

NY Court Decision Bolsters Anti-Fracking Movement

MARY ESCH, Associated Press

ALBANY, N.Y. (AP) — A New York court decision has bolstered a movement among towns determined to prevent the controversial practice of hydraulic fracturing for natural gas within their borders.

A state Supreme Court justice on Tuesday upheld the town of Dryden's August 2011 zoning amendment banning gas drilling. Denver-based Anschutz Exploration Corporation, which has spent \$5.1 million leasing and developing 22,000 acres in Dryden, about 40 miles southwest of Syracuse, had argued state law trumped the ban.

More than 50 New York communities have enacted gas-drilling bans. Binghamton attorney Helen Slottje, who helps draft such laws, says the ruling should embolden towns considering local bans.

"We think it's a terrific vindication of the town's right to home rule and to decide their future," Slottje said Wednesday. "It really should give the green light to communities that want to proceed down this route."

Albany attorney Tom West, who represented Anschutz, said the trial-level state court decision is likely to be appealed to the mid-level Appellate Division and, if necessary, to the state Court of Appeals.

"We remain confident in our position that municipalities cannot ban natural gas drilling in New York state," West said.

Another challenge of a municipal gas-drilling ban is pending in Otsego County, where Cooperstown Holstein Corp. sued the town of Middlefield over a ban similar to Dryden's. The lawsuit says the landowner has leased nearly 400 acres to a gas-drilling company and the ban would block the economic benefits of the arrangement.

New York has had a moratorium on issuing drilling permits for horizontal gas drilling and high-volume hydraulic fracturing, or "fracking," since 2008 while it drafts new regulations. The new technology has allowed companies to extract previously inaccessible natural gas from deep deposits in the Marcellus Shale, which underlies southern New York and parts of Ohio, Pennsylvania and West Virginia.

Fracking involves injecting a well with millions of gallons of chemically treated water at high pressure to crack surrounding shale and release trapped gas.

Critics say thousands of gas wells anticipated in southern New York will bring

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pollution, heavy truck traffic, and an industrialized landscape to rural communities. Supporters cite economic benefits and energy independence and say the fears aren't backed up by facts.

Ordinances enacted by a handful of West Virginia communities to ban gas drilling were overturned last year by a circuit judge who concluded that the state has sole regulatory authority over oil and gas operations.

An industry-led backlash also helped prompt two of these municipalities, Wellsburg and New Martinsville, to repeal their bans. Wellsburg acted one month after Chesapeake Energy withdrew a promised \$30,000 gift for band instruments at Wellsburg Middle School, saying it must support communities that support the industry.

In Pennsylvania, scores of municipalities have passed drilling regulations, prompting complaints from industry about a lack of uniformity. Gov. Tom Corbett recently signed legislation limiting the ability of local officials to keep drilling out of their towns.

Ohio's roughly 1,300 townships were stripped of their regulatory authority over such drilling operations under a law passed in 2004, said Matt DeTemple, executive director of the Ohio Townships Association.

A New York law passed in 1981 also stripped local governments of their authority to regulate the oil and gas industry, according to industry lawyers. The law states that the Department of Environmental Conservation's regulatory authority over oil and gas development supersedes local laws. The Dryden case challenged the industry interpretation of that law.

The ruling from state Supreme Court Judge Phillip Rumsey said the state law supersedes local laws regulating drilling operations, but doesn't pre-empt local control over land use and zoning. In other words, towns can't regulate drilling, but they can ban it.

"This is just really the first step in what will probably be a long appeals process," said Robert Wedlake, attorney for 640 landowners in the Vestal Gas Coalition near Binghamton. "In the final analysis, if moratoriums are ruled illegal, towns are exposing themselves to grave danger by imposing them."

Wedlake said towns could be subject to huge damage claims by gas companies and landowners.

New York's proposed permitting rules would require the applicant to state whether a proposed well would violate any local law. If there was a conflict, DEC could reject the permit application or require the company to modify it, according to DEC Commissioner Joe Martens.

Martens has said a decision on whether to allow natural gas development using hydraulic fracturing is likely within a few months when the four-year-old

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environmental review and regulations are complete.

A "home rule" bill proposed in the state Legislature would codify the right of municipalities to ban gas drilling, but its fate is uncertain.

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