

## **DISAGREEMENT ON LEGAL AUTHORITY COMPLICATES - Pittsburgh Post-Gazette (PA) - November 11, 2014 - page C-2**

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Last week in eastern Ohio, where natural gas production in the Utica Shale has been booming, voters in three towns rejected ballot proposals to ban hydraulic fracturing. While Athens overwhelmingly passed a **fracking** ban, Gates Mills, Kent and Youngstown voted down their measures.

The ballot issues highlight the disparity in responses among local officials who are befuddled by the complicated legal baggage of prohibiting a practice that some say is solely regulated at a state level. Bans could legally embroil areas where drilling companies operate, especially with the Ohio Supreme Court soon to rule on the ability of local authorities to regulate **fracking**.

Local authority to regulate **fracking** is a central issue in the case that the Ohio Supreme Court is reviewing: *Munroe Falls v. Beck Energy*. In 2011, a state court backed the town's right to zone and issue permits to the oil and gas drilling company. An appellate court in February sided with the company.

Oral arguments were heard by the state Supreme Court earlier this year.

The Ohio Oil and Gas Association is closely watching for a decision, said spokeswoman Penny Seipel. "Once that court case is decided, I think it will probably help ... reaffirm that the state ultimately has control over the oil and gas industry," Ms. Seipel said.

Shawn Bennett, senior vice president of the industry group, said his member companies answer solely to the Ohio Department of Natural Resources.

"These bans are, and will remain, without any teeth," Mr. Bennett said. "When (companies) submit their permit, that permit will go to the division and the division will choose whether to accept or deny the permit."

The local bans are coming up for votes because some are afraid that the extraction technique - which has revolutionized the oil and gas industry and involves injecting millions of gallons of water, sand and chemicals into shale formations - could pollute air and water.

Blocking the practice is a way for towns to assert their local rights over corporate interests, said Tish O'Dell, Ohio coordinator for the Community Environmental Legal Defense Fund, which has, by the group's count, helped hundreds of communities nationwide write anti-**fracking** ordinances.

"I've been asked a lot about what it means," Ms. O'Dell said. "What it means is that the residents passed a law in their community, and just like any other law, it's on the books. If someone tries to violate the law, then it needs to be defended and enforced."

In passing the ban, Athens joined the Ohio communities of Yellow Springs, Mansfield and Broadview Heights, which in previous elections have adopted a Community Bill of Rights drafted by the group, a nonprofit based in Mercersburg, Pa. The group also helped Pittsburgh pass its **fracking** ban in 2010, when it became the first U.S. city to approve such a measure.

Patrick Lang, law director in Athens, would not comment beyond a statement from his office released in aftermath of the vote.

"The **fracking** ban is the law in the City of Athens. (Mr. Lang) has spoken with Mayor Wiehl, who ensures him that the city will enforce it. If challenged in court, the city will defend it," the statement reads.

Mr. Lang, who is leaving his post next year, has hired a temporary staff attorney to assist with the office's transition between law directors, according to news accounts. But he told The Athens News in September he also wanted the position in case any litigation arose related to the **fracking** ban.

"We want to make sure we're adequately prepared and have some continuity to be able to handle these issues without the risk of somebody being caught flat-footed," Mr. Lang told the newspaper.

Meanwhile, Youngstown voters rejected a ban for the fourth time in two years - and by the widest margin yet. Martin Hume, as city law director in Youngstown, said he did not have an official position during the election, but he called the anti-**fracking** proposal "too broad."

"I think the perception among the (local) administration and the general community is although their goals are admirable, their methods of achieving them are not appropriate," Mr. Hume said. "I think a more responsible approach would be to make sure (the companies) pay their fair share of societal cost."

Some companies have been quick to file suits once bans are approved.

In **Denton, Texas**, environmentalists scored possibly the biggest victory when 58 percent of voters approved a ban in the energy-friendly town.

The morning after the election, the Texas Oil and Gas Association filed an motion in Denton County District Court seeking an injunction to prevent enforcement of the ban, scheduled to go into effect Dec. 2. The industry group represents 5,000 oil and gas companies in the state, which sits on the Barnett Shale, the third-largest shale gas play in the country.

In Broadview Heights, Ohio, two energy companies have not been content to wait for a Supreme Court ruling and filed a lawsuit in July against the city, claiming its ban - in place after a successful campaign led by Ms. O'Dell, a Broadview Heights resident - is unconstitutional because the city has no legal grounds to outlaw industry activities that are already regulated by the state.

A legal challenge in Athens seems unlikely, Mr. Bennett said, considering there is no drilling activity anywhere near the city. But "when challenged, these Community Bills of Rights are erroneous."

"Sadly, those cities that pass bans will have to spend taxpayer money to fight [lawsuits]," he added.

Fracking opponents remain unfazed.

"We keep pushing on no matter what," Ms. O'Dell said. "We know this isn't a one-election win or loss. It's going to take time. We've realized that."

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