

Communities look to join fracking case

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ALBANY — More than 50 towns and cities from across upstate New York, including Rush and Mendon, have asked a state appeals court for permission to weigh in on whether natural-gas drilling without municipalities can ban in their borders.

According to court filings made this week, the 53 municipalities — along with the state Association of Towns, Conference of

Mayors and the New York Planning Foundation — are hoping to submit a legal argument in favor of “home rule.”

A Norwegian natural-gas company and a Cooperstown-area farmer have appealed separate state Supreme Court decisions that found New York law does not prevent municipalities from banning or using zoning laws to prevent hydraulic fracturing for natural gas.

The lawsuits, which seek to overturn municipi-

pal fracking bans, would “significantly undermine the power of municipalities of this state” if they are successful, according to the most recent filing from the cities and towns.

“It’s really a question of home rule,” said John Henry, an attorney for Albany-based firm White-man Osterman & Hanna, which is representing the municipalities. “They want to make sure that municipalities have a say in regulating the activities within their bor-

ders.”

Among the participating towns are many that have passed or amended zoning laws or moratoriums designed to prevent gas drilling locally, including Rush and Mendon and the towns of Ulysses, Lansing, Caroline and Ithaca in Tompkins County. Others participating include Saugerties, Ulster County, and the city of Ithaca.

The state Appellate Division has to approve the municipalities’ request

before they can submit a legal brief for consideration by the court.

The two lawsuits were first filed last year by Denver-based Anschutz Exploration Corp. and a Cooperstown dairy farm against the towns of Dryden, Tompkins County, and Middlefield, Otsego County, respectively. Anschutz has since dropped its role in the case and has been replaced by Norse Energy, a Norway-based company with its U.S. headquarters in western

New York.

Thomas West, an Albany-based attorney representing Norse, said he was unsurprised that “municipalities who favor bans are supporting this effort.” The lawsuits argue that a “supersedeure provision” in New York law makes clear that the state Department of Environmental Conservation is in charge of regulating oil and gas drilling, not localities.

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“In any event, given the ... filings on both sides of the issue, the Appellate Division should understand that these are important cases that will affect the future of drilling in New York state,” West said.

High-volume hydrofracking — a much-debated technique that uses a mix of water, sand and chemicals to break apart underground shale formations to unlock natural gas — has been on hold statewide as the DEC finishes a regulatory review of the process. But more than 100 municipalities

have taken steps to temporarily or permanently keep fracking and gas drilling outside of their borders.

Peter Baynes, executive director of the state Conference of Mayors, made clear that his organization wasn’t taking a position on the safety of hydrofracking.

“This isn’t about the appropriateness of hydrofracking in New York,” Baynes said. “We’re involved in the cases strictly on the point of protecting the tradition of home rule in New York, especially as it pertains to land use and zoning.”

The effort was organized in part by the town of Ulysses, which passed

an amendment to its zoning laws that specifically prohibits “natural gas and/or petroleum exploration.”

Ulysses had filed a friend-of-the-court brief for both the Dryden and Middlefield cases when they were in the lower courts, according to town supervisor Roxanne Marino.

“Our attorney did a lot of research for that and some other municipalities expressed interest in joining us,” Marino said. “We offered the opportunity for other municipalities to join us, and they did.”

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