LOCAL REGULATION OF OIL AND GAS: THE BATTLE CONTINUES

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Regulation of Oil and Gas Activities

• Traditionally, states have been primary regulators of oil and gas activities in U.S.
• Growing trend for local governments to impose restrictions on oil and gas activities within their borders
• Tension between states and local governments over who has authority to regulate oil and gas operations in the state
Local Regulation of Oil and Gas Activities

• In many areas of the U.S., local governments have passed ordinances that directly and indirectly impact drilling and production operations

• Local ordinances commonly regulate:
  • **Where** oil and gas activities may take place; and
  • **How** they may be conducted
Local Regulation of Oil and Gas Activities

• Common restrictions:
  • Zoning/Siting
  • Setbacks
  • Noise
  • Odors
  • Air emissions
  • Visual impacts
  • Water use and disposal
  • Traffic/Road use
Local Bans on Hydraulic Fracturing

• Some municipalities have gone further and adopted measures to ban hydraulic fracturing altogether on a temporary or permanent basis

• More than 170 municipalities in at least 12 states have imposed permanent or temporary bans on hydraulic fracturing and other oil and gas activities
STATE PREEMPTION OF LOCAL AUTHORITY
Extent of Local Authority

• Local governments are created by and derive their power from the state
• Only have as much authority as the state has given them, either through its constitution or statutes
• Most oil and gas producing states have constitutional provisions granting municipalities the authority to adopt ordinances regarding issues of local concern (commonly referred to as “home rule” authority)
State Preemption of Local Authority

• Local government authority traditionally includes zoning, land use and police power
• When a local ordinance intrudes into an area already regulated by the state, the ordinance may be preempted and thus becomes invalid
• State laws can preempt local authority in 3 ways: express preemption, conflict preemption, or field preemption
RECENT DEVELOPMENTS
Recent Developments – Texas

- On July 16, 2014, the City Council of the City of Denton, Texas rejected a proposed ordinance that would have banned hydraulic fracturing within the city limits.
- Pursuant to its City Charter, the proposed ordinance was submitted to voters in a citywide election.
- On November 4, 2015, the citizens of the City of Denton voted to ban hydraulic fracturing within the city limits.
Recent Developments – Texas

• Lawsuits filed by Texas Oil & Gas Association and Texas General Land Office challenging Denton’s authority to impose ban on hydraulic fracturing

• Lawsuits also filed against the City of Denton by mineral interest owners alleging takings without compensation or due process of law
Recent Developments – Texas

• On May 18, 2015, Governor Abbott signed House Bill 40 into law, which expressly preempts regulation of oil and gas operations by municipalities within its boundaries or extraterritorial jurisdiction

• Allows a municipality to enact an ordinance that regulates only surface activity that is incident to an oil and gas operation if it is commercially reasonable, does not effectively prohibit oil and gas operation and is not otherwise preempted
Recent Developments – Oklahoma

• Oklahoma recently joined Texas by signing into law a bill that restricts local regulation of oil and gas activities
• Prevents a municipality, county or other political subdivision from prohibiting or banning any oil and gas operations, including hydraulic fracturing
• Allows reasonable ordinances concerning road use, traffic, noise and odors and establishment of reasonable setbacks and fencing requirements
Recent Developments – Ohio

• In 2011, Beck Energy Corporation obtained a permit from the Ohio Department of Natural Resources for the purpose of drilling an oil and gas well on property within the corporate limits of the City of Munroe Falls

• City attempted to stop Beck Energy from drilling based on its own municipal ordinances

• City issued a stop-work order and filed a complaint in Summit County Court
Recent Developments – Ohio

- City won at the trial court; reversed on appeal
- On February 17, 2015, the Ohio Supreme Court ruled that the city’s ordinances were preempted by Ohio’s oil and gas law
- Court held that the Ohio Constitution “does not allow a municipality to discriminate against, unfairly impede, or obstruct oil and gas activities and production operations that the state has permitted”
Recent Developments – New York

• In 2011, the Town of Dryden passed a zoning ordinance that prohibited “all activities related to the exploration for, and the production or storage of, natural gas and petroleum”

• In 2011, the Town of Middlefield adopted a zoning ordinance prohibiting “oil, gas and solution mining and drilling” within its boundaries
Recent Developments – New York

• On June 30, 2014, the New York State Court of Appeals upheld the zoning ordinances, rejecting claims that the state’s Oil Gas and Solution Mining Law preempts local bans on hydraulic fracturing.

• Municipalities in New York can effectively “zone out” oil and gas operation by passing zoning ordinances that ban oil and gas production activities within municipal boundaries.
Recent Developments – New Mexico

• On April 29, 2013, the Mora County Board of County Commissioners voted 2-1 to ban the extraction of oil, natural gas, or other hydrocarbons within Mora County.
• On January 20, 2015, a U.S. District Judge overturned the ban, finding that the ordinance blatantly contradicted the U.S. Constitution and Supreme Court precedent in violation of the Supremacy Clause and was preempted by state and federal law.
Recent Developments – California

• In April 2014, the City of Compton adopted an ordinance making it unlawful to use hydraulic fracturing, acidizing or any other well stimulation treatment in any well drilled within and outside the City’s jurisdictional boundaries.

• Western States Petroleum Association filed a lawsuit challenging the ban in July 2014.

• On September 23, 2014, Compton withdrew the ordinance.
Recent Developments – Colorado

- In local elections, five Colorado cities approved ballot measures that would ban hydraulic fracturing (Boulder, Broomfield, Fort Collins, Lafayette and Longmont)
- Lawsuits filed challenging the bans in Broomfield, Fort Collins, Lafayette and Longmont
- Colorado district courts have struck down the bans in Longmont, Fort Collins and Lafayette on grounds that they are preempted by the Colorado Oil and Gas Conservation Act
Recent Developments – Colorado

- In September 2014, Governor Hickenlooper established the Task Force on State and Local Regulation of Oil and Gas Operations
- On February 24, 2015, the Task Force presented its recommendations to the Governor for improving oil and gas development in the state
Conclusion

• Local governments have become increasingly active in regulating oil and gas activities within their boundaries
• In turn, states are seeking ways to preserve a unified regulatory framework and prevent an inconsistent patchwork of municipal ordinances across the state
• Ultimately, the extent of local authority will be decided by the courts
• Until then, the battle over local control continues
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