

New York Court of Appeals Upholds Local Fracking Bans

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The New York Court of Appeals, in a 5-2 decision, held that the New York State Oil, Gas and Solution Mining Law (“OGSML”) does not preempt municipal zoning authority. The Court explained that land use regulation is among the most fundamental powers granted to municipalities and thus can be preempted only where there is a clear expression of legislative intent to do so. In this case, the Court concluded that there was “no legislative intent, much less a requisite ‘clear expression’” to support Appellants’ arguments that OGSML preempts local zoning authority.

Similar to its interpretation of the Mined Land Reclamation Law (“MLRL”) supersession clause in *Frew Run Gravel Products, Inc. v. Carroll*,^[1] the Court found that the OGSML preempts local laws that “govern the details, procedures or operations of the oil and gas industries,” but not those local laws that regulate land use generally. In finding that the local laws at issue were not preempted, the Court explained that local land use regulations banning oil and gas drilling are not inconsistent with the OGSML’s plain language, statutory scheme or legislative history.

The decision acknowledges that hydro-fracking presents significant policy issues and its conclusion plainly states that if the Legislature intends for OGSML to supersede local zoning bans, it is authorized to amend the statute accordingly. Given the politicization of the fracking debate, it is unlikely that the Legislature will amend OGSML in the near future. In fact, in June the New York State Assembly passed a bill extending the State’s fracking moratorium for an additional three years.^[2]

The New York State Court of Appeals decision in *Cooperstown Holstein Corp. v. Town of Middlefield* and *Matter of Mark S. Wallach, as Chapter 7 Trustee for Norse Energy Corp. USA v. Town of Dryden et. al.*, can be found at: <https://www.nycourts.gov/ctapps/Decisions/2014/Jun14/130-131opn14-Decision.pdf>.

[1] 71 N.Y.2d 126 (1987).

[2] Assembly Bill A05424B

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