

ports and marine terminals. The collection of information will provide key highway, truck, rail, and waterside access data and will highlight the access impediments that affect the flow of cargo through U.S. ports and terminals.

Need and Use of the Information: The collection of information is necessary for MARAD officials to identify and assess the physical infrastructure impediments that impact the major ports and marine terminals. The annual data received will be used to statistically demonstrate the change in access impediments to the Nation's ports and terminals.

Description of Respondents: U.S. Ports and Terminals (including the top 50 U.S. deepwater ports, the top 25 container ports and the 14 strategic ports as well as the major shallow draft ports).

Annual Responses: 162 responses.

Annual Burden: 162 hours.

Comments: Signed written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at <http://dmses.dot.gov/submit>. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., edt. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at <http://dms.dot.gov>.

By Order of the Maritime Administrator.

Dated: April 10, 2000.

Joel C. Richard,

Secretary.

[FR Doc. 00-9253 Filed 4-13-00; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Federal Motor Carrier Safety Administration

[Docket No. RSPA-00-7021 (PDA-23(RF))]

Application by Med/Waste, Inc. and Sanford Motors, Inc. for a Preemption Determination as to Morrisville, PA, Requirements for Transportation of "Dangerous Waste"

AGENCY: Research and Special Programs Administration (RSPA) and Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Public Notice and Invitation to Comment.

SUMMARY: Interested parties are invited to submit comments on an application by Med/Waste, Inc. and Sanford Motors, Inc. for an administrative determination whether Federal hazardous materials transportation law preempts requirements of the Borough of Morrisville, Pennsylvania, concerning the transportation of "dangerous waste" (including infections, chemotherapeutic, or hazardous wastes) within the Borough of Morrisville.

DATES: Comments received on or before May 30, 2000, and rebuttal comments received on or before July 13, 2000, will be considered before an administrative ruling is issued jointly by RSPA's Associate Administrator for Hazardous Materials Safety and FMCSA's Administrator. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL-1401, 400 Seventh Street, SW, Washington, DC 20590-0001. The application and all comments are also available on-line through the home page of DOT's Docket Management System, at "<http://dms.dot.gov>."

Comments must refer to Docket No. RSPA-00-7021 and may be submitted to the docket either in writing or electronically. Send three copies of each written comment to the Dockets Office at the above address. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the Docket Management System website at <http://dms.dot.gov>, and click on "Help & Information" to obtain instructions.

A copy of each comment must also be sent to (1) Med/Waste's Vice President for Legal Affairs, Ross M. Johnston, Esq., Med/Waste, Inc., 6175 N.W. 153rd Street, Suite 324, Miami Lakes, FL 33014, and (2) the solicitor to the Borough of Morrisville, Stephen L. Needles, Esq., Stuckert and Yates, Two North State Street, P.O. Box 70, Newtown, PA 18940. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I certify that copies of this comment have been sent to Mr. Johnston and Mr. Needles at the addresses specified in the **Federal Register**.")

A list and subject matter index of hazardous materials preemption cases, including all inconsistency rulings and preemption determinations issued, are available through the home page of RSPA's Office of the Chief Counsel, at "<http://rspa-atty.dot.gov>." A paper copy of this list and index will be provided at no cost upon request to Mr. Hilder, at the address and telephone number set forth in **FOR FURTHER INFORMATION CONTACT** below.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration (Tel. No. 202-366-4400), or Joseph Solomey, Office of the Chief Counsel, Federal Highway Administration (Tel. No. 202-366-1374), U.S. Department of Transportation, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

Med/Waste, Inc. and its subsidiary, Sanford Motors, Inc. (collectively "Med/Waste") have applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts requirements contained in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania, applicable to the transportation of "dangerous waste" (including infectious, chemotherapeutic, and hazardous wastes as defined in Ordinance No. 902) in and through the Borough of Morrisville. In a later letter to RSPA's Office of the Chief Counsel, Med/Waste provided the name of the Borough Manager of the Borough of Morrisville and a copy of a newspaper article that relates to the adoption of Ordinance No. 902. Through its solicitor, the Borough of Morrisville responded to Med/Waste's application in a March 1, 2000 letter.

