IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

WILLIAM COUSER and SUMMIT CARBON SOLUTIONS, LLC, Plaintiffs, v. STORY COUNTY, IOWA, STORY COUNTY BOARD OF SUPERVISORS, LATIFAH FAISAL, in her official capacity as a Story County Supervisor, LINDA MURKEN, in her official capacity as a Story County Supervisor, and LISA HEDDENS, in her official capacity as a Story County Supervisor, Defendants.	)	Civil No. 4:22-cv-00383-SMR-SBJ ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

On May 16, 2023, the Story County Board of Supervisors ("the Board") promulgated Story County Ordinance No. 311, repealing an earlier enactment, Story County Ordinance No. 306, that imposed setbacks and other requirements for hazardous materials pipelines. Plaintiffs William Couser and Summit Carbon Solutions, LLC (collectively, "Plaintiffs") originally filed this suit in November 2022 to enjoin the enforcement of Ordinance No. 306, asserting that it was preempted by federal and state law. They later amended their complaint after the enactment of Ordinance No. 311 claiming invalidity on the same grounds. The parties filed cross-motions for summary judgment. For the reasons discussed in detail below, Plaintiffs' Motion is GRANTED and Defendants' Motion is DENIED.

I. BACKGROUND

A. Carbon Capture Technology in Iowa

The State of Iowa's most valuable agricultural commodity is corn. A significant volume of the corn produced in the state is used for ethanol fuel production. Many byproducts are created during the production of ethanol. One of those byproducts is carbon dioxide ("CO_2"), a greenhouse gas that traps heat in the atmosphere and impacts the global temperature. Consequently, the release of large quantities of CO_2 into the atmosphere poses significant environmental concerns.

An alternative to the release of CO_2 into the atmosphere is a three-step process known as carbon capture and sequestration ("CCS"). The three steps in the CCS process entail capturing, transporting, and storing CO_2 in another location. This CCS technology uses an extensive network of pipelines to transport the captured CO_2 from its original source to its desired destination. Plaintiff Summit Carbon Solutions, LLC ("Summit") has initiated a multi-state project to develop an interstate network of pipelines to receive, transport, and deliver captured CO_2 from more than thirty facilities—primarily ethanol and fertilizer plants. The extensive network spans more than two thousand miles of underground pipelines, traveling across five Midwest states: South Dakota, North Dakota, Minnesota, Nebraska, and Iowa. In Iowa, Summit's project will lead to the construction of more than seven hundred miles of pipeline through thirty counties, including Story County.

B. Application Process with the Iowa Utilities Board

In accordance with Iowa law, Summit began the process to obtain a siting permit for a new pipeline by holding informational meetings in each of the thirty counties identified as being impacted by the project, including in Story County. After the meetings, Summit filed a Petition for a Hazardous Liquid Pipeline Permit with the Iowa Utilities Board ("IUB") on January 28, 2022.

The petition included, among other things, (a) the purpose of the proposed project; (b) a description of the proposed main line route; (c) an overview of the land uses of the areas impacted by the pipeline; (d) a consideration of alternative routes generated by software programs based on various datasets; and (e) information on present and future land use. [ECF No. 31-1 at 108–120]. Summit explained that "[a]pproximately 94% of the proposed route is in agricultural lands" and anticipated "[n]o significant impacts . . . as a result of the construction and operation of the Project and associated facilities, and the Project can be constructed and operated consistent with present and future land uses." *Id.* at 115. It also wrote how the company "performed extensive analyses utilizing Geographic Information Systems . . . to avoid or minimize features identified as moderate risk, and exclude features identified as high risk." *Id.* The permit application has also been in the subject of extensive administrative proceedings before the IUB since its submission.[1]

C. Enactment of the Story County Ordinance No. 306

While the IUB proceedings were ongoing, the Board conducted a hearing on October 18, 2022 on a proposed ordinance establishing setbacks and other requirements for hazardous materials pipelines. Specifically, this hearing concerned the enactment of Ordinance No. 306, a predecessor of Ordinance No. 311.

Before the hearing, the Story County Planning and Development Department drafted a memorandum to the Board, explaining that the Board should adopt Ordinance No. 306 to address safety concerns surrounding the recently proposed hazardous materials pipeline that would run through Story County. [ECF No. 30-3 at 21]. At the hearing, the Planning and Development

[1] The docket for the proceedings before the IUB may be found at this link: https://efs.iowa.gov/efs/ShowDocketSummary.do?docketNumber=HLP-2021-0001 (last visited November 28, 2023).

Director, Amelia Schoeneman, presented the proposed ordinance to the Board and stated it would be limited to requirements that regulate "hazardous materials pipelines that pose . . . health and safety risks."[2] After her presentation, the Board opened the hearing for public comment and then unanimously approved the proposed ordinance on first consideration. A week later, the Board conducted a second public hearing on Ordinance No. 306. The Board approved the ordinance on second consideration and waived third consideration. With this approval, Ordinance No. 306 officially amended Chapters 85 and 86 of the Story County Code of Ordinances.

In response, Summit filed this suit on November 14, 2022 against Story County (the "County"), the Board, and each Story County Supervisor in their official capacities. Summit sought to enjoin the enforcement of Ordinance No. 306 on the grounds it is preempted by federal and state law.

D. Components of the Challenged Ordinance No. 306

Ordinance No. 306 contains numerous sections that are directly challenged by Plaintiffs and are relevant to the motions for summary judgment. The Court briefly reviews each below.

i. Setback Requirements

Ordinance No. 306 establishes a complex distance and siting scheme for all new hazardous materials pipelines. This scheme first categorizes new hazardous materials pipelines based on type and use. The three categories are gas, liquid, and carbon dioxide (dense or supercritical phase). Each of the three categories is further divided into two sub-categories based on a pipeline's distance from: (1) residential developments and places of public assembly and (2) dwellings and other developments.

[2] Audio of Story Cnty. Bd. of Supervisors Meeting at 53:28 (Oct. 18, 2022). The audio may be found at this link: https://www.storycountyiowa.gov/Archive.aspx?AMID=54 (last visited November 28, 2023).

For gas pipelines, the ordinance provides a setback formula based on the size of the pipeline and its maximum operating pressure. Natural gas has its own specific inputs to determine setbacks distinct from those of other gas pipelines.

For liquid pipelines, the ordinance requires setbacks as established under 49 C.F.R. § 195.210, as follows: "[n]o pipeline may be located within 50 feet (15 meters) of any private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble, unless it is provided with at least 12 inches (305 millimeters) of cover in addition to that prescribed in 49 C.F.R. § 195.248." [ECF No. 30-3 at 18-19].

