



APR 22 2015

U.S. Department of Transportation
**Pipeline and Hazardous Materials
Safety Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

Mr. Simone J. Gulisano
Division Chief/Fire Marshal
Chesapeake Fire Department
Fire Prevention Division
304 Albemarle Drive
Chesapeake, VA 23322

Ref. No. 15-0066

Dear Mr. Gulisano:

This responds to your April 6, 2015 e-mail request and subsequent telephone conversation with a member of my staff for clarification on the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to requirements of local government agencies. You describe a scenario involving a City of Chesapeake, Virginia business that stores and maintains intermodal tanks containing hazardous materials at a facility on privately owned property in the City without a proper permit. The local business asserts it is not subject to the laws of the City or the Commonwealth of Virginia, since it is already regulated under federal requirements such as the transportation function described in § 171.1(c)(4), storage incidental to movement of a hazardous material. During the telephone conversation, you stated that the local business often stores the intermodal tanks for long periods of time. Specifically, you ask whether a local municipality may apply local zoning codes, fire codes and building codes at a facility where hazardous materials are stored, regardless of the duration of that storage.

The HMR apply to hazardous materials stored incidental to movement. There is no limit on the duration of storage incidental to movement provided the requirements in § 171.1(c)(4) are satisfied. As explained in § 171.1(f), a facility at which functions regulated under the HMR are performed may be subject to applicable laws and regulations of state and local governments. However, a requirement of a state, local, or tribal government that conflicts with requirements in the HMR is preempted, unless otherwise authorized by another Federal statute or the Department of Transportation issues a waiver of preemption. The Pipeline and Hazardous Materials Administration makes preemption determinations applicable to specific non-Federal requirements on a case-by-case basis. The procedures for DOT to make administrative determinations of preemption are set forth in subpart C of part 107.

I trust this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

S. C. Kelley for

Duane A. Pfund
International Standards Coordinator
Standards and Rulemaking Division

Goodall, Shante CTR (PHMSA)

*Werner
171.1
Applicability
15-0066*

From: Betts, Charles (PHMSA)
Sent: Monday, April 06, 2015 1:20 PM
To: Hazmat Interps
Attachments: image2015-04-06-122738.pdf

Importance: High

Alice/Shante –

Please assign the attached letter to a specialist for immediate response. This is a time sensitive issue and we need to respond by COB April 30th. Looks to be pretty straightforward.

Thanks,
Charles

**City of Chesapeake**

Chesapeake Fire Department
Fire Prevention Division
304 Albemarle Drive
Chesapeake, Virginia 23322
(757) 382-6566
FAX (757) 382-8313/8228

April 6, 2015

BY FACSIMILE TO (202) 366-3666

Mr. Charles E. Betts, Chief Standards Development
Office of Hazardous Materials Standards
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
East Building, 2nd Floor
Washington, DC 20590

Re: **Hazardous Materials Regulations Interpretation**
HMR; 49 CFR 171-180

Dear Mr. Betts:

The City of Chesapeake, Virginia ("City") has been dealing with a local business that stores and maintains numerous intermodal tanks ("IsoTanks") at a facility on privately owned property in the City without a proper permit. Each Iso Tank can hold up to 6,100 gallons of hazardous and non-hazardous materials.

The local business continues to assert that it is not subject to the laws of the City or the Commonwealth of Virginia, since it is already regulated under federal laws. Specifically, the City would like clarification regarding the following:

Can a Virginia municipality apply its local Zoning, Fire and Building Codes with regard to the land uses and/or building/structures where DOT regulated materials are stored, regardless of the duration of that storage?

The City has a Board of Zoning Appeal hearing coming up on April 23, 2015. It would be very helpful, if we were able to receive a response on or before that date. Thank you in advance for your assistance. Please feel free to contact me directly at (757) 382-6566 with any questions. With kind regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read "S. Gulisano".

Simone J. Gulisano
Division Chief/Fire Marshal

cc: Mr. Wilfredo Bonilla, Jr., Esq., *Assistant City Attorney*

*"The City of Chesapeake adheres to the principles of equal employment opportunity.
This policy extends to all programs and services supported by the City."*