



ENERGY CENTER

The Center for Global Energy,
International Arbitration and
Environmental Law

ABOUT

RESEARCH AND PROJECTS

EVENTS

STUDENTS

NEWS

BLOG



Battle Over Fracking in Dallas Continues With Takings Lawsuit

[Samantha Blons](#)

March 6, 2014

[2 Comments](#)

The City of Dallas is facing a multi-million dollar lawsuit over the City's refusal to authorize gas drilling by a company that had leased mineral rights on city property. The lawsuit—which alleges takings, fraud, and breach of contract claims—comes as the latest development in a seven-year saga over the status of urban gas drilling and hydraulic fracturing in Dallas. The City passed stringent restrictions on gas drilling activities in December 2013.

The plaintiff company, Trinity East Energy, LLC (a subsidiary of Keystone Exploration Ltd.), filed its suit in a Dallas state court last month (available [here](#), Cause No. DC-14-01443). The complaint alleges that in 2007, the City—seeking to resolve a budget shortfall—solicited bids to lease mineral rights on city-owned properties. In 2008, TEE and the City signed an oil and gas [lease](#) for properties on the western edge of the City, for which TEE paid Dallas a \$19 million bonus (plus a 25% royalty). TEE says it was misled by (and relied upon) representations of city officials, including a letter from City Manager Mary Suhm that [some](#) have criticized as a secret “side-deal” overstepping her authority. Over the next several years, TEE applied for and was [twice denied](#) by the City Planning Commission (CPC) the necessary permits to drill. Although the company appealed that decision to the Dallas City Council, its application [failed](#) to receive the necessary 3/4ths vote to approve the permits over the CPC's objection.

The complaint states that TEE spent more than \$30 million in reliance on the City's promises, and lost “hundreds of millions more” in lost profits. The company seeks damages based on unconstitutional takings, breach of contract, and fraud claims.

Dallas Mayor Mike Rawlings wasn't surprised when TEE filed the suit. He [warned](#) last fall that a suit would follow if the city denied the permits, and now “[m]y prediction has come [true](#).” Rawlings has indicated in the past that because of depressed natural gas prices and the fact that the Barnett Shale is unproven beneath Dallas, TEE would not have drilled even if the permits had been granted; thus, to deny the permits meant needlessly exposing the City to litigation risks. As of March 4, 2014, the City had not filed an answer to TEE's complaint. However, a city-issued statement said that the lawsuit lacks merit, and noted that the company's permit applications had proposed only a few [drilling sites](#), all of which the CPC had found to be “[inappropriate](#)” for drilling (i.e. in the floodplain or near a city soccer complex).

In the background of the TEE dispute is the seven-year fight within the Dallas community over whether to allow urban gas drilling and hydraulic fracturing (“fracking”), the controversial drilling practice in which sand, water, and chemicals are injected into underground shale rock formations to release natural gas trapped in the rock. More than [400](#) municipalities in the United States have approved moratoria or other measures to ban or limit fracking, due to concerns over its environmental and other [risks](#). Fracking has been used extensively to extract natural gas from the Barnett Shale beneath the City of Fort Worth, west of Dallas.

In Dallas, the fracking debate generated significant public interest over the years, with city officials, residents, the natural gas industry, and opponents of fracking all weighing in. In 2012, a City Council-appointed task force [recommended](#) that the City update its requirements for gas drilling permits to include a 1000-foot “setback” (minimum distance) from protected uses such as homes, churches, schools, and retail stores. The City Council did not act on the recommendations for more than a year and a half. In the interim, ExxonMobil subsidiary XTO Energy—which like TEE had leased mineral interests on city property in 2008—[withdrew](#) its application for a permit to drill due to the lack of regulatory clarity. In December 2013, the City Council finally passed a revised drilling ordinance, resolving the business uncertainty but not in favor of the natural gas industry.

