

Giving Bans the Teeth They Need

FrackBustersNY urges municipalities to go a step further — have the state “make fracking and related industrial harms crimes in law, as they are in life.”

On June 30 the state’s highest judiciary issued its long-awaited decision in *Matter of Wallach, Trustee for Norse Energy v. Town of Dryden*. The Court of Appeals upheld communities’ right to protect themselves from pollution and other harms perpetrated by oil and gas corporations. The towns were sued for banning fracking and related industrial activities; now *all three* high courts have upheld their right to do so.

The many municipalities in New York that have enacted bans can celebrate. Those whose officials awaited legal assurance now can proceed to ban.

Bans protect residents’ water, air, lands, property values and health. They’re effective while legislatures that passed them maintain the same balance — but can be overturned as easily as candidates can be voted in and out. And while the Dryden ruling seems a win for local control, the victory is tenuous. The court noted that towns have only “the power the state chooses to give them” and “the State Legislature has the right [to override local bans] if it chooses to exercise it.”

The statewide [FrackBustersNY](#) and sibling grassroots group SPAN ([Sovereign People’s Action Network](#)) are working to give bans “teeth.” Formed in 2011, they drafted a law to make fracking and related industrial activities crimes in the New York State Penal Code.

They wrote “New York Public Law No. 1” because, says Linda Leeds of Ulster County, a cofounder of both groups, “regulations and bans are only as good as their enforcement. Thousands of rule violations occur in fracking states yearly, and fines *total* a few million dollars. That’s chump change for a multitrillion-dollar industry — just a cost of doing business.”

Virginia Rasmussen of Allegany County adds, “The many local bans in New York have not halted fracking-related water withdrawals, silica importation and distribution, pipelines, compressor stations, brine spreading, waste dumping in landfills or export terminals.”

“The criminalization idea was a bit ahead of its time then,” acknowledges Yates County resident Jack Ossont. “We who had been doing environmental protection work for years had figured out the system was rigged. New activists soon realized the system’s been stacked against the people in favor of corporate ‘persons’ — legal fictions.”

In 2014, “Fracking is a crime!” has become a popular refrain. “People everywhere agree it’s criminal to poison people, animals, water, air, and croplands,” says Mary Finneran of Green County. “So the idea of Public Law No. 1 isn’t really a stretch.”

The Regulatory System Is Broken

New Yorkers have been watching as Pennsylvanians are sickened, impoverished, terrorized and dying from harms of fracking and related industries. They’ve heard hollow assurances from Harrisburg and Albany.

They've discovered that national, state and local legislatures and courts are corrupted. And they've watched as the "moratorium" on fracking, as well as local bans, have done nothing to slow down industrialization.

"A tremendous fossil fuel infrastructure is being built, even as many New Yorkers have been lulled into the false hope that fracking won't hit here," says Carl Arnold of Delaware County and Brooklyn. "People are finally realizing the 'regulatory' system has permitted corporations to perpetrate a dreadful amount of poisoning — what any reasonable person would consider crimes. It's time to 'get tough on crime.' "

Frackbusters recently strengthened Public Law No. 1 and is presently working with municipalities to gain governing bodies' endorsements. They hope enough sign-ons will move Albany lawmakers to sponsor the bill in the Assembly and Senate. The first town to pass a support resolution was Woodstock, in Ulster County, last year.

"The oil and gas industry was [exempted from environmental oversight](#) in the Energy Policy Act of 2005," says Gusti Bogok of Manhattan. "People still find it hard to believe that our government failed us so badly. Once they learn more, this bill makes perfect sense."

"In desperate times," notes Mark DeNat of Greene County, "municipal leaders ignore the evidence of harm and hope it won't happen in *their* districts. But they endanger the communities they're supposed to protect."

For example, Schuyler County officials have cozied up to Crestwood Midstream, which plans to use salt caverns along Seneca Lake to store volatile gases from fracking processes. In Chemung County, legislators want to double the size of the landfill to accept more Pennsylvania frack waste, which is radioactive.

"These are the kinds of crime against a beautiful region, famed for wineries, waterfalls, rivers, lakes, and agriculture, that Public Law No. 1 will punish," says Mike Bernhard of Chenango County. "The corporate bigwigs, not their employees, are the criminals. Those convicted will pay with mandatory jail time and hefty fines for polluting water sources, for explosions, spills and other crimes. They'll receive *real* punishments, as befits those who commit crimes against *real* people."

To read Public Law No. 1 and the reasoning behind it, request a speaker and find out how your municipality can pass a resolution endorsing it, visit www.frackbustersny.org.