EXHIBIT-15

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Lovelace et al., v United States

Final Decision of Deerfield's Board of Health

TOWN OF DEERFIELD

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BOARD OF HEALTH'S DECISION ON THE KINDER MORGAN PROPOSED PIPELINE

This matter has come before the Deerfield, Massachusetts Board of Health at the request of citizens of Deerfield that the Board hold hearings in order to determine whether the "fracked" gas pipeline Kinder Morgan Corporation proposes to build in Deerfield presents unreasonable risk to the health and lives of the citizens of Deerfield. For the reasons set forth below, the Board of Health of Deerfield does indeed find that the proposed pipeline presents an unreasonable risk to the health and lives of the residents of Deerfield and ORDERS Kinder Morgan or any of its subsidiaries or affiliated companies to immediately cease from carrying on activities in Deerfield associated with said pipeline.

I. Background

Kinder Morgan is a Texas Corporation with headquarters in Houston, Texas and offices in Holyoke, Massachusetts. On or about February of 2014 Kinder Morgan announced that it planned to build a pipeline carrying natural gas produced by hydraulic fracturing—fracking—to transit the Town of Deerfield, Massachusetts.

On August 20, 2014 the Deerfield Board of Selectmen held a public hearing, at the request of Deerfield residents, to hear testimony about the concern many residents had over anticipated impacts of the proposed pipeline. In response, the Board of Selectmen issued a non-binding resolution in opposition to the installation of the pipeline on Deerfield's land.

Residents of the Town of Deerfield requested the Board of Health of Deerfield ("BOH") on the same date, August 20, 2014, to hold hearings and determine, under the provisions of M.G.L. Ch. 111 §§s. 31 and 143, whether or not

construction and operation of the proposed pipeline presents an unreasonable risk to the health and lives of residents of the Town of Deerfield. The Board of Health agreed to conduct the requested hearings and set a hearing date for September 9, 2014.

That same evening of August 20, 2014 BOH send an e-mail to the local representative of Kinder Morgan, notifying Kinder Morgan of the forthcoming hearing. (Ex.-1 at pg. 6). This e-mail communication was followed by a Certified Letter addressed to the General Counsel of Kinder Morgan on August 26, 2014 giving notice of the scheduled hearing. (Ex.-1 at pgs. 1-3). Joseph Listengart, General Counsel of Kinder Morgan, received the Certified Letter communication on September 3, 2014 (Ex.-1 at pg. 5). Kinder Morgan notified the BOH via telephone at approximately 12:30 PM on the day scheduled for the hearing, September 9, 2014, that Kinder Morgan would not be attending the hearing (Certified Transcript ["CT"] at pg.4).

The BOH went forward with the scheduled public hearing on September 9, 2014 as planned, at the auditorium of the Frontier Regional School in Deerfield. At this hearing the BOH introduced twelve exhibits into the hearing record (CT at pgs. 9-25). Exhibits 1-12 were introduced by the BOH for the truth of the matters asserted therein and without objection from Kinder Morgan. *Id.*

Kinder Morgan was notified that the hearing had taken place in spite of their default absence and that BOH had granted Kinder Morgan fifteen days, ending on September 24, 2014, to comment on all matters and Exhibits presented at the hearing (CT at pg.5 and Ex.-13). Kinder Morgan defaulted failing to respond to the BOH request by the deadline set of September 24, 2014 at 4:00 PM (CT at pg. 24).

On September 24, 2014 Kinder Morgan wrote to the BOH, in a letter delivered on September 26, 2014, two days past the deadline, in response to BOH communications of August 26, 2014 (Ex.-1) and September 12, 2014 (Ex,-13).

In this defaulted letter, filed past the deadline set by the BOH, Kinder Morgan alleged that the Federal Energy Regulatory Commission ("FERC") "will be the government agency responsible for reviewing" the projected pipeline (Ex.-14). Kinder Morgan chose to ignore all facts introduced into the record of the BOH hearing of September 9, 2014.

II. Facts.

a. Kinder Morgan's subsidiary was convicted in California of six felony counts regarding the deaths of Javier Ramos, Israel Hernandez, Tae Chin, Victor Rodriguez and Miguel Reyes. (Ex.-2)

The Supreme Court of the United States has

> ...rejected the argument that political speech of corporations or other associations should be treated differently under the *First Amendment* simply because such associations are not "natural persons." *Citizens United v, Federal Election Commission Supreme Court of the United States 558 U.S. 310at 343; 130 S. Ct. 876 at 900; 175 L. Ed. 2d 753 at 784 (2010)(citations omitted)*

The order of the Supreme Court establishing that corporations cannot be treated differently from "natural persons", albeit in the context of the First Amendment, gives clear indication to the BOH that a corporation cannot be treated differently from "natural persons" in the context of felonies committed.

