



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

May 24, 2019

Steven D. Gordon, Esq.
Partner
Holland & Knight LLP
800 17th Street, N.W., Suite 1100
Washington, DC 20006

Reference No. 19-0029

Dear Mr. Gordon:

This letter is in response to your March 14, 2019, request and subsequent conversations for clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to retail mobile fueling operations conducted by your client, Filld, Inc. (Filld). You describe a scenario in which Filld: (1) purchases non-Department of Transportation (DOT) specification metal refueling tanks manufactured by Aluminum Tank Industries, Inc. under DOT Special Permit (SP) 14227; and (2) conducts a retail mobile fueling operation that transports gasoline by motor vehicle and then offloads that gasoline to refuel other motor vehicles (*i.e.*, dispensing gasoline into parked automobiles).

We have paraphrased and answered your questions as follows:

- Q1. You ask whether Filld's retail mobile fueling operations are under the purview of the DOT's regulations pursuant to the Federal hazmat law (49 U.S.C. § 5101 *et seq.*) and the HMR.
- A1. The answer is yes. Based on the information you provided, Filld's retail mobile fueling operations offer, transport, and unload "UN1203, Gasoline," a regulated hazardous material, on public roads in commerce. The Federal hazmat law gives the Secretary of Transportation the general authority and mandate to prescribe regulations for the "safe transportation of hazardous materials in intrastate, interstate, and foreign commerce" in accordance with 49 U.S.C. § 5103. Section 49 CFR 1.96(b)(1) delegates PHMSA with the responsibility for promulgating these regulations, which it has done under the HMR, and the HMR governs the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce (*see* § 171.1 of the HMR).

- Q2. You ask whether the scenario described above is in compliance with the HMR.
- A2. Provided Filld complies with all of the additional applicable HMR requirements, the necessary terms and conditions of DOT-SP 14227, and the procedures described in the attachment to the incoming letter, the scenario described above is in compliance with the HMR.
- Q3. You ask whether a transport vehicle operating under the terms and conditions of DOT-SP 14227 is considered a cargo tank motor vehicle (CTMV) as defined by the HMR.
- A3. The answer is no. Because the packagings authorized in DOT-SP 14227 are technically non-bulk and, except for capacity, are fabricated under a specification for an Intermediate Bulk Container (IBC), they do not meet the definition of a CTMV as defined in § 171.8 of the HMR.

Please note that some of the activities you describe in the attachment to your letter such as the requirement for a commercial driver's license are under the purview of the Federal Motor Carrier Safety Administration (FMCSA). FMCSA is the lead Federal government agency responsible for regulating and providing safety oversight of commercial motor vehicles. You may wish to contact FMCSA should you require clarification of any requirements relevant to commercial driver's licenses.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "T. Glenn Foster".

T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

Edmanson
19-0029

January, Ikeya CTR (PHMSA)

From: Kelley, Shane (PHMSA)
Sent: Thursday, March 14, 2019 1:58 PM
To: Hazmat Interps
Cc: INFOCNTR (PHMSA)
Subject: FW: Filld, Inc. request for Letter of Clarification
Attachments: March 14 2019 letter to Shane Kelley re Filld Inc Mobile Fueling Service.pdf

Please log in for response

Thank you

From: Steven.Gordon@hklaw.com [mailto:Steven.Gordon@hklaw.com]
Sent: Thursday, March 14, 2019 1:35 PM
To: Kelley, Shane (PHMSA) <shane.kelley@dot.gov>
Cc: Schoonover, William (PHMSA) <william.schoonover@dot.gov>; pstoecklein@filld.com; Daniel.Burkard@hklaw.com; Mike.Friedberg@hklaw.com
Subject: Filld, Inc. request for Letter of Clarification

Shane:

Following up on our meeting of February 21, 2019, I am submitting a request for a letter of clarification regarding Filld's compliance with the HMTA and HMTR. I will give you a call in the next day or so to follow up. In the meantime, if you have any questions, please contact me.

Thanks.

Steve

Steven Gordon | Holland & Knight

Partner

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March 14, 2019

Via email (shane.kelley@dot.gov)

Shane Kelley
Director, Standards and Rulemaking
Office of Hazardous Materials Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Filld, Inc. Mobile Fueling Service

Dear Mr. Kelley:

This firm represents Filld, Inc. (Filld), which operates a retail mobile fueling service that utilizes transport vehicles configured to transport and dispense gasoline to parked cars, including cars parked on public streets. Based upon the information and representations provided below, I seek confirmation on the following two issues regarding the mobile fueling operation conducted by Filld:

1. Because Filld's mobile fueling operation involves the transportation of gasoline on and along public roads, including unloading incidental to that transportation (i.e. dispensing gasoline into cars), it is within the scope of the transportation and commerce that the Department of Transportation (DOT) regulates pursuant to the Hazardous Materials Transportation Act (HMTA; 49 U.S.C. § 5101 *et seq.*), and the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180); and

2. Filld's transportation and unloading of gasoline on and along public roads, using the equipment and procedures described below, complies with all applicable requirements of, and is authorized by, the HMTA and HMR.

