

Can environmental violations define oil and gas companies as bad actors? A judgment awaits

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Credit: Pixabay/CC0 Public Domain

On the evening of July 19, when Allegheny County Council met to override Rich Fitzgerald's veto of a fracking ban in county parks, council

members were shown a black-and-white video of natural gas rushing from a well in Boyce Park.

The hearing—where the ban on future leasing was sustained by a 12-3 vote, followed by a standing ovation from the crowd—featured testimony from some oil and gas industry supporters and many opponents, some arguing against the entire practice of shale gas extraction and others specifically against fracking in the park.

The video, which was also sent to council members earlier in the day, showed a conventional well, rather than a fracked well. Still, it was a visual cue.

"It's a good illustration of why we need to be careful with this infrastructure in our parks," said Gillian Graber, executive director of Protect PT, an anti-fracking nonprofit.

It was Graber's idea to send the video to the council. Who the well belonged to or what kind of well it is was not the point.

Fitzgerald, who supports shale gas development, wanted a compromise that wouldn't foreclose on the possibility of leasing minerals under park land but would, instead, seek to ferret out "bad actors." After his veto of a fracking ban, he cautioned against using a broad brush to paint an entire industry. It was a "hate the player, not the game" kind of argument.

The question is: What makes a bad actor, and who gets to write the label?

The bill that Fitzgerald supported would have denied leases to companies that have been determined by the [environmental regulators](#) to have "committed repeated and substantive violations."

While environmental oversight is not the purview of local officials, some are reaching for violations data as a way to discern if a company seeking to do business in their community is a bad actor.

West Deer Township, the site of Deer Lakes Park where a lease for oil and gas rights to Range Resources in a 2014 deal has yielded about \$16 million for the county so far, is now involved in a lawsuit tackling this question.

The case before the Allegheny County Court of Common Pleas was brought by Olympus Energy, a Canonsburg-based shale gas driller that was denied a conditional land use permit for a well pad in West Deer in December.

In a long document explaining their decision, West Deer supervisors said they relied, in part, on testimony from Graber, who talked about Penn Township's experience with Olympus. They also relied on an analysis of the company's environmental violations available publicly from the Pennsylvania Department of Environmental Protection.

A group of residents opposed to the well pad used these violations, comparing them to other companies' records, to argue that Olympus is, essentially, a bad actor.

When the appeal went before Judge Joseph James last month, the Marcellus Shale Coalition lent its voice to the case, arguing that notices of violations are "unsubstantiated, unexplained, and unverified" and should not be allowed in zoning proceedings.

A decision in this case will reverberate throughout the industry, argued Blaine Lucas, an attorney with Babst Calland who represented Olympus Energy in its appeal.

Already, Protect PT tried to submit Olympus's DEP violations in a bid to stop the approval of another well pad, this one in Penn Township. Mr. Lucas filed a memo with the same warnings he dispatched in West Deer.

Notices of violations—"they prove nothing," he said.

Over the years, oil and gas companies have raised concerns about the DEP's process for issuing violations. They note that in some parts of the state, inspectors give citations for each alleged problem. In others, inspectors group all of them into one notice, skewing statistics.

Companies have also noted that resolved violations aren't marked as such in a timely manner.

And yet as far as the public is concerned, the DEP violations database is one of the few metrics available to residents and local officials to glean the impact of a company or the industry on their communities.

Even acknowledging the faults in the system, some oil and gas companies, including the nation's largest gas producer, Downtown-based EQT Corp., use DEP violations as one portion of executive compensation.

The DEP itself relies on a company's violation history to make decisions about issuing new permits to that company, John Smith, an attorney with Smith Butz in Canonsburg who represented the group of residents opposing Olympus's application, argued during the hearing before Judge James.

When the judge remarked that the DEP had granted Olympus a permit for the well pad that West Deer rejected, even with a full view of the company's violations, Mr. Smith shot back: "Unfortunately, it's not a township overreaction. It's a DEP underreaction and I've had to sue them

many times."

Judge James has not yet rendered a decision in the case.

There is another limitation to using DEP's violations data to isolate bad actors: When a problem exists but there is no violation to prove it.

It's not clear how long the Boyce Park well had been streaming methane when the video presented to county council was shot.

Though it seemed like a choreographed reveal for the occasion of July 19 hearing, the well had been discovered by accident a few days before.

Melissa Ostroff, Pennsylvania field advocate with the environmental firm EarthWorks, came to Boyce Park for an event focused on another oil and gas well. She brought her optical gas imaging camera, which she uses to document gas emissions that are otherwise invisible.

As the group neared the site of their target well, a strong smell began to pull them in another direction—up a hill, through thick vegetation, to a corroded pipe with a sign identifying the well as belonging to Diversified Energy.

Ostroff grabbed a respirator, suspecting the smell was an indication of pollutants in the air, switched on her camera and recorded a steady stream of gas.

That day, Lois Drumheller, board chair at Protect PT who was part of the group, called Diversified's hotline to report the leak. It was a Saturday morning.

On Monday, Ostroff had compiled a YouTube clip of the well and attached it to a complaint she filed with the DEP, which sent an

inspector to the site that same day.

When he arrived, he found "the site had been freshly weed whacked and the well newly painted. No gas was smelled nor detected." Photos attached to the inspection report showed a well in good order. The open port seen in the video had been plugged. "No violations were observed during the inspection," the DEP official noted.

State records show the well hadn't been inspected in many years, an unfortunate side effect of the DEP's "large workload of higher priority work," DEP spokesman Jamar Thrasher said.

Thrasher said the inspector is preparing a second, administrative report that will include the information sent by Ostroff.

But the video has already made its mark.

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