

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

14.

SUPERIOR COURT  
CIVIL ACTION  
NO. 84-1529

ARTHUR D. LITTLE, INC.

VS.

MELVIN H. CHALFEN,  
As he is Commissioner of Health  
and Hospitals in the City of Cambridge

MEMORANDUM OF DECISION  
ON SEVERED ISSUE

This action was filed March 16, 1984, seeking a declaration that a regulation originally issued by the defendant on March 13, 1984, be declared null and void and of no force and effect, alternatively that it be declared invalid as applied to plaintiff, and order that it be set aside. A temporary restraining order restraining enforcement of the regulation was entered the same day, and on May 2, 1984, made a preliminary injunction to the same effect.

The case was called for trial September 24, 1984, and a stipulation of facts dated that day was submitted.

The Court suggested that the supremacy-preemption question might be determinative and encouraged counsel to agree on further facts to focus on that issue. Counsel, consequently, filed a supplemental stipulation incorporating, by reference, plaintiff's contract with the Department of Defense numbered DAAKII-82-C-0065 dated June 28, 1982, a DOD

inspection report dated March 22, 1984. The original stipulation was marked Exhibit 1. There was also submitted, and marked Exhibit 2, the report of TRC Environmental Consultants, Inc. to the City of Cambridge, dated June 5, 1984, and, as Exhibit 3, the scientific advisory committee report to the city manager dated September, 1984. The parties stipulated to the Court considering the TRC report, Exhibit 2, and such parts of the SAC report, Exhibit 3, as not inconsistent therewith. In particular, plaintiffs did not accept pages 11 through 13 of Exhibit 3, and agreed that the record was sufficient to decide the supremacy issue but reserved the right, if the Court reached the question of the reasonableness of the defendant's decision, to produce additional testimony from its employees. The supplementary stipulation provides that pending a final determination by the Court for the permanent relief requested by the plaintiff, the defendant "shall not cause to be enforced the challenged regulation and order originally issued March 13, 1984, and reissued on September 18, 1984." The preemption-supremacy issue was severed from other issues.

Both counsel requested time for further briefs on the severed issue, which were filed in late October. The point was argued on November 21, 1984.

#### FACTS

The facts are as set forth in the stipulation, supplemental stipulation, attachments and exhibits.

They may be summarized as follows:

The contract to plaintiff, at Acorn Park, near Route 2, Cambridge, is for research and development services entitled "Studies On High Sensitivity Detection of Chemical Agents In Water". It requires plaintiff to expend 1810 hours of labor of chemists and administrative support, and to use its best efforts to find methods of increasing the sensitivity of the chemical agent detection tests contained in the Water Testing Kit chemical agents XM272. This kit was standardized many years ago and does not meet modern water potability standards as set forth in army technical bulletins. Specific concentrations with a reliability of 92.5% were required. The work was to be done on nerve agents, mustard agents, lewisite, and cyanide. The contract was to be performed within twenty-one months after the date of the award. The contract was signed 6/23/82 by plaintiff and 6/28/82 by the United States Contracting Officer.

Section H - "Special Provisions" provided for security, change or modification of contract terms, incorporation by reference of several defense acquisition regulations, schedule of government furnished property, including the chemical agents to be worked on, extensive safety provisions and standards (including limitations on the length and width of researchers' sideburns), hazard information for the agents to be worked on, facilities employed, minimum insurance, and order of precedence. Attached to the contract are "physical and internal security standards for safeguarding chemical surety material

with detailed requirements as to the construction of buildings within which the work was to be done and the handling of the chemicals, including a requirement that "the most secure facilities available be used for the use of the storage of the chemicals." This section also specifies clearance requirements for personnel.

Section H (11) provides "it shall be the contractor's responsibility to have adequate plans and resources for the safeguarding of, the detoxification of, and decontamination of, the CSM [chemical surety material] furnished by the government for use under the contract should any of these steps become necessary as a result of occurrence of fires, explosions or other emergencies. The contractor shall have adequate resources for this and shall not rely on outside agencies such as local fire departments for such capability."

