



Protests against the Kinder Morgan pipeline corridor are spreading across Massachusetts. The one above occurred in Greenfield.

Editor's Note: *As the line of protestors proceeds across the state in opposition to the proposed network of high-pressure natural gas pipelines conveying the fuel from the Pennsylvania fracking fields to East Coast ports for export, environmental lawyer Mary Douglas examines what rights under the law citizens, towns, and Conservation Commissions have to intervene and stop the proposed routes.*

As Kinder Morgan pitches its plans for an extension of a natural gas pipeline at town meetings throughout western Massachusetts, residents worried about environmental impacts are increasingly wondering what tools may be available to stop – or slow down – the steady march toward construction. A labyrinth of laws and regulations governs pipeline projects. Understanding the process is a crucial first step toward effecting changes in its design, or, possibly, adoption of an alternative to the project. The federal laws are:

- **The Natural Gas Act of 1938 (NGA).** The NGA governs all aspects of interstate transportation and sale of natural gas, and gives the Federal Energy Regulatory Commission (FERC) authority over all pipeline projects. After an interstate pipeline is constructed and

operational, the Department of Transportation takes over, assuming responsibility for the safety of the pipeline under the Natural Gas and Hazardous Materials Pipeline Safety Act.

- **Certificate of Public Convenience and Necessity.** FERC must issue a Certificate of Public Convenience and Necessity to pipeline applicant, Kinder Morgan, before it can proceed with its plans. Issuance of a Certificate means that FERC has concluded that the public benefits of the project outweigh any adverse impacts. It also means that FERC has considered the avoidance of unnecessary disruptions to the environment and unnecessary exercise of eminent domain.
- **Preemption.** The NGA preempts any state or local law relating to the transportation of natural gas in interstate commerce. A big exception is that when a federal law itself gives authority to the state to make a determination or issue a permit, the state action is NOT preempted, which means that when the state environmental or water quality agency issues a water quality certificate under section 401 of the Clean Water Act, it cannot be preempted by FERC.
- **Eminent Domain.** When and if Kinder Morgan is granted a Certificate of Public Convenience and Necessity, it can exercise eminent domain. Under the NGA, if a landowner fails to agree with the pipeline company on a purchase price for real property, Kinder Morgan can initiate a court process to condemn the tract in question and establish a fair value for the property to be used for the pipeline.
- **The National Environmental Policy Act (NEPA).** NEPA requires FERC to review the environmental impacts of the proposed project in either an Environmental Assessment (EA) or a more comprehensive Environmental Impact Statement (EIS) before issuing a Certificate. Both documents must include alternatives to the project and must analyze the project's impacts on geology, soils, groundwater, surface waters, wetlands, vegetation, wildlife and aquatic resources, land use, recreation, visual resources, socioeconomics (including transportation and traffic), cultural resources, air quality and noise, reliability and safety, and cumulative impacts
- **Other Federal Agencies.** FERC, as the lead federal agency, prepares the EA or EIS and, under the Energy Policy Act of 2005, must coordinate all applicable Federal authorizations, including the review of the project by other agencies, such as the Department of Transportation.