

NY Court Strikes Down Local Drilling Moratorium

MICHAEL HILL, Associated Press

ALBANY, N.Y. (AP) — A state judge invalidated Binghamton's two-year moratorium on natural gas drilling, marking the first time a local law that would ban or delay hydraulic fracturing in New York has been struck down.

State Supreme Court Justice Ferris D. Lebos became the latest New York judge to weigh in on local bans or moratoriums Tuesday, ruling that the city law approved December 2011 failed to meet the standards of a properly enacted moratorium. Lebos said the city never established that there was a "dire emergency" regarding a practice that is still not allowed in New York.

"There can be no showing of dire need since the New York state Department of Environmental Conservation has not published the new regulations that are required before any natural gas exploration or drilling can occur in this state," Lebos wrote.

Gov. Andrew Cuomo's administration is considering whether to allow natural gas drilling using hydraulic fracturing, or fracking, a process involving the injection of wells with chemically treated water that is denounced by many environmentalists.

As the DEC review continues, more than 30 upstate municipalities have passed bans on gas drilling and more than 80 have enacted moratoriums. The laws enacted by towns sitting atop the gas-rich Marcellus Shale formation are typically in response to fears that fracking could contaminate water supplies.

Local bans in Dryden and Middlefield have already passed muster with state courts. Lebos referred to those two previous court decisions as "well-reasoned" and focused his decision on Binghamton's actions. Because of that, lawyers for environmental groups said they don't believe this ruling would imperil the other local bans.

"Almost all of the decision is very fact specific and limited to Binghamton, which had a very unique law," said Helen Slottje, an attorney with the Community Environmental Defense Council, which represented the city.

Slottje did not know if the city would appeal.

There was no immediate response on the ruling from Binghamton officials. City officials had argued the law was not a moratorium but an emergency action to protect its water. But Lebos ruled it was a moratorium and held the city to that strict legal standard.

"You've got to follow the letter of the law," said Kenneth S. Kamlet, a lawyer for the plaintiffs. "The city of Binghamton didn't play by the rules and they had to pay the

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piper."

The lawsuit was bought by a group of plaintiffs who claimed the law could harm their business or prevent them from obtaining natural gas leases.

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