For carbon dioxide (dense or supercritical phase) pipelines, the ordinance provides a different setback formula based on a pipeline's size. The formula again varies based on location. For example, a setback from a place of public assembly, such as a school or golf course, is greater than that from other developments.

ii. Emergency Plan Option

Ordinance No. 306 also includes an option to reduce these minimum setbacks "to the point at which no occupied structure is located within a risk area." *Id*. at 16. A "risk area" is defined as "the area where a professionally accepted level of concern threshold (where the concentration or other effect of a material is immediately dangerous to life or health) may be exceeded." *Id*. This option is triggered by the submission of an emergency plan. A proposed emergency plan that complies with Ordinance No. 306 must include a copy of all emergency plans required by federal regulations; outline potential emergency events (including the operator's ability to respond to such emergency); describe in detail the immediate response procedures; lay out a notification process to local authorities (including identifying potential concerns for the local authorities); attach computer models that predict the chemical reactions and risks to potential emergencies; outline an

evacuation plan for affected areas; and describe a consultation process with applicable cities to discuss the relationship of the proposed pipeline routes to the city's future growth plans. The plan must also describe in specified detail any unique concerns that may affect local emergency responders and any specialized equipment that may be needed. The pipeline companies are required to provide drills and training to local emergency responders.

iii. Minimum Cover Requirement

Ordinance No. 306 details a minimum cover requirement for all new hazardous materials pipelines, which dictates the depth in which an underground pipeline must be buried beneath certain landmarks. If there is an applicable federal standard, the ordinance requires the pipeline operator to abide by those minimum depth of cover standards. If there are no governing federal regulation, the ordinance requires a "minimum depth of 36 inches or greater" for agricultural land. *Id.* at 20. The ordinance also includes the following catch-all provision: "[a] greater depth shall be required when determined necessary to withstand external loads anticipated from deep tillage of 18 inches, as required by Iowa Administrative Code Chapter 9.5(6), Restoration of Agricultural Lands During and After Pipeline Construction." *Id.*

iv. Critical Natural Resource Area Protections Requirement

Ordinance No. 306 establishes additional standards for new hazardous materials pipelines in ordinance-designated "Critical Natural Resource Areas." First, a hazardous materials pipeline is prohibited in such areas unless specifically permitted by ordinance. This includes the maintenance of buffer areas. Second, the pipeline operator must explain "why rerouting around a Critical Natural Resource Area is unavoidable." *Id.* Once a determination is made that rerouting is unavoidable, the pipeline operator may only build a pipeline in Critical Natural Resource Areas, including in the undisturbed buffer areas, by utilizing trenchless construction methods.

v. Rezoning Consultation Requirement[3]

The last provision under Ordinance No. 306 is an obligation on the County, not on pipeline operators. When new developments are proposed near the pipeline facilities, the County is required to consult with the pipeline operators to discuss potential risks.

E. Enactment of the Story County Ordinance No. 311

During the pendency of this litigation, the Board held a public hearing on May 9, 2023 to consider Ordinance No. 311, a new amendment that would repeal Ordinance No. 306. Schoeneman presented the newest amendment to the Board and recommended a standard one-quarter mile setback from dwellings, various residential and commercial areas, certain places of assembly, city boundaries, and urban expansion areas. Ordinance No. 311 also included a trenchless construction requirement in Critical Natural Resource Areas; the submission of an emergency response or preparedness plan to assist the County with its emergency response planning; and an authorization requirement that prohibits the commencement of construction until the applicant "obtain[s] all required federal, state, and local permits and any private easements or other land use permissions prior to commencing construction and submit[s] documentation of such authorizations." [ECF No. 30-3 at 8–9]. The new ordinance eliminated all prior standards for hazardous *materials* pipelines and only established new requirements for hazardous *liquid* pipelines.

The avowed purpose of the proposed regulation also changed. By admission of the parties, the primary purpose of Ordinance No. 306 was to address the safety concerns of hazardous materials pipelines. [ECF No. 34 at 26]. Seven months later, the Board entertained a new

[3] Summit argues the Rezoning Consultation Requirement is preempted by state law. [ECF No. 30-1 at 17 n.6]. It is unclear, however, how an obligation *on the County* affects the IUB's permit process or Summit's ability to construct an IUB-approved pipeline.

amendment with an entirely different interest for regulating hazardous liquid pipelines. In recommending the approval of Ordinance No. 311, Schoeneman now claimed a general interest in regulating hazardous liquid pipelines consistent with "how Story County has developed historically."[4] Schoeneman reiterated this sentiment at the next hearing before the Board:

> I just want to clarify one point on the ordinance . . . that it is about orderly development of land. It doesn't have to do with safety. We're looking at historic patterns of development here, . . . coordinating with our cities and how they're going to grow in the future, preserving the County's rural character, and [ensuring there is] adequate spacing [for] uses that . . . could interfere with each other.[5]

On May 16, 2023, the Board convened for a second public hearing. At the close of the hearing, the Board waived third consideration to approve Ordinance No. 311.

F. Components of the Challenged Ordinance No. 311

Ordinance No. 311 contains numerous sections that are directly challenged by Plaintiffs and are relevant to the motions for summary judgment. The Court briefly reviews each below.

i. Preamble

The newly passed Ordinance No. 311 also contains a four-page preamble that describes the purported historical background and legal authority behind this amendment, and ultimately sets forth what the Board believes favors the validity of Ordinance No. 311 against federal and state preemption. The Board concludes the preamble by stating the new purpose for regulating hazardous liquid pipelines:

> [T]o adopt standards, including setbacks, for hazardous liquid pipelines consistent with (1) historic patterns of development; (2) goals of the Plan for protection of (a) the County's rural character, (b) reduction of

[4] Audio of Story Cnty. Bd. of Supervisors Meeting at 1:23:17 (May 9, 2023). The audio may be found under the same link provided in footnote 2.

[5] Audio of Story Cnty. Bd. of Supervisors Meeting at 1:10:49-1:11:12 (May 16, 2023). The audio may be found under the same link provided in footnote 2.

> incompatibilities between land uses including utilities, (c) intergovernmental coordination related to future urban development, (d) appropriate siting of new development, (e) preservation of existing rural residential development, (f) communication and collaboration with partnering agencies and organizations on emergency preparedness; and (3) to achieve the intent and purpose of the Ordinance to ensure orderly growth and development and address social, economic, and environmental concerns related to conflicts between different uses of land.

[ECF No. 30-3 at 5-6]. The lengthy preamble is followed by a brief section describing the purpose of the ordinance, the proposed amendments, a repealer and severability clause, and the effective date of the ordinance.

ii. Setback Requirements

The parties' dispute largely centers on the validity of the new standards for hazardous liquid pipelines. Four new standards are challenged. The first of those standards is the setbacks.

The new setbacks eliminated the formula-based setbacks of the previous ordinance and, in its place, provided a standard one-quarter mile setback from various locations. Specifically, the new setback standards provide:

> A setback of one-quarter mile shall be required from dwellings, areas zoned A-R Agricultural Residential, R-1 Transitional Residential, R-2 Urban Residential, RMH Residential Manufactured Housing District, C-LI Commercial/Light Industrial District, HI Heavy Industrial District, retirement and nursing homes, family homes, schools, childcare homes and centers, group homes, hospitals, detention facilities, human service facilities, campgrounds, day camps, cemeteries, stables, amphitheaters, shooting ranges, golf courses, stadiums, parks, houses of worship, and auditoriums . . [and] from city boundaries and areas identified as Urban Expansion by the C2C Plan Future Land Use Map.

