



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

1200 New Jersey Ave, SE
Washington, D.C. 20590

JUL -8 2010

Mr. Clyde Hamer
Plan Examiner
Department of City Development
City of Milwaukee
809 N. Broadway
Milwaukee, WI 53202

Ref. No. 10-0108

Dear Mr. Hamer:

This responds to your May 5, 2010 request for clarification on the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask whether a local municipality may apply local zoning codes, fire codes and building codes at a facility where hazardous materials are parked or stored during transportation, regardless of the duration of that parking or storage.

As explained in § 171.1(f) of the HMR, 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 hope this answers your inquiry. For your information, it may be helpful to attend the next Hazardous Materials Multimodal Seminar being held in Milwaukee August 10-11, 2010.

Information on the Hazardous Materials Multimodal Seminar in Milwaukee can be found on our website at <http://www.phmsa.dot.gov/hazmat/training/seminars>. If you need further assistance, please contact this Office.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Betts". The signature is written in a cursive style with a large initial "C" and a long horizontal stroke at the end.

Charles E. Betts
Chief, Standards Development
Office of Hazardous Materials Standards



Department of City Development

Housing Authority
Redevelopment Authority
City Plan Commission
Historic Preservation Commission
NIDC

Rocky Marcoux
Commissioner

Martha L. Brown
Deputy Commissioner

Boothe
\$171.1
Applicability
10-0108

May 5, 2010

To: U.S. DOT
PHMSA Office of Hazardous Materials Standards
ATTN: PHHH-10
East building
1200 New Jersey Ave, SE
Washington, DC 20590-0001

RE: Local jurisdiction regarding Hazardous Materials in transit.

To Whom It May Concern,

The City of Milwaukee has formed a task force comprised of various regulatory and enforcement sections to address the storage and or use of Hazardous Materials within the City Limits. As part of that discussion we have some questions regarding the regulation of Hazardous Materials at a facility that incorporates DOT transportation functions. We are requesting clarification regarding that issue. Please see the question below and provide clarification to us.

At a facility that incorporates DOT transportation functions including storage incidental to movement and transloading, can the local municipality apply local Zoning Codes, Fire Codes and Building Codes in regards to the land uses and or buildings or structures where DOT regulated materials are parked or stored regardless of the duration of that parking or storage?

IE To illustrate our question

"The offloading of hazardous material from a vehicle into a building or the parking of a trailer containing hazardous material at a facility while awaiting transfer to another vehicle where the building or facility in question is not the final destination as indicated on the shipping documents."

Thank you in advance for your assistance and Cooperation. Please feel free to contact me directly via phone or email please see contact information below.

Clyde Hamer
Plan Examiner
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Email: chamer@milwaukee.gov
809 N Broadway
Milwaukee, WI 53202