Felons have limited rights in Massachusetts, i.e., cannot participate in elections as they cannot vote while incarcerated, cannot be members of the Gaming Commission, etc.

The Deerfield BOH hereby finds that a corporation convicted of felonies resulting in the tragic deaths of five people presents an unreasonable risk to the health and lives of residents of Deerfield if such felon were to be allowed to build a massive, high pressure fracked-gas pipeline, the dangers of which will be enumerated in the sections which follow.

b. Kinder Morgan's Safety Violations and Accidents (Ex.2)

Kinder Morgan was cited by the Hazardous Materials Safety Administration for violating its regulations five times in 2011 (Ex.-2 at pg.-4).

In Texas, alone, from 2003 to 2014 Kinder Morgan experienced 36 "significant incidents" resulting in fatalities or hospitalization, fires, explosions or spills (Ex-2 pgs. 4 and 5, describing the incidents in detail with adequate references).

The Deerfield BOH hereby finds that allowing a corporation known to have acted with such willful disregard for regulations enacted to prevent injury to or death of residents and citizens to build and operate a massive high pressure "fracked" gas transportation pipeline through the town would present unreasonable risk to the health and lives of residents of Deerfield.

c. Kinder Morgan Has a Record of Bribery, Pollution, Fraud, Scams, Thefts, Deaths, Felonies, Environmental Disasters, Labor Violations, Unsafe Working Conditions, and Influence Buying. (Ex.-4 at pgs. 7-11).

Kinder Morgan's operations in Portland, Oregon, have been home to pollution, law-breaking, and even bribery. (Ex.-4 at pg. 7).

The Federal Bureau of Investigations determined that between 1997 and 2001 "Kinder Morgan systematically scammed some of its customers, including the Tennessee Valley Authority ('TVA'), a publicly owned provider of electricity in the mid-South" (Ex.-4 at pg.-7).

The same federal investigation found that at its Grand River Terminal in Kentucky, Kinder Morgan officials took coal from a customer's stockpiles and resold nearly 259,000 tons (Ex.-4 at pg.-7).

In another case the US Environmental Protection Agency ("EPA") fined Kinder Morgan $613,000 for violations of the Clean Air Act after "regulators discovered that the company had been illegally mixing an industrial solvent described as a 'cyclohexane mixture' into unleaded gasoline and diesel" (Ex.-4 at pg-7).

In 2010 the federal government fined Kinder Morgan $1 million for repeatedly violating the Clean Air Act. The US Department of Justice found that "among other crimes" Kinder Morgan managers lied in permit applications, stating that the company would control its pollution when all the while they knew the control equipment was not being operated or even maintained properly (Ex-4 at pg.-7).

Currently, Kinder Morgan is under investigation by the EPA for violating the federal Renewable Fuels Standard. Officials believe that Kinder Morgan purchased conventional fossil fuels while filing falsified documents certifying that the fuels came from renewable sources (Ex.-4 at pg-8).

The Deerfield BOH hereby finds that if allowed to build and operate a massive fracked gas transportation pipeline through the town, a corporation on the record as having acted with such willful disregard for regulations enacted to prevent injury to or death of residents and citizens would present unreasonable risk to the health and lives of residents of Deerfield.

d. Kinder Morgan's Pipelines Have Endangered Lives in Many Communities across the United States and Canada.

In 2007 a Kinder Morgan pipeline ruptured in Burnaby, British Columbia, forcing 50 families to evacuate their homes as oil rained down on a residential neighborhood (Ex.-4 at pg. 8).

In January of 2012 a Kinder Morgan storage facility in British Columbia spilled roughly 29,000 gallons of crude oil into the community of Abbotsford (Ex.4 at pg. 90).

In April of 2004 a long stretch of a Kinder Morgan corroded pipeline ruptured, spilling 123,000 gallons of diesel fuel into a sensitive saltwater wetland on San Francisco Bay. Kinder Morgan pled guilty on four counts relating to that spill as

well as an unrelated spill in Los Angeles Harbor (Ex.-4 at pg. 9).