Id. at 8. The ordinance also states the "setback shall be measured from the pipeline to the closest point of the building or property line, depending on the identified use type." *Id.*

iii. Critical Natural Resource Area Protections Requirement

The second standard is a trenchless construction methods requirement in areas designated as Critical Natural Resource Areas under ordinance. This provision under Ordinance No. 311 restricts the construction of a hazardous liquid pipeline in Critical Natural Resource Areas in the same manner as Ordinance No. 306. The new ordinance similarly requires a pipeline company may only utilize trenchless construction methods to install its pipeline in such areas, including in its buffer areas.

iv. Emergency Plan Requirement

The third standard is a narrower version of the previous ordinance's emergency planning requirement. Under this narrower version, a pipeline operator proposing to construct a hazardous liquid pipeline within Story County must submit a copy of an emergency response or preparedness plan "to assist with the County's emergency response planning." *Id.* at 9. "The plan may be a preliminary or draft version of an emergency response plan that would meet the requirements of the federal Pipeline and Hazardous Materials Safety Administration." *Id.* Importantly, the "County will [then] determine whether the information in the plan is sufficient for the County to plan its own emergency response and may request additional information." *Id.*

v. Authorization Requirement

The fourth and last standard is an authorization requirement. It imposes a strict prohibition against commencing construction until "all required federal, state, and local permits and any private easements or other land use permissions" are obtained. *Id.* A pipeline operator must also "submit documentation of such authorizations with the permit application." *Id.*

II. PROCEDURAL HISTORY

The original complaint alleged that Ordinance No. 306 is preempted by the Pipeline Safety Act ("PSA"), a federal law regulating many aspects of pipeline safety, and Iowa Code § 479B, which provides the IUB with authority to issue permits approving the construction of pipelines.

After the Board passed Ordinance No. 311, which repealed many of the provisions in Ordinance No. 306, Plaintiffs filed an Amended Complaint alleging that the new ordinance was also preempted. The Amended Complaint takes the position that both ordinances are invalid because they are preempted by federal and state law.

On August 21, 2023, both parties filed a Motion for Summary Judgment. Plaintiffs ask the Court to prohibit the County: "(1) from enforcing Ordinance No. 311 or its predecessor (Ordinance No. 306); (2) from implementing other ordinances on the permitting, construction, or development of Summit's pipeline project; and (3) from implementing any ordinance (or comparable regulation) that regulates any safety, permitting, or siting aspect of Summit's pipeline project." [ECF No. 30 at 2].

On the other hand, Defendants request that the Court to find: "(A) Plaintiffs' challenges to Ordinance No. 306 are moot; (B) the County's hazardous liquid pipeline ordinance is not preempted by state law, and (C) the County's hazardous liquid pipeline ordinance is not preempted by federal law." [ECF No. 31 at 2].

On October 27, 2023, Defendants filed a supplementary briefing informing the Court that Summit is working closely with counties in South Dakota to ensure it complies with their local ordinances, and they suggest that Summit could similarly work with counties in Iowa, including Story County. Defendants argue Summit's conduct in South Dakota shows "it is not impossible

for Summit to likewise comply with Iowa Code chapter 479B *and* the County's ordinance" and thus no conflict preemption exists. [ECF No. 46 at 2].

In their supplement, Defendants also include two additional updates: (1) Summit's recent changes to its pipeline routes in North Dakota and South Dakota outside of the landowner easement process, which they argue undercuts Summit's earlier contention that it cannot do the same in Iowa, and (2) Pipeline and Hazardous Materials Safety Administration ("PHMSA") recently issued a letter to Summit, which Defendants argue supports a different, more collaborative, understanding of the roles of the different levels of government in addressing safety concerns associated with hazardous liquid pipelines. Plaintiffs respond that Summit's conduct in other states is irrelevant to the legal issues before the Court and that the content of the PHMSA letter was fully briefed in prior filings, as the federal administration's recent letter mirrors a 2014 letter that was already submitted to the Court.

For the reasons below, Plaintiffs' Motion for Summary Judgment is GRANTED and Defendants' Motion for Summary Judgment is DENIED.

III. GOVERNING LAW

A. Summary Judgment Standard

"Summary judgment is proper if the movant 'shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *United States v. Meyer,* 914 F.3d 592, 594 (8th Cir. 2019) (quoting Fed. R. Civ. P. 56(a)). "A dispute is genuine if the evidence is such that it could cause a reasonable jury to return a verdict for either party; a fact is material if its resolution affects the outcome of the case." *Amini v. City of Minneapolis*, 643 F.3d 1068, 1074 (8th Cir. 2011) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). "If the moving party has met this burden . . . the non-moving party must set forth specific

facts showing that there are genuine issues for trial." *Bankston v. Chertoff*, 460 F. Supp. 2d 1074, 1085 (D. N.D. 2006) (citation omitted). To preclude the entry of summary judgment, the nonmovant must make a sufficient showing on every essential element for which it has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). When considering a summary judgment motion, a court must view "evidence in the light most favorable to the nonmoving party and draw[] all reasonable inferences from that evidence in favor of the nonmoving party." *Cullor v. Baldwin*, 830 F.3d 830, 836 (8th Cir. 2016) (quoting *Smith v. URS Corp.*, 803 F.3d 964, 968 (8th Cir. 2015)). However, a court must reject an interpretation of events in favor of a party if it is blatantly contradicted by the record. *Wallingford v. Olson*, 592 F.3d 888, 892 (8th Cir. 2010) (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2010)). Summary judgment is most appropriate when the "issues are primarily legal rather than factual" in nature. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Shirley*, 96 F.3d 1108, 1111 (8th Cir. 1996).

B. Relationship Between Iowa Home Rule Authority and Preemption

In 1978, an amendment to the Iowa Constitution granted local authorities the power "to determine their local affairs and government." *Goodell v. Humboldt Cnty.*, 575 N.W.2d 486, 492 (Iowa 1998) (quoting Iowa Const. art. III, § 39A). This power, known as home rule authority, allows counties and local authorities to enact ordinances on matters of their choosing "unless a particular power has been denied [to] them by statute." *City of Des Moines v. Master Builders of Iowa*, 498 N.W.2d 702, 703–04 (Iowa 1993). The Iowa Legislature may preempt or deny local municipalities authority to enact measures on certain subjects in an express or an implied manner. *Goodell*, 575 N.W.2d at 492. Express preemption occurs when the Iowa Legislature has directly prohibited local action in an area. *Chelsea Theater Corp. v. City of Burlington*, 258 N.W.2d 372, 373 (Iowa 1977) (holding a law passed by the Iowa Legislature preempted local regulation of

obscene materials because the statute imposed "uniform[ity]."). Implied preemption occurs if a municipality "prohibits an act permitted by a statute, or permits an act prohibited by a statute." *City of Des Moines v. Gruen*, 457 N.W.2d 340, 342 (Iowa 1990) (citation omitted). It may occur if the Legislature has "cover[ed] a subject by statutes in such a manner as to demonstrate a legislative intention that the field is preempted by state law." *City of Council Bluffs v. Cain*, 342 N.W.2d 810, 812 (Iowa 1983).