Most importantly, Section H (12) of the contract provides "the contractor should conform to all Federal, State and local laws and ordinances which apply to operations with toxic materials at the location of his facility."

In 1983 plaintiff constructed a laboratory at its Acorn Park facility in Cambridge known as the Levins laboratory. In that year, pursuant to the contract, it started testing three nerve agents and two blister agents, Soman-Gd, Sarin-Gb-Vx, Mustard-Hd and Lewisite.

On March 13, 1984, the defendant Commissioner, pursuant to G.L. c. 111, §§31 and 143, issued a regulation which prohibits "the testing, storage, transportation and disposal" of the five specified chemical agents and created a scientific advisory committee (the "SAC").

On March 26 the SAC was appointed, held eighteen meetings, and adopted its final report on September 12, 1984. Exhibit 3.

On March 27 the city engaged TRC to prepare a risk assessment report.

On or about September 18, 1984, defendant issued a regulation identical to that of March 13 except that the provisions relating to SAC were omitted.

DOD's inspectors visited and inspected the plaintiff's facility most recently on September 7, 1984. In its letter of March 22, 1984, to the Director of Procurement at the Aberdeen Proving Ground it reported a shipment of CSM had been made to plaintiff on October 29, 1983, after visits by the safety office. It was the opinion of the author that plaintiff's "facility meets the highest standards for safety and security and that the staff is eminently qualified to work with and store hazardous chemicals such as CSM."

The TRC report, Exhibit 2, is dated June 5, 1984, and considers the effect of release of the agents into the air by a spill, explosion, fire, or intentional release, in a plume, cloud or puff, or droplets, and the effect on persons

potentially exposed as curious onlookers drawn to the scene, motorists or pedestrians along Route 2, those in the parking lots of neighboring businesses, and in playing fields across Route 2. The report contained the opinion that a release could produce a lethal dose to a maximum of 10-30 adults over about a 23-foot square area off plaintiff's property, Exhibit 2, page 3. The calculations were based on statements by plaintiff that they would voluntarily limit quantities worked on to 100ml and that DOD would not ship materials to them in quantities greater than 1 liter.

Incorporated in Exhibit 2 is an affidavit of Brian L. Murphy, Senior Consultant of TRC, based on preliminary estimates and review of calculations. He concluded that accidental or intentional release is very unlikely but not impossible.

The SAC report, Exhibit 3, in its summary of findings, page 2, found that the chemicals were highly toxic, release is unlikely but not impossible, members of the general public might be located within range of lethal levels, the benefits of research with these chemicals do not justify lethal risks to the general public, that testing of these chemicals within Cambridge is inappropriate, the risks are unacceptable, and no regulatory mechanism exists to insure prior public notification and safe management.

The committee at page 17 recommended that defendant adopt regulations requiring a report to defendant of the proposed

use, at least three months prior, of a list of toxic chemicals, page 17, evaluation by defendant, page 18, and rejection if defendant is of the opinion that the use presents an unacceptable hazard to public health or safety, for reasons including a worst case accidental release of lethal doses into inhabited areas.

The membership of the SAC committee included a doctor in chemistry, a doctor in physical chemistry, a doctor in physics, a scientist, an industrial hygienist, a doctor of micro-biology and molecular genetics, a doctor of biochemistry and pharmacology, a medical doctor, a doctor of urban and environmental policy and other qualified citizens, Exhibit 3, Appendix A.

#### DISCUSSION

Federal law is accorded supremacy over conflicting state and local laws by Article VI, clause 2 of the United States Constitution. Furthermore, under the Supremacy Clause, Congress may prospectively preempt all state and local regulation in a given area if there is clear evidence of a Congressional intent to occupy that field of regulation. Silkwood v. Kerr McGee Corp., 52 U.S.L.W. 4043, 4046 (U.S. January 11, 1984); Florida Lime & Avacado Growers, Inc. v. Paul, 373 U.S. 132, 141 (1963).

