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As Gas Drilling Spreads, Towns Stand Ground Over Control

By **SABRINA TAVERNISE**

Correction Appended

SOUTH FAYETTE, Pa. — As energy companies move to drill in densely populated areas from Pennsylvania to Texas, battles are breaking out over who will have the final say in managing the shale gas boom.

The fight, which pits towns and cities against energy companies and states eager for growth, has raised a fundamental question about the role of local government: How much authority should communities have over the use of their land?

The battle is playing out in Pennsylvania as the Republican-controlled legislature considers bills that would in their current form sharply limit a community's right to control where gas companies can operate on private property. Critics say the final bill could vastly weaken local zoning powers and give industry the upper hand in exchange for a new tax, which municipalities badly need.

The legislation has struck a nerve in a state where land control has long been considered quintessentially local.

"I'm a conservative Republican, and this goes against all my principles," said Brian Coppola, the chairman of the Board of Supervisors of Robinson Township, in Washington County west of Pittsburgh. The pending legislation, he said, "is an enormous land grab on the part of the industry. He added, "Our property rights are being trampled."

Mr. Coppola noted a hillside in town that began to crack and slide under the weight of a new shale gas processing plant, which he contends was built without a permit. The town's zoning powers allowed him, through a court, to compel the company to follow town regulations and allow town inspectors access to the site. The site was eventually stabilized. Losing those powers would leave local officials out of the equation, he said, even though they are responsible for protecting the health and safety of their citizens.

"I'm an unpaid, part-time elected official, and it's been a nightmare," he said. "The state is not

capable of monitoring even the most basic parts of this industry.”

Local governments argue that drilling is an industrial activity, just like that of a gas station or a cement factory, that should be subject to zoning. Dozens of towns, cities and counties across the country have enacted rules on drilling noise, lighting and the distance from homes and, in some cases, outright bans. In New York State alone, there have been at least 70 such actions.

Companies say the rush to regulate has produced an overly burdensome set of demands that is denting their potential when the economy desperately needs a lift.

“It’s like having to get a different driver’s license in every town,” said Matt Pitzarella, a spokesman for [Range Resources](#), a Texas drilling company that is active here.

The flurry of local rules comes as the federal government inches forward on a national study of hydraulic fracturing, also known as fracking, the process used to extract previously inaccessible [natural gas](#) from shale deep underground.

The study is expected to shape the future of the industry, but progress has been slow. In the meantime, courts have become the next frontier.

In New York in September, a Denver exploration company sued Dryden, a town near Ithaca, over a drilling ban. In Colorado, Gunnison County, which contains a ski resort, is fighting a drilling company’s court challenge to its zoning. In Texas, a restrictive gas drilling ordinance adopted by an affluent suburb of Dallas called Flower Mound has drawn several lawsuits charging that it amounts to an unconstitutional seizure of mineral rights.

Jordan Yeager, a Pennsylvania lawyer who represents municipalities, said litigation brought by gas companies had a chilling effect, discouraging towns and cities from enacting regulations because they cannot afford to defend them in court.

Supporters of the Pennsylvania legislation argue that it would hold the industry to higher, more uniform environmental standards in addition to charging them fees.

“We substantially raised the bar of what we expect from natural gas operators,” said Representative Matthew Baker, a Republican who helped shape the legislation.

[Emily A. Collins](#), a professor of environmental and [oil](#) and gas law at the University of Pittsburgh, said parts of the legislation would help the environment — for example, expanding the distance in which a driller could be presumed responsible for replacing a tainted water supply.

She said the legislation seemed to anticipate litigation, calling for special judges to be added to the state Commonwealth Court, presumably to handle new flows of cases against local governments.

Companies have been ramping up shale gas drilling operations during the past decade in states like Texas and Colorado, and during the past several years in Pennsylvania, where the giant Marcellus Shale formation has set off a frenzy of activity.

The industry, however, has bumped up against affluent homeowners concerned about possible health effects and their property values. The median household income in Flower Mound, for example, is more than double the national median.

“It used to be that gas development happened ‘out there,’ ” said Gwen Lachelt, the director of the Oil and Gas Accountability Project for [Earthworks](#), a national organization based in Colorado. “Now you see it in urban areas.”

That was the case in South Fayette, a bedroom community of rolling hills and upscale developments in Allegheny County for professionals from Pittsburgh. In August, Range Resources lodged a formal complaint against a zoning ordinance that established distances that drilling pads had to be kept from buildings in residential areas, charging that it went further than state law allows. On Nov. 9, the town rejected that complaint, raising the stakes.

“I spent a lot of money and invested heavily in my home,” said Keith McDonough, a resident who is an executive at a clothing company. “I don’t want to see it go up in smoke on a fracking site.”

Mr. McDonough, who described himself as a die-hard Republican, said he was finding himself doing things he had never done before, like knocking on doors and circulating petitions.

William Sray, a farmer who has signed a lease with a gas company, argued that by delaying drilling, opponents were denying his right to fulfill his contract and collect royalties. “Everybody has property rights, but they’re not respecting mine,” he said.

Mr. Pitzarella, of Range Resources, said that only a small minority of towns in Pennsylvania’s Marcellus Shale area — about 80 of approximately 1,800 — had, or were developing, regulations and that most of them were affluent. A strong set of state standards that people agree on would protect all communities, he said.

“It’s about having predictable and enforceable regulation that works for everyone,” he said.

But local regulation of oil and gas development is very strong in Texas, Professor Collins said, and has not seemed to hamper the industry’s growth. Fort Worth, for example, issues its own permits for drilling, something that states typically do.

Mr. Coppola argued that the most immediate risk in Pennsylvania was the possibility that companies, which are not required to share infrastructure like pipelines and compressor stations, could erect multiple sets, driving away developers and affluent residents and reducing the tax base.

Mr. McDonough was hopeful. He said towns would not make the same mistake they did with the coal industry. A river in town still runs orange, even though the industry is long gone.

“We’re at a turning point,” he said. “If this is not done with common sense, we will have lost an entire way of life.”

Correction: December 14, 2011

Due to an editing error, an earlier version of this article misidentified the school at which Emily A. Collins is a professor. It is the University of Pittsburgh, not the University of Pennsylvania.