In November of 2004 an oil pipeline of a Kinder Morgan subsidiary burst in the Mojave Desert, sending a jet of fuel 80 feet into the air. The break closed the nearby interstate highway and contaminated more than 10,000 tons of soil in the habitat of the federally endangered California Desert Tortoise (Ex.-4 at pg. 10).

In 2005 Kinder Morgan spilled 70,000 gallons of fuel into Oakland's inner harbor, and then 300 gallons into the Donner Lake watershed in Sierra Nevada. And in 2007 the City of San Diego sued Kinder Morgan for falsifying records of the clean-up of a fuel leak that contaminated the aquifer (Ex.-4 at pg. 10).

In May of 2011 the US Pipeline and Hazardous Materials Safety Administration announced a proposed $425,000 fine against Kinder Morgan for safety violations following a federal investigation into Kinder Morgan's having spilled 8,600 gallons of hazardous liquids in New Jersey (Ex.-4 at pg. 10).

In December of 2011 a two-year-old Kinder Morgan natural gas pipeline leaked in Ohio, spewing 127,000 cubic feet of natural gas and forcing residents to evacuate their homes (Ex.-4 at pg. 10).

The Deerfield BOH hereby finds that allowing a corporation with a known record of endangering the lives of residents across North America to build and operate a massive fracked gas transportation pipeline through the town would present unreasonable risk to the health and lives of residents of Deerfield.

e. Pipeline Transportation of Fuels is a Dangerous Operation in the United States and Worldwide.

From 2000 to 2009 there were 460 accidents on record related to pipeline discharges of fuels, whether gas or liquids, in the United States (Ex.-5 at pgs. 1 to 23). Pipeline-related incidents have brought pipeline safety to national —and presidential — attention (Ex.-6 at pgs. 1-5).

From 1994 through 2013 the United States had 745 serious incidents with gas distribution, causing 728 fatalities, 1059 injuries, and $110 million in property damage (Ex.-7 at pg.-2).

National Public Radio reported in January of 2014 that more than 6,000 leaks of gas had occurred in the District of Columbia alone (Ex.-8 at pgs. 1-4).

In Massachusetts in the last ten years it has cost consumers more than $1.5 billion for fuel leaked from pipelines (Ex.-9 at pgs. 1-4).

The Deerfield BOH hereby finds that there is a danger to the health and lives of residents of Deerfield if the BOH were to permit construction and operation of

natural gas pipeline within the town of Deerfield, particularly when the company constructing and operating the pipeline is Kinder Morgan, as per sections a to d above.

f. Kinder Morgan's Official, Mark Hamrich, Reported at a Public Meeting Held at Greenfield Community College on July 14, 2014 that Kinder Morgan Does Not Know the Composition of the Gas Resulting from Fracking to be Transported in the Proposed Pipeline.

Fracking is a process designed to extract gas from shale buried in the soil. Fracking fluid is a toxic brew consisting of multiple chemicals which may include toxic materials such as petroleum distillates, ethylene glycol, methanol, polyacrylamide and many others (Ex.-11 and Ex-12 at pgs. 1-3).

Kinder Morgan has not denied that some of these fracking chemicals might be present in the fracked gas to be transported through the pipeline.

The Deerfield BOH finds the statement by Mark Hamrich of Kinder Morgan at an open meeting disingenuous as the actual composition of the gas in the pipeline can be established at any time by simple gas and/or liquid chromatography analysis.

The Deerfield BOH hereby finds that the unknown composition of the gas in the pipeline does indeed present a danger to the health and lives of residents of Deerfield if the BOH were to permit construction and operation of natural gas pipeline within the town of Deerfield, particularly when the company constructing and operating the pipeline, Kinder Morgan, does not know the composition of the gas to be transported through the pipeline.

g. Many Residents of Deerfield Have Shallow Wells Which Might Be Contaminated by Leaks from the Proposed Pipeline, and There is No Evidence that the Proposed Pipeline Will Not Disturb the Aquifer and thus Endanger Residents of Deerfield (CT at pages 21-22).

The Deerfield BOH hereby finds that given possible contamination of the fracked gas with fracking chemicals from possible corrosion and leaks from the pipeline that installation of the massive pipeline through Deerfield will indeed endanger the health and lives of the residents of Deerfield by contaminating drinking water drawn from the shallow wells of many Deerfield residents.

