

Fight over fracking lingers in New York

USA TODAY NETWORK Jon Campbell, Gannett 5:28 p.m. EDT October 17, 2015



(Photo: File photo)

ALBANY, N.Y. — When New York Gov. Andrew Cuomo's administration first said it would ban large-scale hydraulic fracturing, it was hailed as a victory for vocal environmentalists and fracking opponents and a stunning defeat for the natural-gas industry.

Now, 10 months later, [gas companies are still weighing whether to sue \(http://on.rocne.ws/1ROzfrZ\)](http://on.rocne.ws/1ROzfrZ) ahead of a fast-approaching deadline. And fracking critics aren't taking any chances, even as some shift their focus to other states and different sectors of the energy industry.

"New York's ban has really been embraced by not only the advocacy community, but elected officials around the world — from the local, state and national level," said Julia Walsh, an organizer with New Yorkers Against Fracking and Frack Action. "If it's not safe for New York, it's not safe for 'X' country or 'X' state."

Cuomo's administration first announced Dec. 17 that it would move to ban high-volume hydrofracking, the much-debated technique using water, sand and chemicals to help access natural gas in underground shale formations. The announcement marked the beginning of the end of a nearly seven-year review process that spanned two governors and three environmental commissioners.



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[Skirting Cuomo's fracking ban, N.Y. group files proposal](http://www.usatoday.com/story/news/nation/2015/07/08/tioga-county-fracking-proposal/29890337/)

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Since then, New Yorkers Against Fracking, the coalition of like-minded groups that shadowed Cuomo at events and campaign stops across the state, has remained active, with some of its leaders traveling to other states — and even other countries — to speak about the successful push against drilling in New York.

The Park Foundation, an Ithaca-based philanthropic fund, has also continued to fund state-based anti-fracking efforts despite the ban, including a \$125,000 grant to New Yorkers Against Fracking earlier this year.

Overall, the foundation awarded more than \$700,000 in grants to fracking-related causes from January through June across the country, including to efforts in North Carolina and California. An \$80,000 grant went toward the making of the third installment of *Gasland*, the documentary series that casts fracking in an environmentally negative light and helped bring national attention to the technique.

On the other side of the oft-contentious debate, trade groups representing the natural-gas industry face a key Oct. 27 deadline to file what's known as an Article 78 claim, which is used to challenge a judgment or action by a state agency.

Should they file the document in court, it would challenge the validity of the state Department of [Environmental Conservation's "findings statement"](#) — the 43-page document that formally put the ban into place on June 29.

If they let the deadline pass, they forfeit their right to file an Article 78 claim. Separately, pro-fracking groups could also consider a lawsuit claiming damages from lost oil and gas rights, though similar efforts have been unsuccessful thus far.

So far, the industry has held its cards close, declining to say whether a lawsuit is on the way. But API New York, the deep-pocketed [American Petroleum Institute's](#) state chapter, hasn't ruled anything out, whether it's a challenge to the findings statement or some other legal avenue.

"We are considering our options," said Karen Moreau, executive director of API New York. "All options are still on the table."

The Joint Landowners Coalition of New York, a Binghamton-based organization representing landowners who had hoped to lease their gas rights to energy companies, had previously sued the Cuomo administration in an unsuccessful attempt to force a decision on fracking prior to the ban.

But unlike its previous legal effort, the coalition has not been raising funds for a possible lawsuit this time around.

"Various groups are looking at a variety of options," said Scott Kurkoski, the coalition's attorney.

Other fracking supporters are looking at ways around the ban, which only applies to fracking operations using more than 300,000 gallons of water.

Tioga Energy Partners, a limited liability company, has filed an application with the state Department of Environmental Conservation seeking approval to use a propane-based, waterless form of fracking to help access gas in the [Tioga County](#) portion of the Marcellus and [Utica shale](#) formations.

Propane-based fracking isn't covered under the state's ban. But approval of the permits is far from a foregone conclusion: The DEC could order an environmental review similar to the one that tied up high-volume, water-based fracking in New York for more than seven years before Cuomo's administration decided to ban it.

Walter Hang, an Ithaca-based organizer and owner of environmental database firm Toxics Targeting, has focused his efforts on stopping the propane-fracking applications.

The state's fracking ban, he said, should be widened to include fracking with more than 5,000 gallons of any substance, not just 300,000 gallons of water. He's urged his mailing list, which has thousands of recipients, to call Cuomo's office and nudge him on the matter.

"Shale fracking really hasn't been prohibited, and I'm not convinced that the actual prohibition has so many giant loopholes that the industry could frack any time it wants to," Hang said. "[Waterless](#) alternatives aren't included in any way, shape or form."

Campbell is a reporter for Gannett's Albany (N.Y.) bureau

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