

Gas industry plans to challenge towns' zoning protections Dryden board to vote on limits tonight

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DRYDEN — As towns like Dryden prepare zoning laws intended to protect them from the effects of gas drilling, the natural gas and oil exploration industry expects to thwart such efforts.

The Dryden Town Board will vote tonight on zoning ordinance amendments that would limit heavy industry, in particular natural gas extraction that uses high volume hydraulic fracturing, commonly known as hydrofracking or fracking.

Town Attorney Mahlon Perkins said the town has not identified any area in the town where gas drilling would be appropriate. Perkins believes the town has the authority to prohibit fracking.

“We believe that under the zoning power and land use regulating power given to the towns by the (state) Legislature and based on a couple of New York Court of Appeals cases, that we have the authority to regulate land use and this is a heavy industrial use,” Perkins said.

In Cortland County, the only town with zoning protections in place related to gas drilling is Virgil. The laws there forbid surface activities related to gas drilling in areas 1, 2 and 3 of the aquifer protection district.

But in an editorial board meeting with the Cortland Standard in July, Brad Gill, executive director of the Independent Oil and Gas Association of New York, said gas companies would likely challenge the town laws and they “would hold no water” in court.

Gill said the state Department of Environmental Conservation has the ultimate authority to regulate the industry.

The Dryden Town Board has been exploring its authority to ban fracking, supported by hundreds of residents who have signed petitions with local activist groups and opposed by residents who say the ban is too broad and they have the right to use their land as they wish. At a public hearing last month, 45 people spoke in favor of the proposed zoning change and 17 spoke against.

The DEC's regulations governing the industry, released in July, provide for local land use and zoning laws to apply to a certain extent. A 60-day comment period on these regulations will begin later in the summer. The document, the state generic environmental impact study, will then be revised.

The state expects to release the final study next year.

The gas company must certify its operations are consistent with local land use and zoning laws. If it cannot certify that or if a locality challenges their operations, that triggers additional DEC review prior to a permit being issued, according to the guidelines.

DEC spokeswoman Emily DeSantis said the state will require the applicant to complete a compatibility analysis of the project with local land use and zoning laws. The DEC will review the analysis when it considers issuing a permit.

DeSantis stated in an email Monday that, "... in the end, the courts will decide because DEC's granting of a permit is conditioned on the project being in compliance with local laws."

Dan Dineen, director of the Cortland County Planning Department, said it is hard to say at this point how the courts would rule.

"These types of things are challenged all the time in court," Dineen said. "Sometimes they side with the municipality and sometimes they side with the industry."

In the case of zoning laws, said Dineen, the applicant can always apply for a use variance.

"You always have to give the opportunity to appeal, for somebody to make their case why they should be allowed to have this," Dineen said.

Dineen said towns might decide to only allow drilling in certain areas, such as the industrial districts, and then the DEC would regulate it in that district.

Dineen said this is how gravel mining is handled.

"If the DEC treats it the same way they do mining, they'll say, 'OK, towns can control where in their town they are going to allow this use through zoning but that's it. Once they control the area, after that it's all regulated by the DEC,'" Dineen said.

Perkins said Dryden is not trying to regulate the gas drilling industry, it is trying to ban heavy industrial uses from the town.

Perkins said the amendments simply clarify the existing zoning law — that this kind of heavy industrial use has never been allowed in Dryden.

Ultimately Perkins said the state Legislature should clarify the issue and state explicitly that either municipalities cannot zone out gas drilling activities, or that it is possible for towns ban it.

"The Legislature needs to make this call," Perkins said. "That would get towns and the gas companies off the hook and it can be a matter of local decision."

Dryden Supervisor Mary Ann Sumner said she anticipates a vote on the amendment to pass unanimously.

"It is just clarifying our current zoning and reaffirming it," Sumner said. "That heavy industrial use of any kind has never been allowed in the town of Dryden."