

Groups seek NY constitutional right to clean air, water

December 29 2016, by Mary Esch

Environmental and public policy groups in New York are calling for a state constitutional amendment that would guarantee residents a right to clean air and water.

Environmental Advocates of New York and EffectiveNY are promoting the proposed amendment with online video ads Thursday featuring children from Hoosick Falls, where water wells have been contaminated by an industrial chemical.

"You shouldn't have to fight for clean water," says 15-year-old Mikayla Baker, a Hoosick Falls ninth-grader featured in one of the two videos.

The groups say a constitutional amendment would give residents more power to hold state lawmakers and regulators accountable for ensuring a healthy environment.

Six states have environmental rights provisions in their constitutions. A 1971 Environmental Rights Amendment to Pennsylvania's constitution was the basis for a state Supreme Court ruling in 2013 that said municipalities have a right to zone against shale gas development. Drilling in the underground shale has resulted in public health and environmental concerns.

In Hoosick Falls, special filters were installed on public and private wells contaminated with the industrial chemical PFOA that has been linked to cancer and other illness. Residents there have accused the administration

of Democratic Gov. Andrew Cuomo of being too slow to launch an investigation and warn people after the contamination came to light in 2014.

At a state Senate hearing in August, Health Commissioner Howard Zucker said the state followed federal guidelines in addressing the issue.

"In 2016, we saw communities in New York struggling with clean drinking water and clean air," Environmental Advocates executive director Peter Iwanowicz said. "What was missing was clear language in the state constitution giving people the right to drink water that won't make them sick and breathe air that's safe."

State regulators also drew criticism this year from community residents and environmental groups for their handling of air permits for oil terminals at the Port of Albany. As a result, the Department of Environmental Conservation in September said it will require an extensive new review of permits originally issued in 2012 that turned Albany into a major hub for crude oil rail shipments from North Dakota.

"Constitutional protection means that even if a state agency or the Legislature does the wrong thing through regulation or statute, people have the ability to use our courts to get us to do the right thing," said Democratic state Sen. Liz Krueger, a potential sponsor of the amendment when it's drafted.

Residents now have the right to bring lawsuits challenging environmental laws or regulations, but a constitutional amendment would give stronger weight to their arguments, Iwanowicz said.

"An environmental rights amendment helps preserve the environment, but how much it helps depends on how it's worded, how the courts apply it, and the way in which various government actors implement it," said

John Dernbach, a Widener University law professor who has written about Pennsylvania's constitutional amendment.

One useful purpose of an environmental rights provision is that it prevents the state from backsliding on environmental protection when new laws and regulations are adopted, Dernbach said.

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