III. The Board of Health of Deerfield Has Authority to Prevent the Construction and Operation of the Proposed Pipeline Within the Confines of the Town of Deerfield.

a. The Board of Health of Deerfield Has Authority under M.G.L. Ch. 111 §§s. 31 and 143 to Conduct Hearings and Determine Whether or Not the Proposed Kinder Morgan Pipeline Presents an Unreasonable Danger to the Health and Lives of the Residents of Deerfield.

Kinder Morgan, in a belated letter arriving at the offices two days after the close of comments on the subject matter of the hearings (Ex.-14), implies that any resolution by the BOH in this matter is inconsistent with the Federal Constitution and Federal statutes, and thus that it is invalid under the *supremacy clause of the United States Constitution*, Art. VI, cl. 2.

This argument has been dealt adequately by the Supreme Court of Massachusetts in *Arthur D. Little v. Commissioner of Health of Cambridge 395 Mass. 535; 481 N.E.2d 441; 1985 Mass. LEXIS 1720(1985).*

The Supreme Court considered the argument in light of two principles which are traditionally the basis of preemption analysis.

First, "[p]reemption . . . is not favored, and State laws should be upheld unless a conflict with Federal law is clear." *Attorney Gen. v. Travelers Ins. Co., 385 Mass. 598, 602 (1982) (Travelers I)*, vacated, *463 U.S. 1221 (1983)*, reaffirmed, *391 Mass. 730 (1984)*, aff'd sub nom. *Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724 (1985)*. See *Commonwealth v. McHugh, 326 Mass. 249, 265-266 (1950)*; *Exxon Corp. v. Governor of Md., 437 U.S. 117, 132 (1978)*. State law is not preempted merely by reference to some vaguely defined Federal policy, or on the ground that Congress has enacted a statute which is tangentially relevant to the subject at issue. Instead, the plaintiff here is obligated to show preemption "with hard evidence of conflict . . . on the basis of the record evidence in this case." *Grocery Mfrs. of Am., Inc. v. Department of Pub. Health, 379 Mass. 70, 81-82 (1979)*, quoting *Kargman v. Sullivan, 552 F.2d 2, 6 (1st Cir. 1977)*. Generally speaking, "a finding of no preemption is regarded as preferable because Congress can overrule it by appropriate legislation, while a finding of preemption cannot be changed by the states." *Agency Rent-A-Car, Inc. v. Connolly, 686 F.2d 1029, 1038 (1st Cir. 1982)*. See *Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n, 461 U.S. 190, 216 (1983)*.

Secondly, the Court argued that the Supreme Judicial Court of the Commonwealth and the United States Supreme Court have been particularly reluctant to overturn State laws which are "deeply rooted in local feeling and responsibility." *Travelers I, supra at 611*, quoting *San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236, 243-244 (1959). Massachusetts Elec. Co. v. Massachusetts Comm'n Against Discrimination, 375 Mass. 160, 174 (1978)*. This principle applies with special force to laws designed to protect the public health and welfare, a subject of "particular, immediate, and perpetual concern" to any municipality *6 E. McQuillin, Municipal Corporations § 24.01 (3d ed. rev. 1980)*. In fact, according to an early decision of the Massachusetts Supreme Judicial Court, *Vandine, petitioner*, 6 Pick. 187, 191

(1828), " [t]he great object of the city is to preserve the health of the inhabitants." Accordingly, municipal health and safety regulations, such as that at issue here, carry a heavy presumption of validity and are only rarely preempted by Federal law. *Travelers I, supra at 612.* See *Malone v. White Motor Corp., 435 U.S. 497, 513 n.13 (1978).* "The States traditionally have had great latitude under their police powers to legislate as 'to the protection of the lives, limbs, health, comfort, and quiet of all persons.'" *Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 756 (1985),* quoting *Slaughter-House Cases, 16 Wall. (83 U.S.) 36, 62 (1873). Huron Portland Cement Co. v. Detroit, 362 U.S. 440, 442-443 (1960).*

b. The Federal Energy Regulatory Commission Cannot Prevent the BOH of Deerfield from Issuing Regulations Safeguarding the Health and Lives of the Residents of Deerfield.

The law created by Congress designed to regulate pipeline transportation of natural gas in the Unites States is the Natural Gas Act, *15 USCS §§ 717* et seq. The Federal Energy Regulatory Commission is the agency created by Congress to enforce the Natural Gas Act.

