

# New York Towns Can Prohibit Fracking, State's Top Court Rules

By [KATE TAYLOR](#) and [THOMAS KAPLAN](#)

JUNE 30, 2014



Opponents of fracking rallied outside Gov. Andrew M. Cuomo's fund-raiser in Manhattan on Monday, calling on him to ban the drilling method. Individual towns now may impose a ban.

Credit Ruby Washington/The New York Times

In a decision with far-reaching implications for the future of natural gas drilling in New York State, its highest court ruled on Monday that towns can use zoning ordinances to ban hydraulic fracturing, the controversial extraction method known as fracking.

Since the issue arose about six years ago, there has been a statewide moratorium on fracking, and the State Health Department is currently studying its potential health effects. But in recent years some towns, worried that the state would eventually allow the practice, have taken matters into their own hands by banning fracking within their borders. Among them, two towns — Dryden, in Tompkins County, and Middlefield, in Otsego County — amended their zoning laws in 2011 to prohibit fracking, on the basis that it would threaten the health, environment and character of the communities.

Subsequently, an energy company that had acquired oil and gas leases in Dryden before the 2011 zoning amendment, and a dairy farm in Middlefield that had leased land to a gas drilling company, filed legal complaints, arguing that state oil and gas law pre-empted the town ordinances.

On Monday, in a 5-to-2 decision, the State Court of Appeals affirmed a lower-court ruling rejecting that argument, and found that the towns did indeed have the authority to ban fracking through land use regulations.

Numerous municipalities across the state have either banned fracking or are considering doing so, and the trend may accelerate because of the court's ruling.

In the fracking process, a mix of water and chemicals is injected into the ground at high pressure to break up shale deposits and release natural gas. Opponents fear that the chemicals may contaminate groundwater. Gov. Andrew M. Cuomo has delayed making a decision whether to allow fracking as he tries to balance the potential for economic development against the concerns of environmental advocates.

Opponents of fracking immediately celebrated the ruling.

"This sends a message to all the oil and gas drillers anxiously eyeing our borders: The people of New York will not be steamrolled," Kate Sinding, the director of the Community Fracking Defense Project at the Natural Resources Defense Council, said in a statement.

The Dryden town supervisor, Mary Ann Sumne, said, "The oil and gas industry tried to bully us into backing down, but we took our fight all the way to New York's highest court." She added, "I hope our victory serves as an inspiration to people in Pennsylvania, Ohio, Texas, Colorado, New Mexico, Florida, North Carolina, California and elsewhere who are also trying to do what's right for their own communities."

Thomas S. West, a lawyer for one of the energy companies, [Norse Energy Corporation USA](#), said he was disappointed by the ruling, which he said made it increasingly unlikely that gas drilling companies would invest in New York State.

"Industry has already fled the state because of the six-year moratorium," Mr. West said.

In the future, he said, companies will have to weigh whether to invest "the tens or hundreds of millions of dollars required to develop the resource, only to be at risk of a municipal ban."

Norse Energy Corporation itself is in Chapter 7 bankruptcy.

"They're sort of the poster child for what the six-year moratorium has done to companies that were too heavily invested in New York," Mr. West said.

As for the Cuomo administration's review of whether to allow fracking, there appears to be no end in sight.

Drilling companies and landowners hoping to lease their properties for natural gas extraction have accused Mr. Cuomo, a Democrat who is up for re-election in November, of trying to drag out the process for political reasons. Polls have repeatedly found voters roughly split over whether fracking should be allowed, so a large swath of the electorate may wind up unhappy whichever way the Cuomo administration proceeds.

Mr. Cuomo's Republican challenger, Rob Astorino, the Westchester County executive, has tried to draw attention to the issue, arguing that what he describes as the governor's vacillation over fracking is costing the state much-needed jobs and economic activity.

The expected completion of the Health Department's inquiry [has been pushed back](#), and state health officials have insisted on secrecy as they conduct their study.

Appearing alongside Mr. Cuomo at the gay pride parade in Manhattan on Sunday, the acting state health commissioner, Dr. Howard A. Zucker, declined to provide an update on the health study. Asked if the study would be completed by the election in November, Dr. Zucker responded, "I would need to review the data before I could answer."

**Correction: June 30, 2014**

An earlier version of this article incorrectly described two companies that filed legal complaints against town ordinances. One is an energy company and the other is a dairy farm. Both are not energy companies.