The test of Med/Waste's application and a list of the exhibits to the application are set forth in Appendix A to this notice. A paper copy of the exhibits to Med/Waste's application (which have been placed in the public docket) will be provided at no cost upon request to Mr. Hilder, at the address and telephone number set forth in **FOR**

FURTHER INFORMATION CONTACT above. The Borough of Morrisville's March 1, 2000 letter is Appendix B to this notice.

In the application, Med/Waste challenges:

(1) The definitions of "infectious waste," "hospital waste," and "dangerous waste" in Section 01 of Ordinance No. 902 and the use of the term "dangerous waste" throughout the ordinance. In Section 01, "dangerous waste" is defined to mean "infectious wastes, chemotherapeutic wastes, or hazardous wastes, or any combination thereof." Section 07 of Ordinance No. 902 provides that "For purposes of this Ordinance, all Hospital Waste shall be presumed to be DANGEROUS WASTE." Med/Waste asserts that the terms "infectious waste," "hospital waste," and "dangerous waste" conflict with the designations, descriptions and classifications of hazardous materials in the HMR.

(2) The designation of Pennsylvania Route 1 (between the Delaware River Toll Bridge and the boundary line with the Township of Falls) as the only street in the Borough of Morrisville that may be used by trucks transporting dangerous waste. Med/Waste contends that this limitation does not comply with the requirements in 49 U.S.C. 5112 and 31114, and that this restriction cuts off its access to its facility that holds a permit from the Pennsylvania Department of Environmental Protection to transport infectious and chemotherapeutic wastes that are not "hazardous wastes" under Pennsylvania regulations. Med/Waste also states that the routing limitation may be a constructive taking of its property without just compensation in violation of the Fifth Amendment to the U.S. Constitution.

(3) The requirement in Section 05(a) of Ordinance No. 902 that each truck transporting dangerous waste:

shall carry and have available for inspection the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act.

Med/Waste states that the ordinance requires the preparation of a hazardous waste manifest for shipments of regulated medical waste, in conflict with the HMR. Med/Waste asserts that

"Regulated medical waste as defined by the HMR is not a hazardous waste as defined in 40 CFR part 262."

In its responding letter, the Borough of Morrisville argues that, under *City of Philadelphia v. New Jersey*, 437 U.S. 617 (1978), and *Ensco, Inc. v. Dumas*, 807 F.2d 743 (8th cir. 1986),

states and local municipalities are permitted to establish waste management standards more stringent than those imposed by federal law and that only local regulations which totally prohibit storage, transportation or treatment should be preempted.

The Borough of Morrisville contends that the "elements of the definitions" of "Infectious Waste," "Hospital Waste," and "Dangerous Waste" are substantively the same as the definitions in 49 CFR 173.134(a)(4). It acknowledges that the Borough's requirement for drivers to carry a written manifest when hauling dangerous wastes "may be different from the federal regulation," but states that this difference "does not render the applicant's ability to comply with 40 CFR 261.3 impossible, nor does it impede the objectives of the federal law."

In its letter, the Borough of Morrisville also states that its ordinance does not restrict Med/Waste's ability to use Route 1 within the Borough. It refers to the authority of a State to designate highway routes for the transportation of hazardous materials, under 49 U.S.C. 5112, and asserts that "In Pennsylvania, this right is further delegated to counties and municipalities by Section 304 of the Municipal Waste, Planning, Recycling and Waste Reduction Act, 53 Pa.C.S.A § 4000.304."

II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are relevant to Med/Waste's application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under section 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if:

(1) complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or

(2) the requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to the accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the "dual compliance" and "obstacle" criteria which RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption

provision in the Hazardous Materials Transportation Act (HMTA). Public Law 93-633 section 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines v. Davidowitz*, 312 U.S. 52 1941; *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); *Ray v. Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not "substantively the same as" a provision of Federal hazardous material transportation law or a regulation prescribed under that law or DOT grants a waiver or preemption:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marketing, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be "substantively the same," the non-Federal requirement must "conform[] in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted." 49 CFR 107.202(d). Subsection (c)(1) of 49 U.S.C. 5125 provides that, beginning two years after DOT prescribes regulations on standards to be applied by States and Indian tribes in establishing requirements on highway routing of hazardous materials, a State or Indian tribe may establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with section 5112(b).¹

These preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate

¹ DOT's standards and procedures for State and Indian tribe requirements for highway routing of non-radioactive hazardous materials are issued under 49 U.S.C. 5112(b) and contained in 49 CFR Part 397, subpart C.