> The purpose of The Natural Gas Act is to protect consumers against exploitation. ... The Natural Gas Act was intended to provide, through exercise of national power over interstate commerce, agency for regulating wholesale distribution to public service companies of natural gas moving interstate, which United States Supreme Court has declared to be interstate commerce not subject to certain types of state regulation. ... Congress, in drafting Natural Gas Act, was not only expressing its conviction that public interest requires protection of consumers from excessive prices for natural gas, but was also manifesting its concern for legitimate interests of natural gas companies in whose financial stability gas-consuming public has vital stake. ... Purpose of Congress in enacting Natural Gas Act was to create comprehensive and effective regulatory scheme, and to underwrite just and reasonable rates to consumers of natural gas. ... Primary aim of Natural Gas Act is to protect consumers against exploitation at hands of natural gas companies; to that end, Congress created comprehensive and effective regulatory scheme. ... Purposes of Natural Gas Act are to protect consumers against exploitation at hands of natural gas companies, to underwrite just and reasonable rates to consumers of natural gas, and to afford consumers complete, permanent, and effective bond of protection from excessive rates and charges. ... Primary aim of Natural Gas Act is protection of consumers against exploitation at hands of natural gas companies, and congressional intent is to give

> Federal Power Commission [now FERC] jurisdiction over rates of all wholesale sales of natural gas in interstate commerce. ... Natural Gas Act is intended to create, through exercise of national power over interstate commerce, agency for regulating wholesale distribution to public service companies of natural gas moving interstate, and is, for this purpose, expected to balance investor and consumer interests; Federal Power Commission's [now FERC's] responsibilities include protection of future, as well as present, consumer interests. ... Fundamental purpose of Natural Gas Act is to assure adequate and reliable supply of gas at reasonable prices. ... Basic purpose of Natural Gas Act is protection of public interest. ... Purpose of Natural Gas Act is to underwrite just and reasonable rates to consumers of natural gas. ... Protection of interest of consumers in adequate supply of gas at reasonable rates is overall purpose of Natural Gas Act. ... Purposes of Natural Gas Act, including that of protecting consumers from prices which are forced above just and reasonable level by market power of natural gas suppliers, impose limits on Federal Power Commission's [now FERC's] broad discretion to devise methods of natural gas regulation capable of equitably reconciling diverse and conflicting interests. ... Purpose of regulation under Natural Gas Act is to provide reliable and adequate supply of gas for interstate market at lowest reasonable cost; Federal Power Commission [now FERC] must regulate, through application of Act, in such manner as to encourage exploration, development, and dedication of natural gas to interstate market. ... It is not purpose or intent of Natural Gas Act to interfere with intrastate transportation, sale, or use of natural gas, and Act was not designed to limit state authority to prevent waste in its natural gas resources. [(Natural Gas Act *15 USCS § 717* Section III (A) (2)] (Citations Omitted).

c. Safeguarding the Health and Lives of Residents of Towns in Massachusetts by Boards of Health Is Not a Preempted Activity by The Natural Gas Act.

These are the State Activities preempted by the Natural Gas Act according to the Statute and Court decisions, (Court Citations Omitted):

> Natural Gas Act preempts regulatory powers over transportation and sale of natural gas in interstate commerce. ... Congress meant by Natural Gas Act to create comprehensive and effective regulatory scheme,

complementary in its operation to those of states and in no manner usurping their authority. ... Natural Gas Act does not envisage federal regulation of entire natural gas field to limit of constitutional power, but contemplates exercise of federal power as specified in Act, particularly in that interstate segment which states are powerless to regulate because of commerce clause of Federal Constitution. ... Congress, in enacting Natural Gas Act, did not intend to cut down state regulatory power, but rather to supplement it by closing gap between federal and state powers created by prior decisions of United States Supreme Court. ... Congress, in enacting Natural Gas Act did not give Federal Power Commission [now FERC] comprehensive powers over every incident of gas production, transportation, and sale; rather, Congress invested Commission with authority over certain aspects of this field, leaving residue for state regulation; however, from fact that Congress intended to impose comprehensive regulatory system on transportation, production, and sale of gas, it follows that as to problem which is not, by its very nature, one with which state regulatory commissions can be expected to deal, Congress desired regulation by federal authority rather than no regulation. ... Interstate sales of gas are not to be determined by case-by-case analysis of impact of state regulation upon national interest. ... Congress meant by Natural Gas Act to create comprehensive and effective regulatory scheme of dual state and federal authority, and, from this fact, it follows that as to problem which is not, by its very nature, one with which state regulatory commissions can be expected to deal, Congress desired regulation by federal authority rather than no regulation; when dispute arises over whether given transaction is within scope of federal or state regulatory authority, problem should not be approached negatively, thus raising possibility that "no man's land" will be created; in borderline case where congressional authority is not explicit, crucial question is whether state authority can practicably regulate given area, and, if it cannot, federal authority governs. ... Congressionally designed interplay between state and federal regulation under Natural Gas Act does not permit states to attempt to regulate purchasing decisions of interstate pipelines in mere guise of regulating natural gas production. ... Congress, in enacting Natural Gas Act (*15 USCS §§ 717* et seq.), did not envisage federal regulation of entire natural gas field to limit of federal constitutional power; rather, Act is designed to supplement state power

