

September 26, 1974

Mr. Phillip V. Chabot
City Hall
126 Daniel Street
Portsmouth, NH 03801

Dear Mr. Chabot:

This refers to your letter of July 8, 1974, in which you ask the views of this office regarding the enactment of local laws to control the operation of pipelines subject to 49 CFR Part 195.

First, you ask our position on local ordinances of an environmental nature. Except to the extent 49 CFR Part 195 is designed to prevent discharges from pipelines, the safety standards included therein are not for environmental protection purposes. Thus local requirements of an environmental nature would most likely regulate subjects not covered by the requirements of Part 195. So long as those local requirements would not unduly burden interstate commerce, conflict with Federal laws or regulations, or be preempted by Federal environmental or other statutes, we see no problem with their enactment. The issue of whether certain New York regulations are preempted by the Transportation of Explosives Act (18 USC B31 et seq.) under which Part 195 is issued or conflict with Part 195 is currently before the United States District Court for the Southern District of New York in 73 Div. 3177. This suit is between the Arco Pipe Line Company and the Public Service Commission of New York, among other litigants.

Secondly, you ask our opinion on establishment of a local program to ensure compliance by carriers with the Federal standards in Part 195. The role that State and local governments may play in enforcing compliance with the Federal safety standards in Part 195 is unclear. The Transportation of Explosives Act does not provide for State enforcement measures as does the Natural Gas Pipeline Safety Act of 1968 respecting gas pipeline operators. If it is decided there is no Federal preemption of the safety regulations of interstate liquid carriers, then a State or local government could enact requirements identical to Part 195 and enforce them as State law. With respect to gas pipeline safety, this office has established a policy of permitting State agencies to serve as Federal agents for law enforcement purposes. A similar program has not been developed in the liquid pipeline area.

Finally, you ask our views on local adoption of the Federal standards coupled with additional requirements for environmental purposes. As previously stated, the validity of local adoption

and enforcement of Federal standards depends on how the question of Federal presumption is decided. As for adoption of additional requirements of an environmental nature, those would probably be all right if they do not conflict with applicable Federal safety or environmental requirements. In this regard, a local requirement which is more stringent with respect to a subject regulated by Part 195 is probably of doubtful validity.

We trust this discussion is helpful to you.

Sincerely,

Joseph C. Caldwell
Director,
Office of Pipeline Safety