C. Iowa Regulation of Pipelines

The Iowa Legislature has enacted a statutory scheme to govern the construction of pipelines. *See* Iowa Code § 479B *et. seq*. Under Iowa law, "[a] pipeline company shall not construct, maintain, or operate a pipeline or underground storage facility under, along, over, or across any public or private highways, grounds, waters, or streams of any kind . . . except in accordance with this chapter." *Id.* § 479B.3. To receive permission to construct a pipeline, the company must "file a verified petition with the board asking for a permit to construct, maintain, and operate a new pipeline." *Id.* § 479B.4(1).[6] The permit application must include, among other information, a "legal description of the route of the proposed pipeline and a map of the route," "[a] general description of the public or private highways, grounds, waters, streams, and private lands of any kind," "the possible use of alternative routes," and "the relationship of the proposed project to the present and future land use and zoning ordinances." *Id*. § 479B.5(3–7).

Once a petition is filed, the statute directs the IUB to "fix a date for a hearing." *Id.* § 479B.6(1). Prior to the hearing, any individual or entity "whose rights or interests may be affected by the proposed pipeline or hazardous liquid storage facilities may file written objections . . . not less than five days before the date of the hearing on the application." *Id.* § 479B.7. At the

[6] Iowa Code § 479B's usage of "the board" refers to the Iowa Utilities Board.

hearing, the board shall consider the petition, any objections, or testimony "in making its determination regarding the application." *Id.* § 479B.8. At the hearing, "[t]he board may [also] examine the proposed route of the pipeline and location of the underground storage facility." *Id.*

After a hearing, the IUB "may grant a permit in whole or in part upon terms, conditions, and restrictions as to location and route as it determines to be just and proper." *Id.* § 479B.9. A permit "shall not be granted to a pipeline company unless the board determines that the proposed services will promote the public convenience and necessity." *Id.* The applicant is responsible for "all costs of the informational meetings, hearing, and necessary preliminary investigation . . . [and] the actual unrecovered costs directly attributable to inspections conducted by the board." *Id.* § 479B.10.

D. Federal Preemption

The Supremacy Clause of the United States Constitution states that "the laws of the United States" are "the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. This means state laws that conflict with federal laws or regulations are invalid, unenforceable, and unconstitutional. *Malone v. White Motor Corp.*, 435 U.S. 497, 504 (1978). This rule applies "in several different ways." *Hillsborough Cnty. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 713 (1985). First, Congress may engage in express preemption by stating its intent to do so. *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). Second, Congress may preempt state laws "where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress 'left no room' for supplementary state regulation." *Hillsborough Cnty.*, 471 U.S. at 713 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). Third, federal law nullifies state law if they conflict. *Id.* (citing *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–43

(1963)). Fourth, implied preemption occurs when Congress "intended to oust state law in order to achieve its objective." *Kinley Corp v. Iowa Util. Bd.*, 999 F.2d 354, 358 n.3 (8th Cir. 1993). Both federal statutes and regulations can preempt state law. *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 699 (1984).

E. Federal Legislation and Regulation of Pipelines

Federal statutes and regulations govern nearly every part of the construction and operation of hazardous liquid pipelines. In 1994, Congress enacted the Pipeline Safety Act ("PSA") in an attempt to provide uniformity to the federal laws governing the construction of various types of pipelines.[7] Under the PSA, the Secretary of Transportation "shall prescribe minimum safety standards for pipeline transportation and for pipeline facilities." 49 U.S.C. § 60102(a)(2). Authority given to the Secretary of Transportation is, in turn, delegated to PHMSA. *See id.* § 108. The PHMSA promulgates regulations on "the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities." *Id.* § 60102(a)(2)(B).

The PHMSA has promulgated many pipeline regulations that are relevant to this dispute. One regulation states that "[p]ipeline right-of-way must be selected to avoid, as far as practicable, areas containing private dwellings, industrial buildings, and places of public assembly." 49 C.F.R. § 195.210(a). In addition, "[n]o pipeline may be located within 50 feet (15 meters) of any private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble, unless it is provided with at least 12 inches (305 millimeters) of cover in addition to that prescribed in § 195.248." *Id.* § 195.210(b).

[7] The statute incorporated previous statutes into its framework. 49 U.S.C. § 60102(a)(1). This means that decisions interpreting said statutes are relevant to interpreting the PSA. *Id.*

Pipeline companies must also abide by certain construction standards. These include minimum cover standards. *Id*. § 195.248 (mandating covers by pipeline location and excavation type); § 195.210(b) (near private dwellings, industrial buildings, or places of public assembly); *Id*. § 192.327 (transmission lines).

Other relevant regulations describe how pipelines must prepare for emergencies. *Id*. § 195.402(e) (requiring pipeline operators to implement emergency procedures, including "[r]eceiving, identifying, and classifying notices of events that need immediate response," "[h]aving personnel, equipment, instruments, tools, and material available as needed at the scene of an emergency," and "assisting with evacuation of residents.").

In addition to regulations, the statute provides a "[s]tate authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation." 49 U.S.C. § 60104(c). This language is understood to preclude "state decision-making in this area altogether." *Kinley Corp.*, 999 F.2d at 359. The statute "leaves no regulatory room for the state to either establish its own safety standards or supplement the federal safety standards." *Id.* (citing *ANR Pipeline Co. v. Iowa State Com. Comm'n*, 828 F.2d 465, 472 (8th Cir. 1987)). Put simply, the PSA is a sweeping exercise of express preemption. *Id.*

IV. PRELIMINARY QUESTIONS

A. Enforcement of Ordinance No. 306

Plaintiffs' Motion addresses both ordinances to avoid confusion regarding whether Ordinance No. 306 would survive the invalidation of Ordinance No. 311. Defendants respond in their Motion that Ordinance No. 306 has been "repealed and replaced" so any challenges to it are "moot." [ECF No. 34 at 11–12]. Given these representations to the Court, and Defendants' concession that the challenged provisions of Ordinance No. 306 are preempted anyway, the

Court's analysis will include both ordinances but focus primarily on Ordinance No. 311. Such analysis would apply equally to any subsequent effort to enforce Ordinance No. 306. For the sake of clarity, the Court will rely on Defendants' representations that Ordinance No. 306 do not survive regardless of any determination of the validity of Ordinance No. 311.

B. The Intent of Ordinance No. 311

Much enthusiastic debate in the summary judgment record, albeit ultimately irrelevant, was aimed at dissecting the real intent of the Board underlying the adoption of Ordinance No. 311. Plaintiffs argue that "Story County enacted both Ordinance No. 306 and Ordinance No. 311 for the very purpose of regulating pipeline safety," regardless of the purported reasons under the Ordinance No. 311 and at the Board's public hearings. [ECF No. 30-1 at 13]. Defendants disagree. Defendants acknowledge that Ordinance No. 306 imposed safety standards to regulate interstate hazardous materials pipelines, stating that "[a]t the time Ordinance No. 306 was enacted, safety was a primary consideration and the specifications reflected that focus." [ECF No. 34 at 26]. They argue instead that the two ordinances are distinct amendments with an entirely different intent behind their approval and should be examined by the Court as such. This argument, in its most credulous iteration, would ask the Court assessing the validity of the new ordinance: (1) to ignore the Board's admittedly singular focus of regulating pipeline safety when passing Ordinance No. 306 and (2) accept that the Board's new regulations under Ordinance No. 311 were adopted approximately seven months later—*in the middle of litigation*—for reasons other than regulating pipeline safety. This argument is particularly unconvincing when the "changes" comprise substantially the same components as those in the repealed ordinance: the ordinances establish

(a) distance and siting requirements, (b) certain other controls over hazardous liquid pipelines delegated to the IUB through its permitting process, and/or (c) emergency planning requirements.[8]

Ultimately, the intent of the County in passing Ordinance No. 311 is not relevant for the determination at summary judgment. The Board could pass an ordinance which is specifically intended to fall within the bounds of preemption under federal or state law but fails to do so. It could also enact an ordinance with the purest motives but ultimately conflicts with federal law or transgresses the boundaries of Iowa home rule authority. Intent of the Board is not the issue when considering whether either ordinance is preempted. For reasons set forth in this Order, the challenged components of both ordinances are expressly or impliedly preempted by federal and state law, as both Congress and the Iowa Legislature did not envision a role for local governments to impose these restrictions on pipelines.

