

LEGAL UPDATES

PUBLISHED: MAY 4, 2016

Services

Energy Regulation

Environmental

Environmental &
Chemical Regulation

Colorado Supreme Court Lifts Local Fracking Bans

On May 2, 2016, the Colorado Supreme Court unanimously affirmed two lower court rulings that municipal ordinances banning or placing a moratorium on hydraulic fracturing are preempted by state law and are therefore invalid and unenforceable. The Court's rulings pave the way for hydraulic fracturing operations to resume within the city limits of Longmont and Fort Collins, Colorado and signal that similar local bans on hydraulic fracturing in Colorado will be found to be invalid and unenforceable.

State's Interest in Energy Development at Issue

In *City of Longmont v. Colo. Oil and Gas Ass'n*, the city of Longmont amended its home-rule charter to impose a ban on hydraulic fracturing, or fracking, and on the storage and disposal of hydraulic fracturing wastes within its city limits. Similarly, in *City of Fort Collins v. Colo. Oil and Gas Ass'n*, the city of Fort Collins, also a home-rule municipality, passed an ordinance that imposed a five-year moratorium on hydraulic fracturing and the storage and disposal of hydraulic fracturing wastes within its city limits. Both ordinances were challenged by the Colorado Oil and Gas Association and were struck down by lower courts as being preempted by state law.

In both cases, the Colorado Supreme Court found that the ordinances involved issues of mixed state and local concern and concluded that an operational conflict exists between the ordinances and applicable state law. In Longmont, the Court found that "Longmont's ban, if left in place, could ultimately lead to a patchwork of regulation that would inhibit the efficient development of oil and gas resources." In both cases, the Court found that the Colorado Oil and Gas Conservation Act and the Colorado Oil and Gas Conservation Commission's pervasive rules and regulations that apply to hydraulic fracturing "evinced state control over numerous aspects of fracking," such that "the state's interest in the efficient and responsible development of oil and gas

resources includes a strong interest in the uniform regulation of fracking.” As a result, the Court concluded that the ban in Longmont and the five-year moratorium in Fort Collins materially impede the effectuation of the state’s interest. The Court therefore held that both ordinances are preempted by state law and are invalid and unenforceable.

What This Means To You

The Court’s rulings, which cannot be appealed to the U.S. Supreme Court, confirms industry’s long-held position that oil and gas activity, including hydraulic fracturing, is best regulated by states and should not be subject to a patchwork of conflicting local regulations. While the immediate effect of the Court’s rulings is that hydraulic fracturing operations may resume within the city limits of Longmont and Fort Collins, the rulings also make clear that similar municipal bans or moratoriums on hydraulic fracturing in Colorado would likely be found to be preempted by state law and therefore invalid and unenforceable.

However, the question of local regulation of hydraulic fracturing may come up again in Colorado later this year. Environmental groups are currently gathering signatures to place several initiatives on the November 2016 ballot that target hydraulic fracturing. One proposed ballot initiative would amend the Colorado Constitution to provide that local laws targeting hydraulic fracturing will not be preempted by state law.

Contact Us

For additional information on Colorado state energy regulation, contact an environmental attorney focused on the hydrocarbon industry and member of Husch Blackwell’s Energy & Natural Resources team.