The preemption analysis under the Supremacy Clause has grown sharper and more complex in recent years, and now proceeds under a two-step inquiry. First, "[i]f Congress evidences an intent to occupy a given field, any state law

falling within that field is preempted." Silkwood, 52 U.S.L.W. at 4046. Second, even if there is no Congressional intent to entirely displace state regulation, state law will nevertheless be preempted in situations (1) where "it actually conflicts with federal law, that is, when it is impossible to comply with both state and federal law, Florida Lime & Avacado Growers, Inc. v. Paul, 373 U.S. 132, 143-143 (1963)," and (2) where "the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress, Hines v. Davidowitz, 312 U.S. 52, 67 (1941)." Silkwood, 52 U.S.L.W. at 4046. As the party instituting this suit, plaintiff has the burden of proving that the Cambridge ordinance is preempted.

Applying this analysis to the instant case, it is clear that this is not a situation involving complete preemption. Although plaintiff points to Congress's and the President's exclusive constitutional authority over matters of national defense, U.S. Const. art. I, §8, and art. II, §2, this authority does not preempt the regulation at issue in the instant case.

First, the cases relied upon by plaintiff do not address the situation of state or local regulation of a private contractor engaged in work for the federal government. Instead, they address federal immunity from private suits for injunctive relief against the implementation of military decisions. See McQueary v. Laird, 449 F. 2d 608 (10th Cir.

1971) (individuals challenged storage of toxic chemicals at federal arsenal); Luftig v. McNamara, 373 F. 2d 664 (D.C. Cir. 1967) (Army private sought to enjoin Secretary of Defense from sending him to Vietnam); Concerned About Trident v. Schlesinger, 400 F. Supp. 454 (D.D.C. 1975) (private suit challenging Trident submarine weapons program). The issue in this case is whether Cambridge may prohibit testing of toxic chemicals within its boundaries, not whether it may alter federal military policy decisions. Plaintiff's attempt to avoid local regulation by invoking the doctrine of derivative sovereign immunity, under Pratt v. Hercules, Inc., 570 F. Supp. 773 (D. Utah 1982), is similarly misplaced. That doctrine applies only as a defense and relates to "immunity from unconsented suit," Keifer & Keifer v. Reconstruction Finance Corp., 306 U.S. 381, 388 (1939), and not to immunity from regulation by another sovereign.

Second, and more to the point, the chemical testing at issue here also implicates environmental and public health concerns not exclusively covered by federal regulation. In this regard, courts have recently focused more sharply on whether the particular motivation or purpose of state or local regulation is preempted by a congressional scheme. In Pacific Gas & Electric Co. v. State Energy Conservative and Development Commission, 51 U.S.L.W. 4449, 4452 (April 20, 1983), for example, the court held that while the Atomic Energy Act preempts the states from imposing additional safety

requirements on nuclear plants, a state could nevertheless make an economic decision as to whether it wishes such plants in the state at all. And in Silkwood, supra, even though the activity (production of nuclear fuel) was extensively regulated by Congress, state imposition of punitive damages on a violator of these regulations was held not to obstruct the federal scheme. The local regulation in the case at hand similarly is merely intended to address environmental and public health concerns, and is not meant to impinge on the exclusive federal control over matters of national defense.

Neither Congress nor the Department of Defense (DOD) has manifested an intent to totally preempt the states and localities from regulating hazardous substances, even in the context of military testing. Both the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et. seq., and DOD regulations, 32 C.F.R. Part 650, Subpart F, expressly allow for state and local regulation of hazardous substances.

The TSCA provides general authority for the Administrator of the Environmental Protection Agency (EPA) to insure the public health and safety by regulating toxic chemicals which pose a risk of injury to health or the environment. It does not, however, completely preclude states and localities from taking further precautions to insure the health and safety of their residents.