V. STATE PREEMPTION ANALYSIS

A. Statutory Interpretation Under Iowa Law

"A trial court's determination of whether a local ordinance is preempted by state law is a matter of statutory construction." *City of Sioux City v. Jacobsma*, 862 N.W.2d 335, 339 (Iowa 2015) (quoting *City of Davenport v. Seymour*, 755 N.W.2d 533, 537 (Iowa 2008)). "In construing statutes, [the] goal is to ascertain legislative intent." *Mall Real Estate, L.L.C v. City of Hamburg*, 818 N.W.2d 190, 194 (Iowa 2012) (citation omitted). "In ascertaining legislative intent, we consider the language used in the statute, the object sought to be accomplished, and the wrong to be remedied." *Swainston v. Am. Fam. Mut. Ins. Co.*, 774 N.W.2d 478, 482 (Iowa 2009) (quoting *Mortenson v. Heritage Mut. Ins. Co.*, 590 N.W.2d 35, 39 (Iowa 1999)). "We consider all parts of

[8] The Court cautions that Defendants' proposition, if adopted by other courts, could lead to the regular use of superficial repeals and amendments by state or local governments to evade federal preemption challenges in the middle of litigation.

an enactment together and do not place undue importance on any single or isolated portion." *Id.* "In the context of state-local preemption, the silence of the legislature is not prohibitory but permissive." *Bellino Fireworks, Inc. v. City of Ankeny, Iowa*, No. 4:17-cv-212-RGE-CFB, 2017 WL 11446135, at *6 (S.D. Iowa June 29, 2017) (quoting *Seymour*, 755 N.W.2d at 543).

B. Iowa State Law Claims

Summit argues two components of Ordinance No. 306 and one component of Ordinance No. 311 are preempted by Iowa Code § 479B. For Ordinance No. 306, it contends the components pertaining to (i) distance and siting and (ii) certain other controls over hazardous liquid pipelines under the IUB permitting scheme are unenforceable because Iowa Code § 479B delegates authority over such matters to the IUB.

For Ordinance No. 311, it contends the distance and siting components are unenforceable for the same reason. Defendants argue the disputed provisions of both ordinances are not preempted because Iowa Code § 479B does not limit their ability to engage in ordinary zoning and "does not directly contradict any provision in chapter 479B or rewrite the state regulatory scheme." [ECF No. 39 at 6-8].[9] The Court finds that the challenged components under this subsection cannot be enforced because of implied preemption.

i. Distance and Siting Requirements

The first issue is whether the two ordinances' distance and siting requirements are impliedly preempted by Iowa Code § 479B. The Court finds that they are.

Both ordinances impose many limitations on the placement of pipelines. Ordinance No. 306 requires Summit to lawfully place a pipeline based on a complex distance and siting scheme

[9] Defendants' resistance to Plaintiffs' Motion addresses Ordinance No. 311 but is equally applicable to Ordinance No. 306.

that varies depending on the type and use of the pipeline and its distance from certain areas and developments. For liquid pipelines, it adopts the federal setback standards under 49 C.F.R. § 195.210. For all other pipelines, formulas are utilized with inputs based on the size of the pipeline, its maximum operating pressure, and other factors. The limitations under Ordinance No. 311 are restrictive as well. Ordinance No. 311 provides numerous situations where a one-quarter mile setback is required.[10] Both ordinances also impose severe restrictions on construction of a pipeline in areas designated as Critical Natural Resource Areas.

These restrictions significantly limit the land in Story County on which an IUB-approved pipeline may be built. The restrictions by Ordinance No. 306 on hazardous *liquid* pipelines do not eliminate all or almost all land in Story County, as these restrictions mirror the federal minimum setback standards. However, all other pipelines are restricted significantly enough to prevent their operators from completing, or even beginning, to construct a pipeline in Story County after the approval from IUB. The same problem exists with the restrictions under Ordinance No. 311.

Defendants argue that Plaintiffs have not offered any evidence proving it is impossible to build a pipeline in Story County. [ECF No. 34 at 21-22]. They state that "[t]he County consists of 572 square miles," while the "largest setback in the ordinance is one quarter mile." *Id.* at 21. Defendants' statement, however, misunderstands the nature of an interstate pipeline. An interstate pipeline is not a single structure that may be placed in one location within the 572 square miles of the County's land area. The largest setback of one-quarter mile applies to numerous areas as

[10] These includes, dwellings, areas zoned A-R Agricultural Residential, R-1 Transitional Residential, R-2 Urban Residential, RMH Residential Manufactured Housing District, C-LI Commercial/Light Industrial District, HI Heavy Industrial District, retirement and nursing homes, family homes, schools, childcare homes and centers, group homes, hospitals, detention facilities, human service facilities, campgrounds, day camps, cemeteries, stables, amphitheaters, shooting ranges, golf courses, stadiums, parks, houses of worship, auditoriums, city boundaries, and Urban Expansion Areas.

recounted by the Court above. The ordinance requires a setback from each of those areas while, at the same time, the pipeline must traverse through Story County, eventually connecting to twenty-nine counties in Iowa and many more counties in the four other Midwest states. It will create a serious possibility the IUB would approve the construction of the pipeline but Summit would be unable to build because it could not comply with the requirements of the ordinances. Put another way, the ordinances would prohibit "an act permitted by a statute." *Gruen*, 457 N.W.2d at 342. This situation is the one that preemption is designed to avoid, and the ordinances are unenforceable under implied preemption. *Seymour*, 755 N.W.2d at 538 (citation omitted).

Other portions of the statute support this interpretation. Specifically, the statute directly assigns a role to the county boards of supervisors in some provisions but not in others. A notable example requires a board of supervisors to consider certain topics, hire a professional engineer, and conduct detailed inspections for the purposes of land restoration. Iowa Code § 479B.20. This stands in sharp contrast to the location provisions of the statute, which do not mention local governments. *See id.* §§ 479B.8, 479B.9. This omission is evidence that the Legislature did not envision a role for local governments in regulating the location of pipelines. *State v. Beach*, 630 N.W.2d 598, 600 (Iowa 2001) ("the express mention of one thing implies the exclusion of other things not specifically mentioned"); *Marcus v. Young*, 538 N.W.2d 285, 289 (Iowa 1995) (same).