and to produce harmonious and comprehensive regulation of industry, and neither state nor federal regulatory body is to encroach upon jurisdiction of other. ... In passing Natural Gas Act, Congress took care not to intrude unnecessarily upon state prerogatives; Congress did not intend Federal Power Commission [now FERC] to act as local forum on matters over which it had no regulatory jurisdiction. ... Federal regulatory control is proper during period from time that Federal Power Commission [now FERC] has made determination that federal jurisdiction exists until conclusive upholding of such finding by last available court, and state authorities have no right to regulate unfettered merely because courts have not conclusively reviewed Commission's finding of jurisdiction. ... In borderline cases under Natural Gas Act (*15 USCS §§ 717* et seq.) involving respective ambits of state and federal regulatory authority, courts ask whether it is within capability of states to regulate in accordance with purposes of Act, and if it is not, courts can preserve efficacy of Act only by determining that federal authority prevails. ... Under Natural Gas Act, regulation of interstate transportation and sale for resale of natural gas is committed exclusively to jurisdiction of Federal Power Commission [now FERC], and jurisdiction over such transactions cannot be asserted by state agency. Courts have subject matter jurisdiction under *28 USCS § 1331* in action in which companies sought declaration that zoning amendment providing for absolute prohibitions and limitations on siting of liquefied natural gas facilities was preempted by Natural Gas Act, and also sought injunction barring enforcement of amendment because complaint sought both declaratory and injunctive relief on grounds of preemption. ... If Natural Gas Act, *15 USCS §§ 717* et seq., grants jurisdiction to Federal Energy Regulatory Commission over matter, its jurisdiction is exclusive. ... Gas producers do not have "natural" monopoly power; that is, the industry does not possess the inherent technical characteristics that prevent its efficient and economical operation unless operated as a monopoly. Therefore, the theory that a regulatory agency is necessary to represent consumers when they bargain on rates with a natural monopolist like a utility no longer applies to gas production; FERC has a fundamentally different regulatory obligation, a narrower authority to administer the NGPA and to prescribe higher price ceilings only in certain circumstances. ... Regulation of natural gas companies engaged solely in interstate commerce and sale for resale has been preempted

by federal government. ... Natural Gas Act was so framed and enacted as to complement and in no manner usurp state regulatory authority. ... Where natural gas company was not engaged in exclusively interstate operations, state control was not precluded by Natural Gas Act. *Natural Gas Act 15 USCS §717Section III (B)(6)* (Citations Omitted).

The Natural Gas Act is primarily concerned with safeguarding consumer financial protection from predatory practices of corporations involved in natural gas transportation. Thus it specifically preempts certain activities. ... Order of state regulatory agency requiring interstate natural gas pipeline company to take gas ratably, in proportion to shares of various well owners and operators, from common gas pool and to purchase gas under nondiscriminatory conditions is pre-empted by comprehensive scheme of federal regulation. ... When applied to "natural gas companies" within meaning of Natural Gas Act (NGA) (*15 USCS §§ 717* et seq.), state statute under which state's public service commission regulates issuance of securities by public utilities transporting natural gas in interstate commerce is pre-empted by NGA as regulation of natural gas companies' rates and facilities. ... Interstate natural gas pipelines operate within field--reserved under Natural Gas Act (*15 USCS §§ 717* et seq.) for federal regulation--of buying gas in one state and transporting it for resale in another, so inevitably states are preempted from directly regulating such pipelines in such way as to affect pipelines' cost structures. ... Needs of metropolitan area for adequate and efficient supply of natural gas outweighed state's plan for community development, and therefore regional development commission's action in refusing to issue permit for construction of natural gas plant was arbitrary and unwarranted imposition on interstate commerce in conflict with Natural Gas Act. ... Oklahoma statute providing that pipeline company, on request, shall furnish gas to one whose premises are crossed by its pipeline frustrates full effectiveness of Natural Gas Act because it frustrates exercise of power which Congress has delegated to Federal Power Commission [now FERC]; state statute violates supremacy clause and is without effect. ... Natural Gas Act (*15 USCS §§ 717-717w*) pre-empts state public utilities securities regulation law which requires public utilities, including natural gas companies as defined under *15 USCS § 717a(6)*, operating in state to obtain approval of state's