Section 2617, dealing with federal preemption, is explicitly designed to provide opportunities for a state or a

political subdivision of a state to issue or to continue in effect regulations which control or even prohibit the use of dangerous substances. Where the Administrator has issued regulations controlling a given substance, state and local regulations which are identical or which prohibit such substances entirely are not preempted, § 2617(a)(2)(B). In addition, states and localities may petition the Administrator to exempt from preemption regulations which are stricter than the federal ones. §2617(b). By including these explicit allowances for regulation and for total prohibition by state and local governments, Congress intended to limit some of its authority and to refrain from occupying the field entirely.<sup>1/</sup>

The Department of the Army has undertaken to regulate toxic substances according to the same scheme. 32 C.F.R. Part 650, Subpart F. The safety precautions described in 32 C.F.R. § 650.141 refer to particular programs established by the Army to regulate toxic chemicals, at AR 385-61. These programs, along with AR 385-40 and AR 385-10, deal explicitly with chemical warfare agents, but do not completely preclude localities from regulating these substances.

---

<sup>1/</sup> Congressional intent to accommodate local regulations of substances hazardous to the environment and public health can also be found in the Clean Air Act, 42 U.S.C. § 7418 (formerly § 1857f), and the Federal Water Pollution Control Act, 33 U.S.C. § 1323.

The Army has committed itself to compliance "with environmental quality policies and procedures . . . established by the applicable Federal, State, interstate or local authorities for the control of hazardous and toxic materials and substances." 32 C.F.R. § 650.124(b) (1984). The federal TSCA, and the resulting authority of state and local governments to prohibit the use of toxic chemicals, thus appear to be incorporated into the Army regulatory scheme.<sup>2/</sup>

This case, therefore, is not one which involves "a scheme of federal regulation so pervasive as to make reasonable the inference that Congress left no room to supplement it." Pacific Gas & Electric, 51 U.S.L.W. at 4452. The states and localities may regulate hazardous substances - to the extent allowed under TSCA and DOD regulations described above - pursuant to their inherent police powers. The police power is "not to be superseded by a Federal Act unless that was the clear and manifest intent of Congress," Pacific Gas & Electric, supra, at 4453.

We now proceed to the second level of the preemption inquiry: Does the Cambridge regulation either directly conflict with federal law or stand as an obstacle to the accomplishment of the full purposes of Congress? The answer to both parts of this question must be "no."

---

<sup>2/</sup> The DOD would only be exempt from compliance with the TSCA in the event the President requested a waiver and made a determination that it was necessary in the interests of national defense. 15 U.S.C. § 2621. No such waiver has been made here.

The Cambridge regulation is not in direct conflict with federal laws, DOD regulations, or the plaintiff's contract with the DOD. The clearest expression of Congressional intent to exercise authority over toxic substances management is the TSCA, described above. But there can be no conflict between state or local regulation of a given substance and the TSCA unless the EPA Administrator has issued regulations dealing with such substance. 15 U.S.C. § 2617(a). The record presented to me in this case and my own research do not show that the Administrator has issued any such regulations with regard to the five chemicals subject to the Cambridge ordinance.

Moreover, even if such regulations had been issued, the Cambridge ordinance - completely prohibiting the use, storage, transportation and disposal of the named toxic agents-is not in conflict because it can be "pigeonholed into one of the three specific exceptions provided in the third part of section 2617(a)(2)(B)," SED, Inc. v. City of Dayton, 519 F. Supp. 979, 987 (1981); 15 U.S.C. § 2617(a)(2)(B)(iii).<sup>3/</sup>

---

<sup>3/</sup> In certain emergency situations the President of the United States can suspend application of state and local regulation of toxic materials. See 15 U.S.C. § 2621, 50 U.S.C. §§ 1512(3), 1515, 33 U.S.C. § 1323(a), and 42 U.S.C. § 7418(b) (formerly § 1857f). Again, however, the record in this case discloses no such action by the President and, accordingly, no direct conflict with federal law.