The Filld Operation

Filld utilizes mobile fueling trucks that follow algorithmically-optimized routes to deliver gasoline primarily to individual consumers and small- to mid-size businesses. Filld transports the fuel via unmodified, conventional pickup trucks (e.g., GM 3500HD), each of which carries four, DOT-approved, Intermediate Bulk Containers (IBCs). Each IBC has an individual volume of less than 119 gallons and is manufactured by Aluminum Tank Industries, Inc. (Winter Haven, FL) pursuant to DOT Special Permit 14227.

Gasoline is unloaded from the IBC via an electric pump with a hose and nozzle assembly specifically designed for dispensing gasoline into motor vehicles. Filld's trucks are equipped with a variety of safety equipment including proprietary secondary spill containment, electronic leak detection devices, fire suppression equipment, and redundant emergency shut-off switches.

Filld drivers are required to have a Commercial Driver's License (CDL) or to be actively engaged in its apprenticeship program through which it trains and transition a non-CDL driver into a credentialed CDL driver. At any time when a non-CDL driver is operating a Filld vehicle, that driver may not transport more than 119 gallons of gasoline. Every CDL driver is required to possess a Hazardous Materials Transportation (i.e., HM 26/181) endorsement and any non-CDL driver is certified to an equivalent standard per internal hazmat handling policies/protocols.

A more detailed summary of the general procedures carried out by Filld operators during each mobile fueling operation is as follows:

Arrival and Parking at Customer Fueling Site

- a. Upon arrival at the customer fueling site, immediately position the Filld Truck with respect to each vehicle being fueled so as to minimize the threat of damage to equipment (e.g., dispensing hose) that could be posed by passing motor vehicles.
- b. Activate hazard lights and select the light bar setting directing approaching vehicles to divert around the Filld Truck on whichever side is opposite the customer vehicle.
- c. Upon exiting the Filld Truck, place orange safety cones at limits of operating area to the rear and to the side of the Filld Truck adjacent to the customer vehicle.
- d. If fuel dispensing operations occur during nighttime hours, activate and direct side- and rear-mounted floodlights as needed to ensure adequate lighting of the work area.

Fuel Dispensing

- a. Put on gasoline-rated safety gloves.
- b. Select the proper fuel grade and type by connecting the fuel draw dry break to the proper tank dry break.
- c. At the selector hose port point, open the ball valve for the attached fuel tank.
- d. Unlatch dispensing nozzle and unroll only the necessary amount of fuel hose from the hose reel. Deploy approved hose ramp if needed to avoid obstructing a public sidewalk or bicycle lane.
- e. Place approved drip/spill pan beneath each fuel fill opening (i.e., the point of connection between the nozzle and the customer vehicle) prior to and during dispensing operations.
- f. If the customer vehicle fuel fill opening is not metal and establishing metal-to-metal contact between the dispensing nozzle and the fuel fill tube is not possible or if such contact is uncertain, connect the spooled bonding wire to a metal point on the customer vehicle throughout refueling.

g. An operator is required to remain at the nozzle during the entire fueling operation. Leaving the nozzle unattended at any time is strictly prohibited.

h. Utilize approved spill rag keeping it underneath and in constant contact with the nozzle during fuel dispensing to catch and contain any possible drips or minor spillage.

i. Continue fueling until the auto-shutoff nozzle clicks off. Topping off or filling beyond the auto-shutoff is strictly prohibited. Dispensing must be ceased immediately if fuel reaches the nozzle tip or becomes visible.

Completing Delivery and Departing Customer Fueling Site

a. Upon completion of fuel dispensing, securely attach the customer vehicle gas cap (if equipped) and close the gas flap.

b. Minimize wear and tear on the fuel hose by ensuring that the hose recoils cleanly and tightly onto the reel via the hose guide.

c. Securely re-rack the nozzle in the holder and shut off the pump.

d. Collect the drip/spill pan and orange safety cones and store securely inside the Filled Truck canopy.

e. Deactivate hazard and safety light bar lights before departing the customer fueling site.

Thank you for attention to this matter. Should you have any questions or desire additional information, please do not hesitate to contact me.

Sincerely,

HOLLAND & KNIGHT LLP



Steven D. Gordon

SDG:aem

cc: Pierson Stoecklein