Commerce Committee “endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.” S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials in necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Public Law 101–615 Section 2, 104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the “linchpin” in the design of the HMTA, including the 1990 amendments that expanded the original preemption provisions. *Colorado Pub. Util. Comm’n v. Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, Congress revised, codified and enacted the HMTA “without substantive change,” at 49 U.S.C. Chapter 51. Public. Law. 103–272, 108 Stat. 745.)

III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. The Secretary of Transportation has delegated authority to make determinations of preemption that concern highway routing to FMCSA and those concerning all other hazardous materials transportation issues to RSPA. 49 CFR 1.53(b) and 1.73(d)(2) (as added October 9, 1999, 64 FR 56720, 56721 [Oct. 19, 1999], and revised January 1, 2000, 65 FR 220, 221 [Jan. 4, 2000]). Because Med/Waste’s application concerns both highway routing issues and non-highway routing issues, FMCSA’s Administrator will address highway routing issues, and RSPA’s Associate Administrator for

Hazardous Materials Safety will address non-highway routing issues. 49 CFR 107.209(a), 397.211(a).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**. Following the receipt and consideration of written comments, FMCSA and RSPA will publish their determination in the **Federal Register**. See 49 CFR 107.209(d), 397.211(d). A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211, 397.223. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm’n v. Harmon*, above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), FMCSA and RSPA are guided by the principles and policies set forth in Executive Order No. 13132, entitled “Federalism” (64 FR 43255 (August 4, 1999)). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which FMCSA and RSPA have implemented through their regulations.

IV. Public Comments

All comments should be limited to the issue whether 49 U.S.C. 5125 preempts the Borough of Morrisville’s requirements challenged by Med/Waste. Comments should specifically address the preemption criteria detailed in Part II, above, and set forth in detail the manner in which the Borough of Morrisville’s requirements in Ordinance No. 902 were adopted and are applied and enforced, including but not limited to:

(1) whether the term “dangerous waste” in Ordinance No. 902 includes materials that are not defined as an “infectious substance” under the HMR, 49 CFR 173.134(a);

(2) how the materials defined as “regulated medical waste” in the HMR, 49 CFR 173.134, are categorized or classified under Ordinance No. 902;

(3) whether the term “hazardous waste” in Ordinance No. 902 includes materials that are not defined as a “hazardous waste” in the HMR, 49 CFR 171.8;

(4) whether Ordinance No. 902 requires a hazardous waste manifest to be prepared for, and accompany, a shipment of an “infectious substance” or a “regulated medical waste,” as those two terms are defined in the HMR, 49 CFR 173.134(a);

(5) the application of Pennsylvania’s Municipal Waste Planning and Recycling and Waste Reduction Act, 53 P.S. 4000.101 *et seq.*, and solid Waste Management Act, 35 P.S. 6018.101 *et seq.*, and the regulations issued under those statutes to the transportation of an “infectious substance” or a “regulated medical waste,” as those two terms are defined in the HMR²;

(6) the extent to which adoption of the routing limitation in Section 02 of Ordinance No. 902 was in compliance with the Federal standards set forth in 49 CFR 397.71(b), including but not limited to the standards concerning:

(a) Notice to the public, 49 CFR 397.71(b)(2);

(b) Notice to officials responsible for highway routing in New Jersey or in political subdivisions adjacent to the Borough of Morrisville, 49 CFR 397.71(b)(3);

(c) Reasonable access for motor vehicles transporting hazardous materials to terminals; points of unloading, unloading, pickup and delivery; and facilities for food, fuel, repairs, rest, and safe havens, 49 CFR 397.71(b)(7);

(d) The State’s actions to ensure that its political subdivisions comply with 49 CFR Part 397, subpart C, 49 CFR 397.71(b)(8);

(e) Population density, type of highway, type and quantity of hazardous material, emergency response capabilities, consultation with affected persons, exposure and other risk factors, terrain considerations, continuity of routes, alternative routes, effects on commerce, delays in transportation, climatic conditions, and congestion and accident history, 397.71(b)(9); and

(7) whether the State of Pennsylvania has provided information of the routing limitation in Section 02 of Ordinance No. 902 to DOT, as specified in 49 CFR 397.73(b). Persons intending to

² Please provide a copy of any State regulation referred to in a comment on Med/Waste’s application.

comment should review the standards and procedures governing consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211, and 397.201–397.211.