The DOD regulations concerning hazardous materials also have the force of federal law, as they were promulgated by the Secretary of the Army as authorized under 10 U.S.C. § 3012(g). C. Dallas Sands, Statutes and Statutory Construction (4th ed. 1972), § 31.04.

These regulations, too, allow for local "standards. . . for the control of hazardous and toxic materials and substances." 32 C.F.R. § 650.124(b). The Cambridge ordinance thus does not directly conflict with the DOD regulations on their face. But plaintiff argues that "standards" for control of hazardous materials do not include a flat prohibition of such materials. Plaintiff has failed to cite any authorities construing the language of these regulations in this manner, and I find it more logical to consider a prohibition a standard for control, albeit extreme. Yet even were I to accept plaintiff's construction, the regulation in question compels the Army to comply with "those standards established by the applicable Federal, state, inter-state or local authority for the control of hazardous or toxic materials and substances." Id. (emphasis added). The applicable Federal authority is the TSCA which, as discussed above, expressly accommodates local prohibitions of the use of toxic substances. 15 U.S.C. § 2617(a)(2)(B)(iii).

Finally, there is no direct conflict between the Cambridge ordinance and the terms of plaintiff's contract with

the DOD.<sup>4/</sup> The contract, authorized under 10 U.S.C. §§ 2358 and 2304(a)(11), prescribes detailed safety procedures for the handling and management of the five chemical agents being worked on, to the extent of limiting the length and width of researchers' sideburns. Section H. But Section H.10.b(12) also expresses the same intent found in the DOD regulations: "the contractor shall conform to all Federal, State and local laws and ordinances which apply to operations with toxic materials at the location of his facility." The language of this section is in fact even broader than that in the corresponding regulation, requiring compliance with "all. . . laws and ordinances which apply to operations with toxic materials" (emphasis added). The prohibition here is obviously an "ordinance which applies" to such operations.

<sup>4/</sup> Although the ordinance was issued after the contract was entered into, the ordinance is not a "law impairing the obligations of contracts" as that term has been construed under the Contracts Clause, U.S. Const. art. I, § 10, cl. 1. The Contracts Clause has been held to allow state and local regulation undertaken to protect the lives, health and general welfare of their citizens, pursuant to the police power. "[T]he State . . . continues to possess authority to safeguard the vital interests of its people . . . Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order." Home Building & Loan Association v. Blaisdell, 290 U.S. 398, 434-435 (1934). See Attorney General v. Travelers Insurance Co., 385 Mass. 598, 616-617 (1982), vacated on other grounds, 103 S. Ct. 3563 (1983), on remand, 391 Mass. 730 (1984) (same result). The Cambridge ordinance is clearly a health and safety regulation controlled by this line of cases. Cases cited by plaintiff, as to the general rule regarding incorporation of new and amended laws into pre-existing contracts, are inapposite. See Mayor of Salem v. Warner Amex Cable Communications, Inc., 392 Mass. 663 (1984); Feakes v. Bozyczko, 373 Mass. 633 (1977). Finally, the instant case is distinguishable from Allied Structural Steel v. Spannaus, 438 U.S. 234 (1978). The Cambridge ordinance was passed in response to a perceived potential danger to public health and safety; public health and safety is an area which has historically been subject to regulation by the Commonwealth; and the possibility of such regulation was foreseen in the contract, section H.10.(b)(12). See Travelers Insurance, supra, at 616-617.

Plaintiff argues, however, that because of the context in which Section H.10b(12) is found - a section on safety regulations - that clause can only be understood to mean that plaintiff must comply with "reasonable" local safety regulations. But, even if "reasonableness" were to be read into Section H.10b(12), this would not affect the ordinance's validity under the Supremacy Clause. An unreasonable ordinance may be invalid for a number of reasons, but such arguments are not properly before me at this stage of the proceeding. We are limited here to the issue of federal preemption under the Supremacy Clause, and the mere fact that a local regulation is unreasonable (a severed issue) does not of itself put the regulation in conflict with federal law.