public service commission before issuing long-term securities. ... District Court properly determined that Oklahoma's ratable take statute and implementing regulation, requiring interstate pipeline company to purchase natural gas from all producers of natural gas reservoir or field, was pre-empted by federal regulatory scheme established by Natural Gas Act (*15 USCS §§ 717* et seq.) and Natural Gas Policy Act (*15 USCS §§ 3301* et seq. ... Under Natural Gas Act (*15 USCS §§ 717* et seq.) Congress had implicitly preempted state regulation of interstate pipeline company's direct transportation of natural gas from wellhead in Oklahoma to ultimate consumer in Michigan. ... As applied to interstate pipeline construction, New York State regulatory scheme governing construction of natural gas transmission lines was preempted by Natural Gas Act (*15 USCS §§ 717* et seq.), since Congress intended to vest exclusive jurisdiction to regulate pipelines in FERC, and Congress had occupied field of regulation regarding interstate gas transmission facilities. ... Oklahoma statute directly regulating interstate pipeline companies in their purchase of natural gas by rendering them liable to all royalty owners in entire drilling and spacing unit regardless of whether they had complied with their obligations to parties with whom they had contracted was preempted by Natural Gas Act (*15 USCS §§ 717* et seq.) as amended by Natural Gas Policy Act (*15 USCS §§ 3301* et seq.) insofar as state statute applied to interstate pipelines engaged in purchase of natural gas. ... In case involving natural gas pipeline regulation, Iowa provisions regulated in federally occupied field because (1) Federal Energy Regulatory Commission (FERC) considered environmental concerns and specifically addressed issues of soil preservation and land restoration, which were very areas that board members wished to regulate, (2) there was substantial potential for collision between Iowa provisions and FERC plan in that Iowa regulations imposed additional requirements in number of areas, (3) imminent possibility of collision between Iowa provisions and federal regulatory scheme affected ability of FERC to achieve uniformity of regulation, which was objective of NGA, (4) it was undeniable that Congress delegated authority to FERC to regulate wide range of environmental issues relating to pipeline facilities, and (5) because FERC had authority to consider environmental issues, states could not engage in concurrent site-specific environmental review; thus, Iowa's regulations were preempted by Natural Gas Act (NGA), *15 USCS §§ 717* et

seq., and trial court did not err in granting summary judgment to gas companies granting permanent injunction in companies' favor. ... Rhode Island's Coastal Resource Management Program's Category B Assent (licensing) process required by 04-000-010 R.I. Code R. §§ 100.1(A), (D), 300.1, clearly conflicted with exclusive authority of Federal Energy Regulatory Commission (FERC), which it had exercised in instant case, to license siting, construction, expansion, or operation of liquefied terminals under *15 USCS § 717b(e)(1)*; by finding dredging activities were part of construction and operation of terminal facility, FERC interpreted dredging at issue to be within its jurisdiction, and thus, assent process utilized by Rhode Island clearly collided with FERC's delegated authority and was preempted. ... Where natural gas company could have raised question whether Natural Gas Act (*15 USCS §§ 717* et seq.) preempted state franchise law before FERC at same time that company was raising question in state court, Court of Appeals would not require FERC to reopen proceedings at late date in order to permit introduction of preemption question. ... On review--under §§ 1 and 5 of Natural Gas Act (*15 USCS §§ 717, 717d*)--of FERC Order No. 636, which comprehensively restructured natural gas industry through mandatory unbundling of sales and transportation services, court would uphold (1) FERC's jurisdiction to regulate re-sale of interstate-transportation rights in general, as well as specifically its jurisdiction over local distribution companies (LDCs) who broker capacity to local end-users and over municipal LDCs, (2) uphold FERC's decision that state authorized "buy/sell arrangements" are pre-empted by FERC's capacity-release program, and (3) uphold FERC's decision to exclude Part 157 shippers. ... Where established course of business of gas distributing company is predominantly interstate, mere fact that some gas is sold and delivered in state of its origin affords that state no superior power to regulate or control transaction. ... State constitutional provision and statute which gives state users first priority at obtaining new natural gas that may be found in state is invalid as being violation of Supremacy Clause of United States Constitution since these state provisions clearly frustrate Congressional intent to provide adequate and reasonably priced supply of natural gas for entire nation with equal access to both intrastate and interstate markets. ... Oklahoma ratable take provision in natural gas statute and regulation is unconstitutional where state attempted to prevent discrimination in favor of any one common source

