

For Immediate Release:

Contact:

Jim Cirilano

Community Advocate

724-392-7023

Protect PT

james@protectpt.org

Commonwealth Court vacates Sadat 4a permit, requires additional fact finding

On January 29, 2024, the Commonwealth Court vacated the Court of Common Pleas of Allegheny County’s order affirming the decision of the Plum Zoning Hearing Board and remanded the Sadat 4a injection well approval back to the Plum Borough Zoning Hearing Board. The court is requiring the Zoning Hearing Board to make additional findings of fact or to conduct further hearings to establish such facts prior to granting Penneco’s request to expand its injection well operations in Plum Borough.

The Commonwealth Court held that, while Penneco has a constitutional right to the natural expansion of its non-conforming injection well, that right is not without limitations. It stated that first, Penneco must present evidence that the expansion is a matter of “**necessity... as the dictates of business and modernization require**” (emphasis in the original). “[T]he expansion or modernization [must be] a matter of necessity for the business rather than merely to take advantage of an increase in business’ for the doctrine to be triggered.”

Second, “the right to natural expansion is **not unlimited**, the contemplated expansion must not be detrimental to the public health, welfare, and safety” (emphasis in the original). “[A] municipality **certainly can condition such expansion on certain prerequisites and standards** necessary for the preservation of the health, safety, and welfare of the community” (emphasis in the original).

Third, the court observed that the General Standards for all Conditional Uses or Special Exceptions require that the applicant, Penneco, comply with all requirements of “this” (the complete Plum Borough) Ordinance. It requires the applicant to show “that the traffic from the proposed use will be accommodated in a safe and efficient manner... and that the proposed use shall not create a significant hazard to the public health, safety, and welfare.” The court noted that the ZHB made “**no findings** with respect to traffic, and **no specific finding** with respect to **health, safety, and general welfare**” (emphasis in the original).

Early in the opinion, the Commonwealth Court noted that the members of the Zoning Hearing Board stated, on the record, that they believed that they were powerless to stop Penneco from expanding their injection well, and would be required by the courts to grant Penneco their permit. The Court stated: “Despite its perception to the contrary, the ZHB was not powerless-consistent with *Silver* and the Ordinance-to apply the requirements of the natural expansion doctrine and the plain terms of the Ordinance to regulate the location of the proposed expansion of the nonconforming use at issue here. It erred in believing otherwise.”

“We feel vindicated in pressing forward and insisting that they, the Plum Zoning Hearing Board, take into consideration the health and safety of the community in their decision,” said Gillian Graber, Executive Director of Protect PT. “Like many municipalities facing the tremendous pressure from the industry, the Plum Borough Zoning Hearing Board believed it had no other option but to approve this new well, but townships and municipalities across Pennsylvania can take heart that there are remedies in the law for municipalities to stop this unwanted development,” said James Cirilano, Protect PT’s Community Advocate.

The matter is now back before the Zoning Hearing Board to determine whether Penneco is entitled to expand its injection well in Plum Borough.

###

About Protect PT: *Protect Penn-Trafford is a citizen's group working to ensure the safety, security, and quality of life from the effects of unconventional gas development in Penn-Trafford and surrounding communities in Westmoreland and Allegheny Counties. Learn more at protectpt.org.*