3rd NY Town Wins in Court over Fracking Ban

ALBANY, N.Y. (AP) — A third upstate New York town has won a court challenge to its ban on natural gas drilling as two previous cases are about to be argued before a state appeals court.

Gas drilling company Lenape Resources, based in western New York, had sued the Livingston County town of Avon and the state Department of Environmental Conservation over the town's moratorium on drilling, saying the action threatened to put it out of business after it had operated in the town for decades. Lenape's owner, John Holko, also sought $50 million in damages. He named the Department of Environmental Conservation because he said the agency had a duty to stop towns from enacting local bans.

On March 15, Acting Supreme Court Justice Robert Wiggins in Livingston County ruled against Lenape on all counts. He cited Court of Appeals precedents as well as decisions in favor of local bans in the upstate towns of Dryden and Middlefield.

Appeals of the Dryden and Middlefield decisions will be argued before the Appellate Division of the state Supreme Court in Albany on Thursday. The ban on drilling in the Tompkins County town of Dryden was originally challenged by Denver-based Anschutz Exploration Corp., but after the company declined to pursue an appeal of a trial-level state supreme court ruling in the town's favor, the appeal was filed by Norse Energy, another company with gas wells in western New York.

Albany attorney Tom West is arguing the appeals on behalf of industry and has said he's confident the Appellate Division, or if necessary the highest court, the Court of Appeals, will agree that local bans violate a 1981 state law that says the state's authority to regulate the oil and gas industry supersedes the authority of localities.

New York has had a statewide moratorium on gas drilling that uses high-volume hydraulic fracturing, or fracking, since the Department of Environmental Conservation began an environmental impact study and regulatory overhaul in 2008. In the past couple of years, dozens of localities, anticipating that the state will eventually allow drilling, have enacted local bans or moratoriums on drilling at the request of residents who have petitioned town boards saying such heavy industrial activity is inconsistent with the community character and that they fear potential health and environmental risks.

"One by one, the courts in New York are siding with the people over oil and gas industry interests, ruling that local municipalities have the right to decide what industrial activities are appropriate for their communities," said Deborah Goldberg, attorney for the environmental group Earthjustice who will argue on behalf of Dryden and Middlefield in Albany on Thursday.

Michael Joy, Lenape's attorney, said Tuesday he hadn't seen the decision.

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