



U.S. Department  
of Transportation

Research and  
Special Programs  
Administration

Office of the  
Chief Counsel

JUN 26 2002

400 Seventh Street, S.W.  
Room 8407  
Washington, D.C. 20590

Phone: (202) 366-4400  
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Mr. Kevin P. Mullen  
Director of Safety  
J.H. Walker Trucking  
P.O. Box 19771  
Houston, TX 77224

Dear Mr. Mullen:

I am returning your June 6, 2002 letter in which you asked the Research and Special Programs Administration (RSPA) to "strike down" certain requirements of the City of Galveston, Texas concerning the issuance of a permit to load, unload, or transport explosives. You state that "these rules restrict interstate commerce and have not been submitted to RSPA for ratification."

The Department of Transportation and RSPA do not "strike down" local requirements on the transportation of explosives or other hazardous materials. A local government (including a city) is not required to submit its requirements to us for "ratification," and we do not issue opinions on whether a requirement restricts interstate commerce (except when a State, locality, or Indian tribe applies for a "waiver" of preemption under 49 U.S.C. § 5125(e)).

Under 49 U.S.C. § 5125(d), the Department of Transportation may issue an administrative determination that Federal hazardous material transportation law preempts a requirement of a State, local, or Indian tribal government under the criteria set forth in 49 U.S.C. § 5125(a), (b)(1), and (c). RSPA's procedures for issuing preemption determinations are contained in 49 C.F.R. §§ 107.201 - 107.213. Copies of these sections of the law and our procedural regulations are enclosed.

If you wish to submit an application for an administrative determination of preemption, you need to provide the information specified in 49 C.F.R. § 107.203(b), including why you believe the Galveston requirements are preempted under the preemption criteria in 49 U.S.C. § 5125(a) and (b)(1). You should also address the extent to which the Galveston requirements are

pursuant (or similar) to Captain of the Port or other orders of the U.S. Coast Guard and whether, on that account, they are "authorized by another law of the United States."

I hope this information is helpful. If you have further questions, please contact me or Frazer C. Hilder of my staff, at the above address or at 202-366-4400.

Sincerely,

A handwritten signature in dark ink, appearing to read "E. H. Bonekemper, III", with a stylized flourish at the end.

Edward H. Bonekemper, III  
Assistant Chief Counsel for  
Hazardous Material Safety,  
Research and Technology Law

Enclosures

CERTIFIED MAIL - RETURN RECEIPT REQUESTED