

Gas company to sue Dryden over town's drilling ban

Written by

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ALBANY -- In what could be a precedent-setting case for municipalities statewide, a Denver-based natural-gas company will file the first lawsuit against a local drilling ban in [New York](#), the company's attorney said Tuesday.

Anschutz Exploration Corp. plans to file a [lawsuit](#) this week in state Supreme Court in Tompkins County to have the town of Dryden's ban struck down, according to Thomas West, an Albany-based attorney representing the company.

With the state moving toward allowing high-volume hydraulic fracturing - a technique used with gas drilling - Dryden has been among more than 15 municipalities or counties across the state that have altered zoning regulations or passed legislation meant to ban the activity, either temporarily or permanently.

But state Department of Environmental Conservation Joseph Martens has said a court will likely have to decide whether those bans hold up under [statelaw](#). New York's environmental conservation law

includes a two-sentence clause adopted in the 1980s giving the state power to regulate the oil and gas industry, though it allows municipalities to regulate the industry's use of their roads.

In August, the Dryden Town Board unanimously approved a change to its zoning laws, expressly prohibiting any gas exploration, extraction or storage.

"It will be a good opportunity to let the courts decide whether municipalities can, under the guise of zoning or otherwise, ban or regulate drilling," West said. "Hopefully, it won't be a difficult issue for the [court](#)."

Dryden Supervisor Mary Ann Sumner defended the town's decision, saying she was [confident](#) the town has firm legal standing. The town, she said, conducted "research on the legality of doing what we did and we are confident that our zoning is within our jurisdiction."

"DEC cannot preempt our ability to regulate land use," she said, asserting that Dryden,

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like any other municipality, has the right to decide the industries that conduct **business** within its borders. "Heavy industry is in conflict with our major industries," she said, and the town can regulate heavy industry using its land use laws.

The suit will be closely watched by those on both sides of the hydrofracking debate in New York. The technique, which involves the injection of chemical-laced **water** into underground shale formations to unlock gas, has been on hold in New York as the DEC continues an environmental review, but is expected to be permitted at some point next year.

The city of Buffalo and the Tompkins County towns of Ithaca and Ulysses are among the other municipalities that have taken steps to prohibit hydrofracking, while the city of Albany and at least a dozen other municipalities are considering them.

In an interview Tuesday, Martens repeated his position that the agency will make sure gas companies are adhering to local laws and zoning when applying for a permit, but a court would ultimately have to decide on the issue.

"The law says what it says," Martens told Gannett's Albany Bureau. "There's a superseding provision in the (state) environmental conservation law, anyone can read it. I think it is open to interpretation, and I think this will get decided in a court."

The gas industry has pushed back against local drilling bans in other states, including

West Virginia, where a state judge recently overturned a ban in the town of Morgantown because it was trumped by the state's regulations.

Assemblywoman Barbara Lifton, D-Ithaca, said she believes case law allows local governments to amend their zoning laws in regards to gas drilling, but said she'd like to see the Legislature pass a bill to clarify the state law. She has sponsored a "home-rule" bill for the past three years, but it hasn't passed both houses.

"Changing local zoning is not to regulate the industry," Lifton said. "It's saying where certain things can happen and if they can happen there. That's different from deciding what kind of fracking fluid they use or what kind of container they have to put the fluid in."

West said he's hopeful Anschutz's lawsuit will settle the issue once and for all, but said it will all depend on what the court comes up with.

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"You always hope that it will be precedent setting, but you never know what the court is going to do," West said. "I think it's our goal to go right to the merits, not engage in any ancillary antics and let the court decide if this is preempted or not."

Matt Hayes contributed to this report.

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