

# PUBLICATION

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## Colorado's New Flood Impact Rules and the Effect on State or Local Control of the Oil and Gas Industry

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March 04, 2015

**On Monday, March 2, 2015, the Colorado Oil and Gas Conservation Commission (COGCC) adopted new rules to limit the impact of spills in flood-prone areas of Colorado, like the ones that occurred in the Front Range and eastern plains in 2013. The new rules require that all new wells utilize technology allowing them to be shut down remotely in cases of restricted access, require new and existing tanks and equipment to be anchored securely, and require barriers to prevent damage to the well site by flood debris.**

Underlying the rules' adoption is the ongoing debate of whether state or local governments should regulate the oil and gas industry. On September 8, 2014, Colorado Governor John Hickenlooper, whose state sits squarely at the center of this debate, established an Oil and Gas Task Force to address this issue. Less than a week ago the task force gave its initial report to Governor Hickenlooper, in which it declined to give local governments power over well siting decisions and instead limited municipalities to an increased ability to comment on state decisions on oil and gas facility locations.

The task force's report, followed by the new rules, provides the latest in a series of setbacks to proponents of local regulation of the oil and gas industry. Instead, the rules provide additional support for state regulation under the idea that a city **"does not have the authority to prohibit what the state authorizes and permits."** As cases regarding state or local control of fracking progress through the Colorado appellate courts, it will be interesting to see what impact, if any, these recent rules by the COGCC and the establishment of the Governor's task force will have on subsequent opinions.