Defendants argue that the permit-prohibit test, as reiterated by the Iowa Supreme Court in *Goodell*, should be narrowly interpreted. Under the permit-prohibit test, implied preemption exists when a local regulation "prohibits an act permitted by a statute, or permits an act prohibited by a statute." *Goodell*, 575 N.W.2d at 493. Defendants points out a tension with the permit-prohibit test and a municipal's home rule authority under the Iowa Constitution. They claim that a municipality's home rule authority under Iowa Code § 331.301, which allows local governments

to "set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise," is utterly eroded under a strict interpretation of the permit-prohibit test. They reason that any higher or more stringent standards or requirements imposed by local governments would prohibit an act permitted by state statute. To harmonize this tension, Defendants cite to a post-*Goodell* case that included a caveat to the permit-prohibit test. In 2002, the Iowa Court of Appeals held that a city tire disposal ordinance is not preempted by state statute unless the two are irreconcilable and not merely adding further restrictions. *BeeRite Tire Disposal/Recycling, Inc. v. City of Rhodes*, 646 N.W.2d 857, 860 (Iowa Ct. App. 2002). Defendants argue the ordinances and Iowa Code § 479B are not irreconcilable and thus no implied preemption exists.

The Court disagrees. The *BeeRite* court considered the subject matter of the ordinance as an important part of its reasoning. The court stated:

> [T]he subject matter here is not livestock confinement as it was in *Goodell* . . . unlike the problem of livestock confinement waste where resulting pollutants enter air and water and thus flow freely throughout the state*, tire piles are confined to one area, and there is consequently less of an inherent need for regulations throughout the state to be uniform in order to make any one regulation enforceable*.

Id. at 861 (citations omitted) (emphasis added). Put another way, a strict interpretation of the permit-prohibit test in *Goodell* does not erode a municipality's home rule authority for certain subject matters, as there is an inherent need for uniform regulations across the state for matters such as livestock confinement (or interstate pipelines). Of course, many legal principles can inadvertently supersede related laws if interpreted too strictly. However, in this case, Defendants do not offer such an unduly restrictive interpretation of home rule authority. The ordinances contain a laundry list of distance and siting requirements—complete with setbacks of one-quarter mile—which apply throughout the County that make the siting of a pipeline essentially impossible.

The aforementioned discussion provides support that the subject matter at issue here is critical for ascertaining the breadth of home rule authority in regulating the location of pipelines. The very nature of the case necessitates a uniform distance and siting standard throughout the state. Pursuant to the above discussion, the Court concludes the distance and siting requirements of both ordinances are implicitly preempted by Iowa Code § 479B.

ii. IUB's Permitting Scheme

The next issue concerns whether the following three requirements are preempted by the IUB's permitting scheme under Iowa Code § 479B: the minimum cover requirement, trenchless construction requirement, and authorization requirement. For the reasons discussed below, these provisions are impliedly preempted by Iowa Code § 479B.

Iowa law provides that "[a] pipeline company doing business in this state shall file a verified petition with the board asking for a permit to construct, maintain, and operate a new pipeline along, over, or across the public or private highways, grounds, waters, and streams . . . in this state." Iowa Code § 479B.4(1). The petition must include information about the company filing the application, a legal description of the pipeline, locations of storage facilities, alternative routes, and potential interactions with "present and future land use and zoning ordinances." *Id.* § 479B.5. The IUB "may grant a permit in whole or in part upon terms, conditions, and restrictions as to location and route as it determines to be just and proper." *Id.* § 479B.9.

This permitting scheme also includes two components that are relevant for this discussion. First, the implementing regulations of Iowa Code § 479B requires an applicant to submit information related to the construction methods of a proposed pipeline, such as "engineering specifications covering the engineering features, materials and manner of construction of the proposed pipeline." Iowa Admin. Code 199-13.3(479B). Second, the implementing regulations

of Iowa Code § 479B also require a pipeline company to submit documentation to show it obtained all necessary permissions from the appropriate authorities to begin construction of a pipeline. Iowa Admin. Code 199-13.3(1)(e)(479B). If all necessary permissions have not been obtained, a pipeline company may alternatively submit statements ensuring they will get them. *Id.* The authorization requirement under the federal regulations is relatively flexible. Specifically, the federal regulations allow pipeline companies to "request board approval to begin construction on a segment of a pipeline *prior* to obtaining all necessary consents for construction of the entire pipeline." *Id.* (emphasis added).

The ordinances include three requirements that are relevant to this discussion. First, Ordinance No. 306 provides that a pipeline company must maintain either the federal minimum cover requirements or, if none exists and the land is in agricultural production, maintain a "minimum depth of 36 inches or greater." [ECF No. 30-3 at 20]. In addition, "[a] greater depth shall be required when determined necessary to withstand external loads anticipated from deep tillage of 18 inches," as currently required by Iowa regulations. *Id.* Second, both ordinances require only trenchless construction methods in areas designated as Critical Natural Resource Areas. *Id.* Third, Ordinance No. 311 contains an authorization requirement that prohibits construction until the pipeline company submits documentation that it has "obtain[ed] all required federal, state, and local permits and any private easements or other land use permissions prior to commencing construction." *Id.* at 9.

The Court finds that Iowa Code preempts the ordinances to the extent they interfere with the construction of an IUB-approved pipeline. First, the components pertaining to minimum cover and trenchless construction methods interfere with the IUB's authority because it requires pipeline companies to maintain the County's construction standards after the submission of a petition to

the IUB. By their own admission, Defendants envision Summit changing the route of the pipeline during or after the IUB process to comply with the ordinances. [ECF No. 34 at 9]. In fact, they argue that any rerouting due to the county's restrictions are "a standard part of the pipeline planning process." *Id.* However, this will lead to a situation where the IUB may grant a permit to construct a pipeline and Summit is unable to do so. Such a situation renders a local law irreconcilable with state law and thus unenforceable under preemption. *Goodell*, 575 N.W.2d at 500 (explaining the "well established" principle of law that "[a] local law is 'irreconcilable' with state law when the local law 'prohibits an act permitted by statute, or permits an act prohibited by a statute.'") (citations omitted).

A similar conclusion is appropriate for the County's authorization requirement. Under its permitting scheme, the IUB may allow a pipeline company to commence construction prior to obtaining "all necessary consents for construction of the entire pipeline." Iowa Admin. Code 199-13.3(1)(e)(479B). Under Ordinance No. 311, a pipeline company that obtains all necessary permissions in Story County from the appropriate authorities, if any, will be nonetheless prohibited from commencing construction until it has "obtain[ed] all required federal, state, and local permits and any private easements or other land use permissions prior to commencing construction." [ECF No. 30-3 at 9]. This will once more lead to a situation where the IUB may grant permission to Summit to begin construction of a pipeline in Story County and Summit is unable to do so. As set forth earlier, such a situation renders a local law unenforceable under preemption.

This conclusion is supported by other provisions under the implementing regulations of Iowa Code § 479B. Iowa Admin. Code 199-13.3(479B). Under these regulations, pipeline companies must seek and receive permission from numerous entities and submit this information with their application for a petition. Iowa Admin. Code 199-13.3(1)(e). They must obtain consent

from "appropriate public highway authorities, or railroad companies" who would be affected by the pipeline. Iowa Admin. Code 199-13.3(1)(e)(1). They shall list and acquire any permits required by "federal agencies" or "state agencies." Iowa Admin. Code 199-13.3(1)(e)(3)–(4). The regulations do not mention permits from local municipalities as being required for consideration for building a pipeline. Put another way, the exclusion of municipalities from these regulations suggests that they were intended to not have a role in the permitting process.

