



FOR IMMEDIATE RELEASE

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NY ENVIRONMENTAL CONSERVATION DEP'T URGED TO MOVE FORWARD ON FRACKING

This week the Washington Legal Foundation (WLF) filed formal comments with the New York State Department of Environmental Conservation (DEC) urging it to come to a swift conclusion as to the future of hydraulic fracturing (“fracking”) in the State. In particular, if (as expected) state environmental experts determine that fracking does not pose a significant threat of environmental harm, WLF urged the DEC to rule that local jurisdictions are not permitted to veto such activity within their borders.

After a nearly five-year moratorium and the completion of several studies, the DEC has yet to make a decision regarding the operation of hydraulic fracturing in the state. The resulting uncertainty has caused permit-holders to allow their leases to expire, or to cease seeking new drilling permit approvals. Given hydraulic fracturing’s potential economic boon to the economy, WLF argued that the DEC’s determination on its proposed regulations should be expeditious, balanced, and science-driven.

WLF further advised the Department to include an express provision recognizing its regulations’ preemptive effect over local attempts to regulate. Over 100 municipalities have enacted bans or moratoria on hydraulic fracturing, resulting in litigation over whether the localities have the power to do so. If the DEC enact its proposed regulations, WLF argued, these bans and moratoria will be implicitly preempted under the principles of field and conflict preemption. To provide clarity and to avert protracted and costly litigation, WLF recommended that the DEC make that preemption explicit by categorically prohibiting all such local bans.

In its comments, WLF stated, “While home rule is an important legal principle, the legislature has the authority to preempt this delegated power. Laws enacted at the local level cannot supersede legislation appropriately made at the state level, nor undercut the legislature’s intent to deliver a uniform solution to a state-wide issue.”

WLF also emphasized the potential benefits of hydraulic fracturing, including job creation, tax revenue, and energy independence.

WLF’s comments were submitted pursuant to a public comment period on the Department’s proposed regulations. Final agency action on the proposed regulations will not occur until after the State’s Commissioner of Health completes his review of the draft environmental impact statement, which he is doing in coordination with outside experts.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending free enterprise, individual rights, and a limited and accountable government. WLF has regularly appeared as an *amicus* in state and federal courts in cases involving preemption and environmental issues.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's comments is filed on its website, www.wlf.org.