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#97037
NO.
STATE OF NEBRASKA
OFFICIAL
JUL 3 1997
DEPT. OF JUSTICE

DATE: July 2, 1997

SUBJECT: Does Federal Law Regulating Interstate Natural Gas and Gasoline Pipelines Preempt State Electrical Inspection Requirements of Pipeline Company Property Located in the State of Nebraska?

REQUESTED BY: Terry Carlson, Executive Director
Nebraska State Electrical Board

WRITTEN BY: Don Stenberg, Attorney General
Timothy J. Texel, Assistant Attorney General

You have requested the opinion of this office regarding whether federal preemption applies and prevents inspections of natural gas and/or gasoline pipeline property by Nebraska electrical inspectors to ensure compliance with Nebraska's State Electrical Act, Neb. Rev. Stat. §§ 81-2101 to 81-2145 (1994 and Cum. Supp. 1995), when the natural gas and/or gasoline pipeline companies' pipelines, property, buildings, and electrical equipment are located in Nebraska. In the opinion request, you explained that the Board's concern stems from a situation where one of the Board's electrical inspectors stopped electrical work being performed on a pipeline company's compressor station project located in Nebraska. The electrical contractor had not obtained a wiring permit for temporary electrical service for construction activities, as required by Neb. Rev. Stat. § 81-2124 (1994). The electrical contractor has since applied for inspection, but the situation may arise again.

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Commission's rule was prohibited by the Supremacy Clause of the United States Constitution and held the rule was preempted.

In *Northern Border Pipeline Co. v. Jackson County*, 512 F.Supp. 1261 (D.Minn. 1981), a county enacted an ordinance requiring a pipeline company to bury its pipelines at a minimum depth of six feet. The court pointed out that the NGPSA provided the Department of Transportation with the authority to adopt safety standards for pipelines, which the Department did. The Department of Transportation set the minimum cover for pipelines at three feet. The county's condition was therefore more stringent than the federal standard. The court stated that "the provisions and legislative history of the Natural Gas Pipeline Safety Act indicate quite clearly that federal legislation has preempted the entire field of gas pipeline safety." *Id.* at 1264. As with the other decisions, the court cited to and emphasized the importance of the language in the NGPSA at § 1672(a)(1). The court also stated that Congress intended the federal standards to provide for uniformity of regulations for companies with pipelines traversing a number of states. The county's ordinance was held to be preempted by the NGPSA, and the court permanently enjoined its enforcement.

Similarly, an ordinance regulating the construction, installation, and operation of gas or liquid petroleum pipelines through a Louisiana parish was held to be preempted by the NGPSA. *United Gas Pipeline Co. v. Terrebonne Parish Police Jury*, 319 F.Supp. 1138 (E.D. La. 1970), *aff'd per curiam* 445 F.2d. 301 (5th Cir. 1971). The ordinance established requirements for specifications, reports, permits, insurance, fees, and penalties for non-compliance concerning interstate pipelines. Among other provisions, the ordinance mandated that the pipeline company give written notification of pipeline inspections to the police jury. The district court, citing to § 1672(a) of the NGPSA, found that Congress specifically prohibited the states from regulating construction and installation of interstate pipelines, even if the ordinances were identical to federal codes. *Id.* at 1141.

The pipeline involved in your example transports natural gas or gasoline across state lines. It is our understanding from your opinion request and our conversations with your office, that the Board's concerns are limited to state inspections of these interstate pipeline facilities. We point out that different standards may apply when intrastate pipelines are involved. See 49 U.S.C. §§ 60104(c) and 60105; *United Steelworkers, Local 12431 v. Skinner*, 768 F.Supp. 30 (D.R.I. 1991). We also note that state agencies may be allowed to conduct inspections of interstate pipeline facilities for compliance with federal standards, but only when acting as the federal government's agent. See 49 U.S.C. §§ 60106 and 60107(a)(2). However, all enforcement actions are retained at the federal level.

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Based on the federal statutes, regulations, and case law cited above, it is our opinion that 49 U.S.C. §§ 60101 to 60125, and in particular § 60104(c), demonstrates Congress' intent to completely control the regulation of the safety of interstate gas and hazardous liquid pipelines and preempts state electrical inspection requirements which would otherwise apply to those pipeline facilities located in Nebraska.

Sincerely,


DON STENBERG
Attorney General



Timothy J. Texel
Assistant Attorney General

08-16-14.op

Approved:


Attorney General

