

## Democrat and Chronicle

# Property owners, town need new gas supply after anti-fracking law shuts pipeline

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A natural gas producer has responded to an anti-fracking law in Avon, Livingston County, by shutting its existing wells and pipeline in the town.

The maneuver, which the producer said it is doing to comply with a town law passed in late June, will eliminate free natural gas supplies for a few property owners and force other customers — including the town government itself — to find a new supply. The company, Lenape Resources, also will cease paying royalties to the property owners on whose land the wells are located.

A spokesman for Lenape said it may be the first time a gas company has taken such a step in New York, where a growing number of towns, villages and cities have enacted moratoria or bans on drilling and related activities.

Lenape has 16 active gas wells in Avon, the company said.

Like the measures approved by many New York municipalities, Avon's one-year moratorium covers "natural gas and petroleum exploration and extraction activities, underground storage of natural gas and disposal of ... extraction, exploration and production wastes."

Lenape, an independent gas exploration and production company based in Alexander, Genesee County, has concluded that its existing wells and pipeline should close, at least until it clarifies if the law is valid.

"It's the landowners that suffer. Landowners leased their mineral rights to Lenape so that we can develop those mineral rights, and the town of Avon just took those rights away," Lenape president John Holko said in a statement.

Michael Joy, a Pittsburgh lawyer whose firm has been retained by Lenape, said Holko spoke before the Town Board several times about the moratorium, and his lawyers sent the town a letter "that in part discussed possible impacts on the Town and its residents. However, the Town chose to act on its own."

The moratorium was passed June 28.

The local law includes a paragraph that specifically exempts existing vertical wells from the moratorium. Lenape is the only company with active gas wells in the town.

(Page 2 of 3)

“We were trying to do that to help him,” Avon town Supervisor David LeFeber said of Holko. “Our intent was not to do anything to impact our existing wells or leases with our landowners.”

But Joy, the company’s lawyer, suggested the exemption itself is invalid because local governments do not have the legal right to say some drilling is acceptable and other drilling is not. The power to regulate gas drilling in that way is reserved to the state government, he said.

The company intends to ask the state Department of Environmental Conservation, which oversees gas drilling, to weigh in.

“Our plan is to notify the state when the wells have been shut in and request clarification of who is regulating Lenape’s operations in the town of Avon,” Holko said in a statement forwarded by a spokesman.

LeFeber said a Holko associate first warned that Lenape would shut off the town’s gas supply immediately after the June 28 vote.

“He must feel that our action is jeopardizing his business. It seems to me like he’d be losing money if he shut the wells off,” the supervisor said.

Lenape said it leases drilling rights on about 5,050 acres in the town, pays the owners \$13,000 a year in gas royalties and provides them \$65,000 a year in free gas. State records suggest there are about 10 Avon landowners involved.

It was not clear how many customers buy gas from the company’s pipeline, though Lenape said it supplies a number of small businesses and the large Kraft Foods plant in the village of Avon.

The town also is a minor customer, using gas from Lenape’s pipeline for hot water and heating of a shop at the highway department garage, and to power a backup generator for a water pump. LeFeber said arrangements have already been made to power the generator with propane.

Most of Lenape’s wells in Avon date to the 1980s, though three were drilled in 2004. All are vertical wells into relatively shallow Medina sandstone — much smaller and less

productive than the horizontal wells that companies are seeking permission to resume drilling in upstate New York.

(Page 3 of 3)

State environmental officials have been refusing to issue new permits for large horizontal gas wells while regulations are being revised. State officials have hinted they're near the end of that process.

The method of gas drilling known as hydraulic fracturing, in which water, sand and chemicals are injected into a well to fracture the rock and release gas, has become hugely controversial in New York.

Opponents claim the process can pollute groundwater and generate wastewater that will be difficult to dispose of. Proponents say the Marcellus shale and other layers of rock deep under parts of upstate New York hold billions of dollars of natural gas, and production of new wells would be an economic boon to upstate.

The preferred type of well now involves drilling downward as far as a mile, and then extending the well horizontally through the target rock layer for thousands of feet.

Lenape's wells are all less than 2,000 feet deep, state data show. The data does not indicate whether they were hydraulically fractured, though most wells of that type and vintage were.

Landowners in Avon were notified of Lenape's action by letter on Saturday, the company said. Workers were in the field Monday beginning the process of closing, or "shutting-in," the wells.