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NATIONAL TANK TRUCK CARRIERS, INC.

THE NATIONAL ORGANIZATION SERVING THE FOR HIRE TANK TRUCK INDUSTRY

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DEPARTMENT OF TRANSPORTATION
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DOCKET SECTION

In the matter of: Docket #PD 13R, Nassau County, New York, Ordinance of Transportation of Liquefied Petroleum Gases

Before the Administrator:

National Tank Truck Carriers (NTTC) a trade association (and a party of record in this proceeding) respectfully requests reconsideration of the Administrator's original ruling in this matter which was published in the August 25, 1998 edition of the **Federal Register**.

To "cut to the chase", NTTC believes that administrative reconsideration is appropriate given the facts and circumstances outlined in a "Petition for Reconsideration" (and appendices thereto) filed in this matter by the New York Propane Gas Association (NYPGA) (petitioner).

In its original ruling, the Administrator declined to preempt a vital portion of Nassau County's Ordinance No. 344-1979 based upon a lack of evidence (in the docket) that said ordinance "...as applied and enforced" created unnecessary delays. Furthermore, the Administrator (apparently) relied on assurances from the County's representatives that certain required inspections are scheduled to avoid such unnecessary delays.

Further testing the credibility of the County's representations in this matter, the Administrator bases another part of her ruling on a Nassau County statement that the "permit sticker" is not placed on the "cargo tank itself", but on the fender or door of the vehicle.

It would appear that both the base document of and appendices to NYPGA's Petition for Reconsideration renders the County's averments "misleading" (and best) or fallacious (at worst). For example, the attachments to the DiBiasi affidavit show that a propane cylinder laden vehicle was removed from service (in part) because of an expired Nassau County permit. On the same day, the owner/operator of that vehicle was ordered to keep that vehicle out of service "... until such time a permit to do so is secured from the Nassau County Fire Marshal's office."

June 23rd was a Tuesday, and since the vehicle was not released until approximately 7 p.m. it is reasonable to anticipate that the owner/operator of the vehicle would have to keep that vehicle out of service until the following "first Tuesday" which would be July 7th. Thus, as this "real world" example shows, it would have taken a total of 14 days until that vehicle could have been returned to "hazmat" service under the terms and conditions of the County ordinance. Clearly, this is unnecessary delay. **(We note that, while the vehicle also had an "unchecked" fire extinguisher, such is not material to this issue. The State of New York has adopted the Department's**

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Hazardous Materials Regulations which includes adequate references to that portion of the Federal Motor Carrier Safety Regulations (FMCSR) dealing with fire extinguishers. Herein, the carrier may have been appropriately cited, but the vehicle would not have been placed "out of service". Thus, it is reasonable to conclude that the 14 day delay was caused – solely – by the expired permit.)

Of course, it goes without saying that the County's contention that the "permit sticker" is placed on the fender or door of the vehicle is contradicted by the petitioner's attached photographs showing the "sticker" on the front head of a compressed gas cargo tank motor vehicle. As the Administrator ruled in PD-4, Nassau County's requirement is not "substantively the same" as requirements of the HMR dealing with markings placed on hazardous materials transportation containers.

Since it is obvious that the County's ordinance does produce "unnecessary delays" and is not "substantively the same" as the HMR, it should be preempted. If so, the payment of the registration fee must also be preempted.

As NTTC noted in our original filing, the burdens of the Nassau County Ordinance -- as applied and enforced -- present special problems and hurdles for interstate motor carriers who may serve the citizens of Nassau County on an infrequent or emergency basis. Absent extraordinary communications resources, they would have no knowledge of the Ordinance, except at the time of enforcement. The situation is compounded by the fact that such restrictions can easily be replicated by a multiplicity of jurisdictions (see NYPGA's references to "Smithtown" and "Brookhaven"). This is precisely the type of situation which resulted in the Congressional mandate for a national and uniform hazardous materials regulatory program.

For the reasons cited above, NTTC urges reconsideration in this matter.

Respectfully submitted.


Clifford J. Harvison
President.

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