

Gas driller sues DEC and Avon

Alexander company says ban doesn't comply with state law

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ALBANY — The state Department of Environmental Conservation may soon have to weigh in on a local gas-drilling moratorium after a Genesee County-based company filed suit against the agency.

Lenape Resources, a small natural-gas company based in Alexander, sued both the DEC and the Livingston County town of Avon last month, claiming the town's recent moratorium on gas drilling and storage doesn't comply with state law.

The company is also seeking \$50 million from the town, claiming the ban has cost Lenape millions in the form of lost business and unused mineral rights. Avon's annual budget is about \$3 million, according to Supervisor David LeFeber.

"It is my business," said John Holko, Lenape's president. "It's all I do and what I've spent all the money for in the area, and I don't have much of a choice but to take an action."

Avon passed a one-year moratorium on natural-gas extraction and underground storage that took effect in June. The moratorium includes a "grandfather clause" for existing wells, though Holko claims it isn't nearly broad enough and forced him to shut down.

LeFeber declined comment last week on the lawsuit, which was filed on Nov. 13.

The lawsuit represents at least the fourth attempt in New York to overturn a local ban or moratorium on drilling or hydraulic fracturing, the much-debated technique used to release gas from underground shale formations.

Two of those challenges — including one against the town of Dryden, Tompkins County — were rejected by state Supreme Court justices and are currently being appealed. The third, against the city of Binghamton, was successful in the lower court after a judge ruled the city couldn't prove there was a dire need to prevent gas drilling.

Lenape's suit, however, is unique: It marks the first time the DEC has been included in such a challenge, and it seeks damages from the town.

The company claims state law doesn't allow municipalities to ban gas or oil drilling. Enforcement of that law, the company's suit claims, lies with the DEC.

"This issue is before the courts and we will let that process progress," said DEC spokeswoman Emily DeSantis.

Michael Joy, an attorney for Lenape, said the company hopes the judge will overturn the moratorium based on the state's environmental law, not Lenape's \$50 million "takings" claim.

"If, in fact, it does not happen, the towns cannot have it both ways," Joy said. "They can't have

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the authority to take property rights away — and in the case of Lenape, take tens of millions of hard dollars that they invested in wells and infrastructure — and not expect to have to compensate the company for what they did."

Deborah Goldberg, managing attorney for Earthjustice, a group

representing Dryden in its own case, said Lenape is throwing "everything but the kitchen sink" at Avon.

"All of their wells have been grandfathered in," Goldberg said. "They don't have a valid right to develop new wells. They haven't been injured in any way. It's hard to imagine how this could possibly be a ripe claim."

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