of supply as against another by allowing state to skew free market for gas, because federal law and policy to allow price to be determined by free flow of commerce among states preempts state regulation. ... Federal Energy Regulatory Commission's granting of certificate of public convenience and necessity for bypass transportation of natural gas preempts regulatory power of state public service commission, where bypass will allow direct transportation of gas from Oklahoma facilities to Michigan steel plant, because *15 USCS § 717(b)* applies to this approved interstate transportation of gas, which is neither "other sale" nor "local distribution" within meaning of residual regulatory authority of states. ... In interstate natural gas pipeline companies' suit against state utilities board members, state laws relating to pipelines and land restoration, Iowa Code ch. 479A and 199 Iowa Admin. Code chs. 9 and 12, were preempted. ... Amendment to county zoning regulation, which provided for absolute prohibitions and limitations on siting of liquefied natural gas (LNG) facilities, was preempted under Supremacy Clause of U.S. Const. art. VI by Natural Gas Act (NGA) because *15 USCS § 717b(e)(1)* provided Federal Energy Regulatory Commission (FERC) with exclusive authority over siting of LNG terminals; NGA governed virtually every step of LNG facility's siting, construction, and operation; zoning amendment conflicted with NGA by impeding upon FERC's jurisdiction; and, although *15 USCS § 717b-1(b)* required FERC to consult with state agencies on matters of local concern and *15 USCS § 717b(d)* reserved to states their delegated authority under certain environmental statutes, Congress intentionally structured NGA to give states no decision-making authority. ... Requiring plaintiff natural gas company to obtain permit under Connecticut's Structures, Dredging and Fill Act, *Conn. Gen. Stat. § 22a-359* et seq., for pre-construction, construction, and operation of its federally authorized gas pipeline conflicted with Federal Energy Regulatory Commission's certifying project, and permit requirement was therefore preempted by Natural Gas Act. ... Because Natural Gas Act, *15 USCS §§ 717* et seq., and Federal Energy regulatory Commission's regulations promulgated thereunder govern virtually every facet of liquefied natural gas facility's siting, construction, and operation, Congress has occupied entire field of natural gas regulation and thereby preempted state assent processes. ... Natural Gas Act (NGA), *15 USCS §§ 717* et seq., delineates specific areas of federal regulatory authority; section 1(b) of

> Natural Gas Act (NGA), *15 USCS §§ 717* et seq., gives Federal Energy Regulatory Commission plenary jurisdiction over three areas, and three areas only: (1) transportation of natural gas in interstate commerce, (2) sale in interstate commerce of natural gas for resale, and (3) natural-gas companies engaged in such transportation or sale. … State commerce commission is without authority to regulate issuance of securities issued by natural gas pipeline companies to finance construction and acquisition of facilities subject to jurisdiction of Federal Power Commission [now FERC]. *Natural Gas Act 15 USCS §717Section III (B)(7).* (Citations Omitted).

IV. Conclusion

The Deerfield BOH finds that the proposed hydraulic fracturing—fracking—pipeline will endanger the health and lives of the residents of Deerfield, and hereby bans the construction and operation of such pipeline within the boundaries of the Town of Deerfield. The Board of Health of Deerfield has the authority to ban construction and operation of the proposed pipeline and the Federal Energy Regulatory Commission does not have the legal authority to preempt the decision of the Board of Health.

ORDER.

For all the reasons stated in this opinion the Board of Health of Deerfield orders Kinder Morgan or any of its subsidiaries or affiliated companies to cease immediately all its activities in Deerfield related to construction of the proposed hydraulic fracturing pipeline within the boundaries of the town of Deerfield, Massachusetts.

So ORDERED.

Carolyn Shores Ness
Chair, Deerfield Board of Health

Mark E. Gilmore
Member, Deerfield Board of Health

David W. Wolfram
Member, Deerfield Board of Health