The final point to be addressed is whether the Cambridge ordinance stands as an obstacle to the accomplishment of the full purposes and objectives of Congress. Of course, any State or local regulation which differs at all from federal law presents some obstacle, as it requires an additional effort beyond that required by Congress. The inquiry under the Supremacy Clause, however, goes to whether the State or local regulation in question presents an insurmountable obstacle or serves to frustrate the very purpose behind the Congressional scheme. See Pacific Gas & Electric, supra (State can prohibit operation of nuclear power plant for economic reasons, even though Atomic Energy Act preempts State from imposing additional safety requirements); Silkwood, supra (state can

impose punitive damages on one in violation of Federal regulations regarding nuclear fuel production).

The effect of this particular local ordinance is to put a stop to plaintiff's work at its Cambridge facility. State or local regulation which actually "places a prohibition on the Federal Government" runs afoul of the Supremacy Clause. California Public Utilities Commission v. United States, 355 U.S. 534, 544 (1958); Hancock v. Train, 426 U.S. 167, 180 (1976). In Hancock v. Train, for example, a state requirement that all facilities discharging contaminants into the air obtain a state permit was held inapplicable to federal installations. A similar state permit requirement was held inapplicable to federal installations discharging water pollutants, in EPA v. California ex rel. State Water Resources Control Board, 426 U.S. 200 (1976). In each case, prohibiting the discharge of pollutants without a permit was held tantamount to prohibiting federal operation of the facility in question. Hancock v. Train, supra at 180.

This line of decisions does not control the instant case. The court found, in both Hancock v. Train, supra at 189, and EPA v. California, supra at 215-216, that there was a clear Congressional intent, expressed in both the Clean Air Act, 42 U.S.C. § 1857f, and the Federal Water Pollution Control Act, 33 U.S.C. § 1323, to require the federal facilities to meet state - set emission and effluent levels. And the narrow holdings that "federal agencies need not procure state air and water

pollution control permits . . . have now been effectively overruled by statute." United States v. Pennsylvania Environmental Hearing Board, 584 F. 2d 1273, 1280 n.22 (3d Cir. 1978). The two acts were amended so as to require federal facilities to comply with "all Federal, State, interstate, and local requirements" (emphasis added). See Pub. L. No. 95-96, Tit. I, § 116, 91 Stat. 711 (1977), codified, as amended, at 42 U.S.C. § 7418; Pub. L. No. 95-217, § 60, 91 Stat. 1597 (1977), codified, as amended, at 33 U.S.C. § 1323. Thus the prohibitions complained of in these two cases are now valid, under the same language now found in the DOD regulation at 32 C.F.R. § 650.124(b).

Furthermore, the holdings in Hancock v. Train and EPA v. California are limited to state regulation of federal installations or instrumentalities, as are the holdings in California Public Utilities Commission, supra, and Don't Tear It Down, Inc. v. Pennsylvania Avenue Development Corp., 642 F. 2d 527 (D.C. Cir. 1980), also relied on by plaintiff. The plaintiff here, which owns and works in its own facility and performs work for many clients other than the Federal Government, is clearly not a federal installation or instrumentality. Contractors with far stronger claims than ADL have been held to be private contractors. See, e.g., Powell v. United States Cartridge Co., 339 U.S. 497, 505-506 (1950). United States v. Pennsylvania Environmental Hearing Board, supra.

In this case, as in the two just cited, the Federal Government has "deliberately opted for the 'genius' of private enterprise [by contracting with ADL]. In so choosing, the Government enjoys the benefits that are derived from private operation, but by the same measure, it must also suffer any reciprocal burdens. One of those burdens is the responsibility of . . . compliance with state pollution regulations." Pennsylvania Environmental Hearing Board, supra, at 1279.