The Dallas [ordinance](#) bars any gas drilling within 1500 feet of homes, churches, schools, retail stores, and other protected uses. The 1500-foot setback rule is stricter than the 2012 task force had recommended, and far more so than city's former setback rule of 300 feet. The City Council can elect, via a 2/3rds majority vote, to reduce the setback distance for a particular permit to 1000 feet. Industry critics describe the ordinance as imposing as a “[de facto ban](#)” on natural gas drilling in Dallas, because any proposed well site would need more than a quarter-mile buffer in every direction from all protected uses. Discussing the ordinance, Dallas City Councilman Les Kleinman explained, “We might as well save a lot of paper and write a one-line ordinance that says, ‘There will be no drilling in Dallas.’”

The Dallas ordinance was a major victory for drilling and fracking opponents, who in support of stringent restrictions cited [risks](#) such as air pollution, declining property values, environmental concerns (especially related to drilling in the floodplain that cuts through Dallas), the possibility of well explosions, and water overuse and potential contamination. But the ordinance also has been [criticized](#) as disenfranchising Dallas residents from potentially leasing their mineral rights, cutting the City off from future tax and royalty revenues, and exposing the city to litigation risks, such as that posed by the TEE lawsuit. The danger for Dallas is that its policy decision in favor of stringent regulations could cost it millions in damages to TEE.

Please see the following links for additional information about recent anti-fracking initiatives in:

[Denton](#), Texas, a Dallas suburb that currently has more than 270 active wells within city limits, and where a citizen proposal to ban fracking would apply only to new drilling activities; [Los Angeles](#), where last week the city council directed city officials to draft an ordinance prohibiting fracking; and three cities in [Colorado](#), where voters approved local fracking bans in the 2013 November election.

[cases](#) [court cases](#) [Dallas](#) [energy](#) [fracking](#) [natural](#)

[gas](#) [Texas](#)

2 comments



Elbert Whorton

December 12, 2014 10:19 am

I am in Eagle Lake Texas and one gas drilling permit has been granted in our ETJ and very near my property. Started only a few days ago. They said no fracking but?? What should or can I do to monitor safety issues and emission levels? Who does these monitorings ?? Please advise...

E Whorton

Professor UTMB (ret'd)

409-771-5458

REPLY



Romany Webb

December 16, 2014 4:51 pm

The Texas Railroad Commission (RRC) has primary regulatory authority over natural gas drilling. The RRC's Oil and Gas Division monitors drilling activities to ensure compliance with all applicable laws. To this end, the Field Operations section of the Division may conduct field inspections and/or establish testing programs.

The RRC relies heavily on complaints to identify potential safety and environmental issues associated with natural gas drilling. Landowners and others are encouraged to report issues to their Oil and Gas District Office. For the Lake Eagle area, the relevant office is in Houston and can be contacted by phone on 713.869.5001.

While most complaints related to gas drilling should be made to the RRC, it does not have authority to investigate complaints relating to:

- **Odors:** Complaints regarding odors associated with gas production can be made to the Texas Commission on Environmental Quality [online](#) or by email (cmlplaint@tceq.texas) or phone (888.777.3186).

The complaint should identify the alleged source of the odor and provide information on its frequency, intensity, duration and offensiveness.

- **Dust:** Complaints regarding dust from public roads should be addressed to local government.

- **Noise:** Noise complaints should be reported to the local law enforcement agency.

- **Traffic:** Traffic complaints should be reported to the local law enforcement agency.

REPLY

Leave a Reply

Your email address will not be published. Required fields are marked *

Name *

Email *

Website

Comment

POST COMMENT

The Energy Center blog is a forum for faculty at the University of Texas, leading practitioners, lawmakers and other experts to contribute to the discussion of vital law and policy debates in the areas of energy, environmental law, and international arbitration. Blog posts reflect the opinions of the authors and not of the University of Texas or the Center for Global Energy, International Arbitration and Environmental Law.

Popular Tags

Texas

water

drought

energy

fracking

endangered species

natural gas

groundwater

court cases

conservation

pollution

TCEQ

LNG

climate change

cases