

Local drilling bans raise concerns, energy lawyers say

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By Zack Needles, The Legal Intelligencer

Although there are no plans to drill for natural gas in Pittsburgh, the city's recently adopted ordinance banning the practice has raised concerns within the drilling industry that other municipalities will follow suit.

On Nov. 16, Pittsburgh's City Council voted 9-0 to adopt the ordinance, which was drafted by the Community Environmental Legal Defense Fund and bars all energy companies from drilling within the city limits, citing threats to the "health, safety and welfare" of the city's residents.

The ordinance has since become law. Mayor Luke Ravenstahl allowed the measure to become law without his signature.

The Marcellus Shale formation runs under the city, according to geological maps.

Kevin Colosimo, managing partner of the Pittsburgh office of Houston-based energy law firm Burleson Cooke, said the ban will likely hurt the city in the long run.

"It puts a city that has an incredible budget crisis anyway in a position to fight a legal battle which it can't win," he said, explaining that Pennsylvania's 1985 Oil and Gas Act gives the state the power to pre-empt local laws against oil and gas drilling.

"The city's elected representatives really put it in position to grind what is a personal political ax against this industry based upon a threat that really isn't even close to fruition," he added.

But Mr. Colosimo and other energy lawyers said the more pressing issue is the influence the city's actions could potentially have on other municipalities.

In conjunction with the adoption of the ordinance, six of Pittsburgh's nine council members sent a letter and a copy of the ordinance to the leaders of every municipality in Pennsylvania urging them to adopt similar local laws.

"If a municipality adopted a totally exclusionary zoning ordinance, companies would have to work through the process of commenting on it before it was adopted, trying to modify it through the adoption stage and then bringing challenges in court to set that aside," said Kevin J. Garber, chairman of the environment, energy and natural resources group of Pittsburgh-based Babst Calland Clements & Zomnir.

Mr. Colosimo said he believes Pittsburgh is attempting to "create a mob mentality" by urging other municipalities to follow its lead and agreed that oil and gas companies could face some significant delays and interruptions in their drilling schedules if that happens.

"I don't know if we're going to see a lot of municipalities act in such haste going forward. I hope not," he said. "I hope reason and common sense prevails."

So far, only one other municipality, South Fayette, has adopted an ordinance similar to Pittsburgh's.

But, according to Ben Price, projects director of the Community Environmental Legal Defense Fund, municipal governments in at least 20 counties across the state are considering their own ordinances.

Russell L. Schetroma, member-in-charge of the Meadville office of West Virginia-based Steptoe & Johnson, said his main concern is that "municipalities that don't have the resources to focus on this may be setting themselves up for some very expensive litigation."

Doug Shields, the city councilman who introduced Pittsburgh's ordinance, said the Community Environmental Legal Defense Fund has offered the city legal services free of charge -- aside from expenses -- in the event that the ordinance results in litigation and has extended that offer to any municipality that becomes involved in a legal battle over a similar ordinance.

Still, Mr. Shields called the notion that these ordinances will inevitably result in litigation "very presumptive."

And even if they do, he said, Pittsburgh will have the added advantage of a full-time salaried legal department.

"Whether I work them 100 hours a week or 50 hours a week, it's not going to affect the taxpayer one bit," he said.

Mr. Shields did say he has encountered pushback from some smaller municipalities that are afraid of being sued for attempting to ban drilling.

"They say, 'What if we get sued? We're only a little borough, we're only a little town.' I get that but if, as an elected official, that's what's ultimately going to drive your decision-making, you're not going to be making a lot of right decisions," he said.

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