Even though prohibitions affecting federal activity do not per se stand as obstacles to the achievement of Congressional objectives, they may nonetheless violate the Supremacy Clause in certain situations. Warren County v. State of North Carolina, 528 F. Supp. 276 (1981), for example, involved a local ban on disposal of PCBs under a federal program. The court reasoned that were it "to approve this ordinance, no doubt the other ninety-nine counties in North Carolina would quickly enact identical bans. . . . The Warren County ordinance clearly stands as an obstacle to the accomplishment and execution of the full purposes and objectives under the Toxic Substances Central Act and, therefore, is void." Id. at 290.

While this decision seems contrary to the plain meaning of 15 U.S.C. § 2617(a)(2)(B), it is also factually distinguishable from the case at hand. Were all the counties in North Carolina to ban PCB disposal, the federal program would certainly have been thwarted. But the activity involved

at ADL could be carried on at a federal facility located on federal land, free of local control, pursuant to the Property Clause, U.S. Const. art. IV, § 3, cl. 2. See McQueary v. Laird, 449 F. 2d 608 (10th Cir. 1971) (storage of chemical agents at federal arsenal); Kleppe v. New Mexico, 426 U.S. 529, 542 (1976) (federal property power overrides conflicting state laws under the Supremacy Clause). The court can take judicial notice of the fact that there are federal installations of substantial size within relatively short distances of Cambridge, where this research could still take place conceivably with ADL's personnel.

To date, moreover, it appears there has been a sufficient number of states and localities willing to run the risks of testing toxic substances, so that the matter has not become one of frustrating the intent of Congress. The Cambridge ordinance was issued to address the peculiar needs of its locality, a densely populated, mixed residential and commercial area. In deciding preemption cases, courts have given deference to such local determination of local needs. "The obvious reason for according deference to local safety regulations is that the local authorities are generally in the best position to consider problems unique to their area and to tailor their rules accordingly." Compare City of New York v. Ritter Transportation, Inc., 515 F. Supp. 663, 671 (S.D.N.Y. 1981) (and cases cited therein), aff'd sub nom. National Tank Truck Carriers, Inc. v. City of New York, 667 F. 2d 270 (2d Cir.

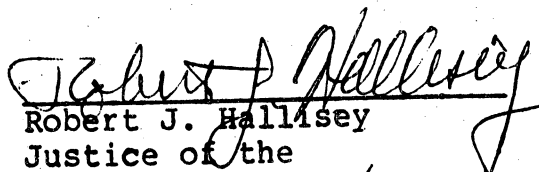
1982). The court in Ritter upheld a New York City ordinance prohibiting the transportation of toxic materials over certain routes through the city, where feasible alternative routes existed. Similarly, the DOD in this case has feasible alternatives to conducting tests of chemical warfare agents within the City of Cambridge. The Cambridge ordinance consequently does not present an obstacle to the achievement of the full purposes and objectives of Congress.

DECLARATION

In conclusion, I declare the Cambridge ordinance does not run afoul of the Supremacy Clause nor is it preempted by federal law.

ORDER

A pre-trial conference will be held in the lobby to room 226, Old Court House, Boston, on December 27, 1984, at 2:00 p.m., on remaining issues. Counsel should present offers to prove additional relevant facts, if any, beyond those in prior affidavits.

  
Robert J. Hallisey  
Justice of the  
Superior Court  
12/13/84

Entered:  
Dated: December 14, 1984

Copies →



# CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139  
Tel. 498-9011

EXECUTIVE DEPARTMENT  
ROBERT W. HEALY  
City Manager

December 17, 1984

To the Honorable, the City Council:

I transmit herewith decision issued by Judge Robert Hallisey of the Middlesex Superior Court relative to the Supremacy Clause in the Arthur D. Little Case.

Very truly yours,

Robert W. Healy  
City Manager

RWH/b

Agenda Item No. <sup>9</sup> S-793

Re: transmitting a copy of the decision  
issued by Judge Robert Hallisey Re: the  
Supremacy Clause in the Arthur D. Little  
Case.

In City Council,

December 17, 1984

12/17/84

*Ploved on file*