

Numerous complaints have been heard regarding the rail traffic and blockages through Chippewa County. The County and the City of Chippewa Falls have become a hub for heavy industrial rail traffic and there is hardly a person who has not been abruptly disturbed during the night by shrill whistles and vibrations as the rail cars carry out millions of tons of frac sand from throughout the County and Counties to the north on a relatively regular and frequent basis.

This issue of the Frac Sand Sentinel deals at least partially with some of the issues. Citizens have been told that nothing can be done about rail operations. Phone numbers of federal and state officials have been provided to governmental officials to determine what can be done particularly when there are emergency routes and people are caught waiting for a train to pass to access medical or emergency assistance.

Have any formal systems been set up? Several citizens caught up in "waiting for the train to pass" events in the City have called locally only to be referred to County officials for resolution. And yet there appears to be no resolution!

Chippewa County is not the exception. Other counties are dealing with similar problems. Is this something we just "live with", or can Counties, Towns, or Cities create ordinances or regulations that can be enforced? If anyone reading the Sentinel has the same or similar issues related to the transport of frac sand through your area, please feel free to share them. As more trans load facilities are fully developed and as more mines and processing plants appear, the problems with the heavy industrial methods used to obtain fossil fuels for world use will not be going away soon even though it appears that the old industrial model only serves to create even more issues than ever expected as officials hastily issued permits without much public input.

If you have questions, concerns, remarks or comments, please be certain to share them.

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www.ccc-wis.com Concerned Chippewa Citizen

See more below:

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ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2005

The Honorable Kerry Spears
Milam County and District Attorney
The Blake Building
204 North Central
Cameron, Texas 76520

Opinion No. GA-0331

Re: Whether federal law preempts Transportation Code section 471.007, which imposes a criminal penalty against a railway company if its train blocks a railroad crossing for more than ten minutes (RQ-0299-GA)

Dear Ms. Spears:

You ask whether federal law preempts section 471.007 of the Transportation Code, which imposes a criminal penalty against a railway company if its train blocks a railroad crossing for more than ten minutes. *See* TEX. TRANSP. CODE ANN. § 471.007 (Vernon Supp. 2004-05).¹ In particular, you ask about the federal Interstate Commerce Commission Termination Act of 1995 (ICCTA), the Federal Railroad Safety Act (FRSA), and the Commerce Clause of the United States Constitution. *See* Brief, *supra* note 1, at 1. You submit this query not only on your own behalf but also on behalf of the county attorneys of Williamson County and Maverick County. *See* Request Letter, *supra* note 1, at 1.

I. The State Statute and its Enforcement

Section 471.007 of the Transportation Code provides that “[a] railway company commits an offense if a train of the railway company obstructs for more than 10 minutes a street, railroad crossing, or public highway.” TEX. TRANSP. CODE ANN. § 471.007(a) (Vernon Supp. 2004-05). It requires a peace officer charging a railway company for an offense to “prepare in duplicate a citation to appear in court and attach one copy of the citation to the train or deliver the copy to an employee or other agent of the railway company.” *Id.* § 471.007(c).² “The hearing must be before a magistrate who has jurisdiction of the offense in the municipality or county in which the offense is alleged to have been committed.” *Id.* § 471.007(e). It is a defense to prosecution under section 471.007 that

¹*See* Letter and Brief (Exhibit “D”) from Honorable Kerry Spears, Milam County and District Attorney, to Honorable Greg Abbott, Texas Attorney General (Dec. 7, 2004) (on file with Opinion Committee, *also available at* <http://www.oag.state.tx.us>) [hereinafter Request Letter and Brief respectively].

²Section 471.007(c) further states that “[t]he citation must show: (1) the name of the railway company; (2) the offense charged; and (3) the time and place that a representative of the railway company is to appear in court.” TEX. TRANSP. CODE ANN. § 471.007(c) (Vernon Supp. 2004-05).

Frac Sand Sentinel

...keeping watch on the industry

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The railroad traffic throughout Chippewa County has caused quite a stir for residents who really have reason to get somewhere and can't arrive on time due to the trains blocking the roadways! There seems to be confusion about who to call to report hazards, incidents, and downright violations; the complaints continue to be heard from many who have experienced problems, but are there enforcement procedures that can be applied and that work? People have to get to work, arrive at appointments on time, follow emergency routes when they most need to, drop off their kids at appointments and school, and don't care to waste more gas sitting at railroad crossings when they have other things to do. Has the rail become a nuisance? A hazard? As the rail expands here in Chippewa County, will it become even more of a hindrance to safe citizen activity? I know of no programs being conducted here in regard to children's safety nor the safety of motorists other than "stings" staged by the police department and the rail.

The following report might be of interest to people locally regarding transportation issues including the rail.

<http://midamericafreight.org/wp-content/uploads/FracSandWhitePaperDRAFT.pdf>