It is important to note at this juncture that the Court reaches a different conclusion for the last provision under Ordinance No. 306, which requires the County to consult with the pipeline companies when new developments are proposed within the setback areas. Specifically, the provision states that "[w]hen a rezoning, minor or major subdivision, or other permit for a place of public assembly, as defined by Table 86-11 is proposed within the required setback for new pipelines, consultation with the pipeline operator on the potential risks shall be required." [ECF No. 30-3 at 20]. Summit argues that this mandatory consultation requirement is preempted by state law because "the IUB already considers rezoning in the permit process." [ECF No. 30-1 at 17 n.6]. Specifically, the IUB considers rezoning in the permitting process by requiring a permit to include "the relationship of the proposed project to the present and future land use and zoning ordinances." Iowa Code § 479B.5(7). The issue, however, is not whether IUB considers rezoning at any point under its permitting scheme. The issue on preemption is whether the ordinance's requirements will lead to a situation where the IUB may grant a permit to construct a pipeline and Summit is unable to do so. Plaintiffs have not offered such a scenario in this case. Any failure to abide by the mandatory consultation requirement will neither impact the IUB's ability to grant a permit to construct a pipeline, nor Summit's ability to construct an IUB-approved pipeline. Therefore, the mandatory consultation requirement under Ordinance No. 306 is not preempted.

Given this discussion of Iowa law and its implementing regulations, the Court concludes the minimum cover requirement, trenchless construction methods requirement, and authorization requirement in the ordinances are preempted by Iowa Code § 479B.

VI. FEDERAL PREEMPTION ANALYSIS

The Court next considers whether other components of the ordinances are preempted by federal law. An examination of federal law supports a permanent injunction of these components.

A. Statutory Interpretation Under Federal Law

Statutory analysis begins "with the plain language of the statute." *Owner-Operator Indep. Drivers Ass'n, Inc. v. Supervalu, Inc.*, 651 F.3d 857, 862 (8th Cir. 2011) (citing *United States v. I.L.*, 651 F.3d 817, 820 (8th Cir. 2011)). The main question is "whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute." *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 450 (2002) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)). "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson*, 519 U.S. at 341. The inquiry ends if "the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.'" *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 171 (2016) (quoting *Barnhart*, 534 U.S. at 450).

B. Federal Law Preemption Claims

Summit alleges that two provisions of the ordinances are preempted by federal law. It claims that the emergency plan requirements under the ordinances, as well as the setback requirements, are unenforceable because of the PSA. As mentioned earlier, Defendants acknowledge that the provisions under Ordinance No. 306 are preempted by federal law. [ECF No. 34 at 26]. However, they argue the two provisions under Ordinance No. 311 are not preempted

by the PSA because the federal statute governs safety standards, not zoning. For the reasons discussed below, the two provisions under both ordinances are preempted by the PSA and its implementing regulations.

i. Setbacks and Emergency Plan Requirements under Ordinance No. 306

The parties agree that the two provisions under Ordinance No. 306 are preempted by federal law. [ECF No. 34 at 26]. Therefore, the Court will briefly explain its findings that the setbacks and emergency plan requirements of Ordinance No. 306 are unenforceable.

The PSA provides, "[a] [s]tate authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation." 49 U.S.C. § 60104(c). The statute delegates sole authority to enact safety provisions to the PHMSA. *Id.* § 60102(a)(2). The standards cover "the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities." *Id.* § 60102(a)(2)(B). This includes setback requirements. *See* 49 C.F.R. § 195.210(a) (stating "[p]ipeline right-of-way must be selected to avoid, as far as practicable, areas containing private dwellings, industrial buildings, and places of public assembly."); § 195.210(b) ("[n]o pipeline may be located within 50 feet (15 meters) of any private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble.").

Using this authority, the PHMSA requires pipeline operators to implement a manual describing its process for responding to "emergencies." *Id.* § 195.402. The operator must have certain materials on hand, the ability to provide an effective response to different types of emergencies, and an emergency shut-off valve. *Id.* § 195.402(e)(2)–(4). The safety procedures must include steps to control the release of materials during "an accident" and minimize "public exposure to injury." *Id.* § 195.402(e)(5)–(6).

Ordinance No. 306 requires pipeline companies to maintain setback requirements based on the type and use of the pipelines, as well as their size and/or maximum operating pressure. As plainly evident in the statute, the specifications to determine the setbacks reflect a focus on safety. This is also supported by comments made during the October 18, 2022 meeting of the Board where Schoeneman clarified that these setbacks would be limited to requirements that regulate "hazardous materials pipelines that pose . . . health and safety risks."[11]

Ordinance No. 306 also requires a pipeline company seeking to reduce the minimum setbacks to submit an emergency plan "meeting the following requirements." [ECF No. 30-3 at 16]. The emergency plan must identify potential emergency events, the company's immediate response to those emergencies, a notification process with local emergency responders, and additional information to assist local emergency response. The plan must "establish a liaison and emergency contact for the pipeline operator in case local authorities need to notify the operator of an emergency or other issue." *Id.* at 20. A company must also submit models about certain emergency scenarios and include an evacuation procedure, as well as consultation process with cities in areas designated as future growth areas.

The PSA provides the Secretary of Transportation with the authority to enact emergency response plans. 49 U.S.C. § 60102(a)(2)(B). This authority is delineated by the statute, which provides a framework for the regulations which include setback requirements. *Id.* § 60102(r); 49 C.F.R. § 195.210. Courts have understood the statute to provide the Secretary with "exclusive authority to regulate the safety . . . of interstate hazardous liquid pipelines." *Kinley Corp.*, 999 F.2d at 359. This language precludes states and municipalities "from regulating in any manner

[11] Audio of Story Cnty. Bd. of Supervisors Meeting at 53:28 (Oct. 18, 2022). The audio may be found under the same link provided in footnote 2.

whatsoever with respect to the safety of" pipeline facilities. *ANR Pipeline Co.*, 828 F.2d at 470. The Secretary's exclusive authority is even understood by courts to preclude state authorities from "adopt[ing] standards identical to the federal standards." *Id.* at 472. In light of this, the Court concludes that express preemption invalidates Ordinance No. 306's setback and emergency plan provisions.

ii. Setback Requirements under Ordinance No. 311

The parties sharply contest whether Ordinance No. 311 regulates safety standards. Defendants argue the setbacks fall under a county's ordinary zoning authority, whereas Plaintiffs claim the true purpose of the setbacks is to regulate the safety standards of pipelines. Notwithstanding the avowed intent of the Board, the Court finds the setback provision is unenforceable, as the ordinance creates a dual safety regulation that competes with the Secretary of Transportation's broad spectrum of duties and "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 377 (2015).

