



Challenge to Colorado Air Quality Rules Dismissed

Weld County Lacks Standing to Challenge New Oil and Gas Air Rules

On February 24, 2022, a division of the Colorado Court of Appeals upheld a district court's dismissal of a challenge to regulations issued by the Colorado Air Quality Control Commission ("Commission") which address oil and gas operations. In *Bd. of Cnty. Comm'rs v. Ryan*, the appellate court addressed whether Weld County had standing to seek judicial review of the air quality rules. See *opinion* [here](#).

The subject rules, which focused on volatile organic compounds associated with oil and gas operations, had been issued by the Commission in compliance with the Colorado legislature's dictates contained in Senate Bill 19-181. That 2019 legislation directed the Commission to issue new rules to minimize emissions of air pollutants and to consider revisions to existing rules. The rules imposed new requirements including (1) more frequent leak detection and repair (LDAR) inspections at well production facilities and natural gas compressor stations and (2) additional emission controls for storage tanks.

Weld County, which is Colorado's largest oil and gas producing county, participated as a party to the rulemaking. The county had provided expert testimony during the rulemaking that as many as 35% of the oil and gas wells in the county could potentially be shut down due to the cost of complying with the proposed LDAR and tank control rules. As grounds for the appeal, the county alleged that the Commission allowed a local community group to submit a late-amended proposal regarding the LDAR rules without granting other parties the opportunity to properly respond. In addition, the county alleged that the Commission failed to comply with section 25-7-105(16), C.R.S. 2021, by not prioritizing the county's concerns regarding how the proposed revisions would impact its economy and land use powers. The county also sought declaratory relief regarding the applicability of section 25-7-

105(16) to the rulemaking.

The Court examined several Colorado Supreme Court and Court of Appeals' opinions that Weld county argued conferred standing on the county, but ultimately concluded:

[W]e apply the rule from *Martin v. District Court*, 191 Colo. 107, 109, 550 P.2d 864, 866 (1976), Because (1) the County is subordinate to the Commission in the context of air quality control and (2) the legislature has not granted the County an express statutory right to seek judicial review of the Commission's rulemaking, the County does not have standing to challenge the rulemaking under *Martin*. Accordingly, we affirm the district court's order granting the joint motion of the defendants . . . to dismiss the County's complaint for lack of jurisdiction.

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