these regulations set aside by the court. In addition, Hopewell did not grant Seitel the right to use vibe trucks on its roads, due to aging infrastructure, and roads with a history of sliding problems, Jones said in that same interview.

In September, Seitel was granted a court order in the Commonwealth Court, forbidding Hopewell and Potter townships from ordinances to regulate seismic testing, court documents show.

More legal cases ensued.

In October, the Center Township Water Authority, the Municipal Water Authority of Aliquippa, and Wayne Lipecky, a Hopewell Township resident, sued Seitel, Hopewell, Center and Potter in Beaver County Court, saying that seismic testing could damage infrastructure beneath some roads.

An agreement for that case was reached in December in Beaver County Court. In the agreement, Seitel said it will not vibrate roads directly over the municipalities' infrastructures. It also requires Seitel to post various bonds and secure insurance should any damage occur from seismic testing on roads.

Also in October, Seitel sued Center, Greene Township and Shippingport — none of which had ordinances to regulate seismic testing in place — and was granted a court order that said that these municipalities “are hereby (prohibited) pending further order of court from enforcing and applying seismic regulations either by resolution or agreement to petitioner’s survey operations and from arbitrarily and unreasonably

prohibiting petitioner's use of the municipality's respective roads." That order is still in place, pending further action of the Commonwealth Court.

Last month, after Hopewell sent out automated calls regarding the seismic testing, the newest court order was issued.

"The township was advising that we had no right to place our equipment there in the rights of way, and that was incorrect," Gallagher said Tuesday. In court documents, Gallagher said that "Hopewell had begun robo-calling all of the residents in Hopewell, advising them Seitel does not have the authority to lay the geophones and that they have the right to remove them if placed within the right of way."

Gallagher said that some of Seitel's geophones have gone missing and the company was in the process of procuring their return. He also said that the ongoing court cases have delayed the company's operations, which were originally scheduled to be completed in November.

"Seitel hopes to conduct and complete its operations in the area without any further incident now that the Commonwealth Court has made it clear that we can place our equipment within the rights of way," Gallagher said.

Hopewell officials have since appealed the Jan. 31 order to the Pennsylvania Supreme Court, citing lack of jurisdiction under Act 13, since their ordinance has been rescinded.

"Under Section 3306 of Act 13, 'any person who is aggrieved by the enactment or enforcement of a local ordinance' that violates Act 13 'may bring an action in Commonwealth Court to invalidate the ordinance or enjoin its enforcement,'" Jones said. "It is our argument on appeal to the Supreme Court that although the Commonwealth Court initially enjoined the enforcement of the ordinance, that ordinance was immediately rescinded. Therefore, we argue, the Commonwealth Court lacked jurisdiction to take any further action in the case under any provision of Act 13."

Jones also said Tuesday that he expects the seismic testing survey to be completed within weeks.



What is seismic testing?

Seismic testing can be conducted two ways. The first, by using a vibroseis truck that lowers a pad onto the ground that generates vibrations that travel under the surface and bounce off subterranean rock formations, which then travel back up to the surface and are measured by receivers, or geophones.

The second, by using “shot holes,” or shafts 30 feet deep and 3 to 4 inches in diameter. Pentolite, a type of explosive, is placed in the hole and covered in gravel, then a 3.3-pound can charge -- or explosive -- is set off. The vibrations from the charge travel under the surface and bounce off the rock layers and back upward in a similar fashion as those from the trucks.

So where will seismic testing take place?

According to court documents, Seitel’s 157-square mile seismic testing project covers Aliquippa, Center, Georgetown Borough, Hanover Township, Hookstown Borough, Hopewell, Independence Township, Monaca, Potter, Raccoon, Shippingport Borough and South Heights Borough in Beaver County; and Crescent, Findlay and Moon townships in Allegheny County.