The PSA delegates authority to enact safety provisions to the Secretary of Transportation. *See* 49 U.S.C. § 60102(a)(2). The statute provides the Secretary with authority to promulgate regulations on the construction of pipeline facilities. *Id.* § 60102(a)(2)(B). These regulations "prescribe[] minimum requirements for constructing new pipeline systems with steel pipe, and for relocating, replacing, or otherwise changing existing pipeline systems that are constructed with steel pipe." 49 C.F.R. § 195.200. One of those minimum requirements provides that a "[p]ipeline right-of-way must be selected to avoid, as far as practicable, areas containing private dwellings, industrial buildings, and places of public assembly." *Id.* § 195.210(a). The requirement also provides that "[n]o pipeline may be located within 50 feet (15 meters) of any private dwelling, or

any industrial building or place of public assembly in which persons work, congregate, or assemble, unless it is provided with at least 12 inches (305 millimeters) of cover in addition to that prescribed in § 195.248." *Id.* § 195.210(b).

By contrast, the setback requirements under Ordinance No. 311 provide a one-quarter mile setback from dwellings, various residential and commercial areas, and certain places of assembly, such as schools, campgrounds, stadiums, and houses of worship. [ECF No. 30-3 at 8]. The county's ordinance also requires a one-quarter mile setback from "city boundaries and areas identified as Urban Expansion by the C2C Plan Future Land Use Maps." *Id.*

Defendants point to what appears to be conflicting language in the PSA and the PHMSA regulations. Under the PSA, the Secretary of Transportation cannot dictate the location or route of a pipeline facility. 49 U.S.C. § 60104(e). The PHMSA regulations, however, require pipeline companies "to avoid, as far as practicable, areas containing private dwellings, industrial buildings, and places of public assembly," and prohibits pipelines "within 50 feet (15 meters) of any private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble," unless certain cover requirements are met. 49 C.F.R. § 195.210.

In light of this purported tension, Defendants argue the "[PHMSA] regulation is unenforceable" because it "expand[ed] the unambiguously expressed preemptive scope set by Congress" that prohibited the federal government from prescribing the location or routing of pipelines. [ECF No. 39 at 21-22]. Defendants claim that "the field of safety standards is distinct from the field of location and routing of pipelines," and that the ordinances' setbacks fall into the latter category. [ECF No. 34 at 4].

The Court disagrees. Federal law preempts Ordinance No. 311 to the extent it serves as an obstacle to the Secretary's authority to promulgate regulations on the construction of pipeline

facilities. The inclusion of setbacks under the federal regulations gives support to a more sensible explanation: while the Secretary cannot dictate where a pipeline should go through Story County or along a specific location within the area, once a location or routing of a pipeline is chosen, the PHMSA regulations dictate it cannot be within the setback requirements set forth in the regulation. Put another way, setbacks are within the field of safety standards, not within the field of location and routing.[12] As setbacks are safety standards, the ordinances' competing requirements intrude upon the Secretary's exclusive authority to regulate the safety of interstate hazardous liquid pipelines and is preempted. *Kinley Corp.*, 999 F.2d at 359.

iii. Emergency Planning Requirements under Ordinance No. 311

Summit argues that any emergency planning requirement under Ordinance No. 311 is preempted by the PSA. Defendants resist. The Court finds that this emergency planning requirement is a "standard," not merely an informational requirement, and is expressly preempted by the PSA and its regulations.

Under the PSA, the Secretary of Transportation "shall prescribe minimum safety *standards* for pipeline transportation and for pipeline facilities." 49 U.S.C. § 60102(a)(2) (emphasis added). "Standard" is defined as "[a] model accepted as correct by custom, consent, or authority" or "[a]

[12] While Iowa Code § 479B "gives the [IUB] primary authority over the routing of pipelines," nowhere in the state statute or its implementing regulations is the authority *over routing* understood to give the IUB the authority *to establish setbacks*. Iowa Admin. Code 199-13.12(479B). The provision under Iowa Admin. Code 199-13.3(479B) requiring companies to submit maps that include "[a]ny buildings or places of public assembly within six tenths of a mile of the pipeline," is not equivalent to a standard prohibiting a pipeline within six tenths of a mile from any building or places of public assembly. As set forth earlier, however, the effect of the ordinances' setbacks would severely limit the available locations for a proposed pipeline in Story County, and consequently create a situation where the IUB would approve the construction of the pipeline but Summit would be unable to build it. Therefore, the reasons for state preemption of the ordinances' setbacks differs from those for federal preemption of the same requirements.

criterion for measuring acceptability, quality, or accuracy." *Standard* Black's Law Dictionary (11th ed. 2019).

Ordinance No. 311's emergency planning requirement fits this definition. It requires pipeline companies to submit a "copy of an emergency response or preparedness plan . . . to assist with the County's emergency response planning." [ECF No. 30-3 at 9]. Companies are allowed to submit "a preliminary or draft version of an emergency response plan that would meet the requirements of the federal Pipeline and Hazardous Materials Safety Administration." *Id.* In isolation, this exchange of information is not a "standard." However, the remaining portion of this requirement is a "standard" that can be fairly read as to set a criterion for regulating the safety of pipelines. Specifically, the remaining portion states that "[t]he County will determine whether the information in the plan is sufficient for the County to plan its own emergency response and may request additional information." *Id.* This language puts the County in the position to determine whether the information provided in the emergency plan meets its expectations or, in other words, its "standards." As the exclusive authority to regulate pipeline safety standards fall squarely with the Secretary of Transportation, the emergency plan provision is preempted.

VII. CONCLUSION

For the reasons discussed above, Plaintiffs' Motion for Summary Judgment is GRANTED[13] and Defendants' Motion for Summary Judgment is DENIED. [ECF Nos. 30; 31].

Under Federal Rule of Civil Procedure 65(d), every order granting an injunction "must . . . state its terms specifically . . . and describe in reasonable detail . . . the act or acts restrained." Fed. R. Civ. P. 65(d)(1)(B)–(C). The scope of the preliminary injunction is defined as follows:

[13] To the extent that Ordinance No. 306 is operative, its mandatory consultation requirement is not preempted and not encompassed by the injunction.

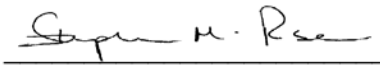
1. **IT IS ORDERED** that Defendants Story County, Iowa, the Story County Board of Supervisors, and each of the Supervisors in their official capacities are permanently enjoined from enforcement of Story County Ordinances No. 306 and 311 effective immediately. They may not enforce Ordinance No. 306's setback requirements, emergency plan requirement, minimum cover requirement, and critical natural resource area protections requirement in any capacity or through any instrumentality available to them. They may not enforce Ordinance No. 311's setback requirements, critical natural resource area protections requirement, emergency plan requirement, and authorizations requirement in any capacity or through any instrumentality available to them.

2. **IT IS FURTHER ORDERED** that Defendants shall immediately issue a written notice to all employees in the County who are involved in enforcing Ordinance No. 306 and Ordinance No. 311 or have oversight of such enforcement and notify them of the permanent injunction prohibiting enforcement of the ordinances.

3. **IT IS FURTHER ORDERED** that Defendants shall demonstrate its compliance with the Order by submitting an affidavit detailing its efforts to the Court within ten (10) days of entry of this Order.

IT IS SO ORDERED.

Dated this 4th day of December, 2023.



STEPHANIE M. ROSE, CHIEF JUDGE
UNITED STATES DISTRICT COURT