Issued in Washington, DC on April 10, 2000.

Julie Anna Cirillo,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

Robert A. McGuire,

Acting Associate Administrator for Hazardous Materials Safety, Research and Special Programs, Administration.

Appendix A

December 30, 1999.

Hazardous Materials Preemption Docket,
Associate Administrator for Hazardous Materials Safety, Research and Special Administration, U.S. Department of Transportation, Washington, DC.

Preemption Application

Dear Sir/Madam; Pursuant to 49 USC § 5125(d) 1999 and the Department of Transportation regulations 49 CFR § 107.203 *et seq.*, Med/Waste, Inc., a publicly traded Delaware corporation together with its subsidiary Sanford Motors., Inc., a Pennsylvania corporation (hereafter referred to as “SMI”) make application to the Associate Administrator to determine that the provisions of the Borough of Morrisville’s Ordinance No. 902, enacted September 20, 1999, are preempted by the Hazardous Material Regulations, 49 CFR § 171–173 1999, as hereinafter set forth.

The full text of the Morrisville ordinance No. 902 is attached as Exhibit “A”. Specific provisions of the Morrisville Ordinance No. 902 and the preemptive Hazardous Material Regulations counterpart are identified below:

1. Section 01: Definitions.

(c) **Infectious Waste.** “Infectious Waste” is waste that contains or may contain any disease-producing microorganism or material. Infectious wastes include but are not limited to the following:

(i) Those wastes that are generated by hospitalized patients who are isolated in separate rooms in order to protect others from their severe and communicable diseases.

(ii) All cultures and stocks of etiologic agents.

(iii) All waste blood and blood products.

(iv) Tissues, organs, body parts, blood and body fluids that are removed during surgery and autopsy, and other wastes generated by surgery or autopsy of septic cases or patients with infectious diseases.

(v) Wastes that were in contact with pathogens in any type of laboratory work, including collection containers, culture dishes,

(vi) slides, plates and assemblies for diagnostic tests; and devices used to transfer, inoculate and mix cultures.

(vii) Sharps, including hypodermic needles, suture needles, disposable razors, syringes, Pasteur pipettes, broken glass and scalp blades.

(viii) Wastes that were in contact with the blood of patients undergoing hemodialysis at hospitals or independent treatment centers.

(ix) Carcasses and body parts of all animals, which were exposed to zoonotic pathogens.

(x) Animal bedding and other wastes that were in contact with diseased or laboratory research animals or their excretions, secretions, carcasses or body parts.

(xi) Waste biologicals (e.g., vaccines) produced by pharmaceutical companies for human or veterinary use.

* * * * *

(e) **Storage.** “Storage” means the holding of DANGEROUS WASTE for a temporary period, at the end of which the DANGEROUS WASTE is treated, disposed of, moved, or stored elsewhere.

(f) **Dangerous Waste.** “DANGEROUS WASTE” means infectious wastes, or chemotherapeutic wastes, or hazardous wastes, or any combination thereof.

(g) **Hospital Waste.** “Hospital waste” means waste of any sort generated by nursing homes, hospitals, clinics for the treatment of disease, or like institutions or business. The term shall also include paper products, bedding, towels, containers, or cleaning implements that have been exposed to infectious, chemotherapeutic, pathological wastes, solid

The definitions of the ordinance are in conflict with and therefore preempted by the corresponding definition in the Hazardous Material Regulations that designate, describe and classify hazardous materials as follows:

“Infectious Waste” and “Hospital Waste” and Dangerous Waste” are in conflict with 49 CFR §§ 173.134(a)(4) and 173.197, describing Regulated Medical Waste. The definitions of the Ordinance also use the word “Dangerous” in conflict with HMR’s use of the word at 49 CFR §§ 171.14(b); 172.548 and 173.124(c).

Section 02 of the Ordinance reads as follows:

Section 02: Routes

Because the streets and roads of the Borough of Morrisville are generally narrow, winding, and in places congested, and not generally designed to accommodate heavy or constant truck traffic, the Borough Council may from time to time designate certain routes and/or particular streets for use by motor vehicle trucks hauling DANGEROUS WASTE. The following streets are the only streets in the Borough in Morrisville designated at this time for transportation by truck of DANGEROUS WASTE:

PA Route 1 (between the Delaware River Toll Bridge and the boundary line with the Township of Falls)
No such motor vehicle truck shall exceed the load limit for any such routes or road.

