

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE et al.,  
  
Plaintiffs and Respondents,

v.

TORCH ENERGY SERVICES, INC. et al.,  
  
Defendants and Appellants.

2d Civil No. B151867  
(Super. Ct. No. 232684)  
(Santa Barbara County)

ORDER MODIFYING OPINION  
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on September 19, 2002, be modified as follows:

On page 4, the second paragraph, beginning "The supremacy clause" is deleted and the following paragraph is inserted in its place.

The supremacy clause of article VI of the United States Constitution grants Congress the power to preempt state law.<sup>4</sup> Any state law that conflicts with a federal statute is "without effect." (*Maryland v. Louisiana* (1981) 451 U.S. 725, 746.) "Consideration of issues arising under the Supremacy Clause 'start[s] with the assumption that the historic police powers of the States [are] not to be superseded by . . . Federal Act unless that [is] the clear and manifest purpose of Congress.' [Citation.] . . . "[T]he purpose of Congress is the ultimate touchstone" of pre-emption analysis." (*Cipollone v. Liggett Group, Inc.* (1992)

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<sup>4</sup> For preemption analysis, "state law" includes laws of local governments. (E.g., *AGG Enterprises v. Washington County* (9th Cir. 2002) 281 F.3d 1324, 1328.)

505 U.S. 504, 516.) However, in areas where the federal government has a history of regulatory involvement, the presumption against preemption does not apply. (*United States v. Locke* (2000) 529 U.S. 89 [Washington State restrictions on oil tanker operations preempted].)

There is no change in the judgment.