Ohio Injection Well Operator Loses State Appeal

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COLUMBUS, Ohio (AP) — An independent review board has upheld an order revoking the permits of a northeast Ohio injection-well operator whose former executive is charged with violating the federal Clean Water Act, but the company says it's not giving up.

The Ohio Oil and Gas Commission's ruling against Youngstown-based D&L Energy came later Friday. It was announced Monday by Ohio Attorney General Mike DeWine and the state Department of Natural Resources.

The state called it a significant step in the legal case against Ben Lupo, a former owner and president of D&L, who is charged with Clean Water Act violations for ordering an employee of his excavating company to repeatedly dump gas-drilling wastewater intended for an injection well into a storm sewer.

Both Lupo and the employee of Hardrock Excavating LLC have pleaded not guilty.

"The Commission's decision to deny D&L Energy's appeal is a win for the environment and for Ohio families," said State Natural Resources Director James Zehringer. "This ruling reinforces the efforts of Gov. John Kasich, ODNR, and Attorney General DeWine to ensure that people and companies who choose to break Ohio law will be held accountable."

D&L's attorney sought during the appeal hearing to distance the company from Lupo, calling him a "bad actor" who was not working for D&L during the alleged dumping incident. Attorney Michael Cyphert said Monday that the company is disappointed in the commission's ruling and is considering appealing to the Franklin County Common Pleas Court.

Authorities allege that on Jan. 31 Lupo directed that at least 20,000 gallons of drilling mud and brine be discharged into a sewer that empties into the Mahoning River watershed. Such drilling wastewater is supposed to be placed in an underground well piped deep into the earth.

Cyphert said Lupo resigned as D&L's president and relinquished control of his ownership stake in the company after charges were filed against him. He said the commission's legal adviser had to recuse himself at the last minute and it shows in Friday's ruling.

"There were a number of legal issues with respect to what the chief could or could not do and none of the commission members are attorneys. As a result, if you read their opinion, you see very little citation of the law," he said.

The state's lawyer told commissioners during the D&L hearing, however, that Lupo

was a key actor in several interrelated companies operating from the same address and his role could not be separated.

Charges brought against the 62-year-old Lupo, of Poland near Youngstown, by the U.S. Attorney's Office carry penalties of up to three years in prison, a $250,000 fine and a year of supervised release if convicted.

The Ohio Department of Natural Resources revoked the permits of Hardrock and D&L after workers at the companies' Youngstown headquarters reported seeing the material being dumped.

The order was issued by state oil and gas chief Rick Simmers, whose division falls under the Natural Resources Department.

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