



Bans Upheld In Lower Court

April 13, 2012

Within a week of each other, two lower courts in New York upheld municipal bans on hydraulic fracturing and gas drilling in the Towns of Dryden and Middlefield. These two cases are being closely watched for their precedent setting effect.

Anschutz Exploration Corporation, a Denver based natural gas company, filed a lawsuit in order to strike down Dryden's Zoning Ordinance, amended in August 2, 2012, which banned all activities related to the exploration for, and production or storage of, both natural gas and petroleum within its border. Similarly, Cooperstown Holstein Corporation, a dairy farm, challenged Middlefield's zoning law which prohibited oil and gas drilling within the geographical borders of the township.

Both challenges addressed the scope of a municipality's authority to regulate drilling under the home rule concept against the scope of the state's statutory authority over the oil and gas sector. While municipalities have certain police powers and zoning authority to regulate within its borders for the well-being of its citizens, these powers are not unfettered. The state preempts local or municipal regulation over certain activities. Currently, New York law allows municipalities to zone mining activities that have significant surface impacts but the law was amended in 1981 to exempt oil and gas from mining activities subject to local regulations.^[1]

The New York State Environmental Conservation Law (ECL) §23-0303(2) preempts any regulation by local authorities in the area of gas, oil and solution drilling or mining. In their respective actions, Anschutz Exploration and Cooperstown Holstein relied on the preemption language as set forth in ECL §23-0303(2):

The provisions of this article [the Oil, Gas and Solution Mining Law] shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries; but shall not supersede local government jurisdiction over local roads or the rights of local governments under the real property law.

Both courts held that the preemption language of the ECL did not prohibit either municipality from enacting drilling bans within its town limits. The Dryden court found that the state supersedure clause did "not expressly preempt local regulation of land use, but only regulations dealing with operations." *Anschutz Exploration Corp. v. Town of Dryden*, 2012 N.Y. Misc. LEXIS 687, *20 (N.Y. Sup. Ct. 2012). A copy of the Dryden decision can also be found [here](#).

The Middlefield court found that the “the state’s interests may be harmonized with the home rule of local municipalities in their determination of where oil, gas and solution drilling or mining may occur. The state maintains control over the ‘how’ of such procedures while the municipalities maintain control over the ‘where’ of such exploration.” *Cooperstown Holstein Corp. v. Town of Middlefield*, 2012 N.Y. Misc. LEXIS 1420, *19 (N.Y. Sup. Ct. 2012). A copy of the Middlefield decision can also be found [here](#). In sum, both courts felt that the bans were proper because the bans regulated land use, not the mechanics of oil and gas operations.

While both of these cases may embolden other municipalities to enact drilling bans within their borders, these rulings are not the final word. Anschutz Exploration has already filed a notice of appeal on March 29, 2012; with Cooperstown Holstein following suit on March 30, 2012.

1. ^[1] Mary Esch, *NY gas drilling opponents aim for local bans* (January 2, 2012), <http://www.seattlepi.com/news/article/NY-gas-drilling-opponents-aim-for-local-bans-2436742.php>