This section of the Ordinance conflicts with the definition and use of the word “Dangerous” by HMR and restricts the route in such a manner as to make it impossible for SMI to enter or exit from its permitted transportation facility located at 1307 south Pennsylvania Avenue, Morrisville, PA 19067, without violating the Routing section of the Ordinance (see SMI Pennsylvania permit attached as Exhibit “B”). SMI has operated a

permitted facility at the same address in Morrisville for over five years. The Ordinance does not comply with 49 USC § 5112 and violates the Surface Transportation Act of 1982, 49 USC § 31114, which guarantees trucks and trailers “reasonable access” between the national network of roads and “terminals”. There is also an argument that the Ordinance, as written, would be a constructive taking of SMI’s property without just compensation in violation of the Fifth Amendment.

Section 03 and 04 read as follows:

Section 03: Speed Limits

Trucks carrying DANGEROUS WASTE within the Borough of Morrisville are hereby limited to the designated speed limit on Route 1, and the posted speed limit on any other state or Borough road within the Borough of Morrisville that may eventually be approved for use by such trucks bearing DANGEROUS WASTE.

Section 04: Conditions of Operations

All Trucks carrying DANGEROUS WASTE in the Borough of Morrisville shall operate with their headlights on at all times.

Sections 03 and 04 are in conflict with HMR in the use of the word “Dangerous” as noted above.

Section 05 of the Ordinance reads as follows:

SECTION 05: Miscellaneous Requirements

(a) Each truck hauling DANGEROUS WASTE shall carry and have available for inspection the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act. Such manifest shall be presented upon request of any Morrisville Borough police officer.

(b) Each truck hauling DANGEROUS WASTE shall be subject to a safety inspection at any time.

(c) Each driver of any such truck shall immediately report any accident or collision involving his truck to the Borough of Morrisville police.

(d) No drive of a motor vehicle truck hauling DANGEROUS WASTE in the Borough of Morrisville shall be permitted to enter the Borough of Morrisville with such truck unless such drive, or the owner of consignor of such DANGEROUS WASTE, shall first have deposited with the Borough Secretary in indemnity bond with limits of not less than \$50,000,000 per occurrence. Such bond shall be conditioned to pay all or part of such sum as damages or restitution to the Borough of Morrisville unless the responsible part shall reimburse any person, firm, partnership, trust or corporation, including the Borough itself, for any damages to person, property or natural resources resulting from the hauling of such DANGEROUS WASTE, or accidents or spills incident thereto, in the Borough of Morrisville.

(e) Any truck or vehicle carrying DANGEROUS WASTE shall comply with all DEP and state regulations and laws pertaining thereto.

The Provisions of Section 05 of the Ordinance are in conflict with HMR’s use of

the word "Dangerous" as noted above. In addition, the requirement in subsection (a) for haulers of "Dangerous Waste" to carry and have a manifest as required under the Resource Conservation and Recovery Act is in conflict with HMR's requirement to carry manifests as required by EPA's regulation (see 49 CFR 172.205(a)). Regulated medical waste as defined by the HMR is not a hazardous waste as defined in 40 CFR part 262. Therefore the Ordinance requires the preparation, execution and use of shipping documents in conflict with the HMR Requirements.

Sections 06 and 07 of the Ordinance read as follows:

Section 06: Storage Prohibition

Except as provided for by DEP regulations, the storage of DANGEROUS WASTE IN ONE PLACE FOR OVER 24 HOURS WITHIN THE borough of Morrisville is entirely prohibited. Storage in separate places within the Borough for a cumulative total of 48 hours or more is also prohibited.

Section 07: Presumption

For purposes of this Ordinance, all Hospital Waste will be presumed to be DANGEROUS WASTE.

Sections 06 and 07 are in conflict with HMR's use of the word Dangerous as noted above.

Section 08 of the Ordinance reads as follows:

Section 08: Penalties

Any person who operates a motor vehicle truck in violation of any of the provisions of this Ordinance shall, upon conviction, be fined not less than \$100 nor more than \$500 and may, in addition or alternatively, be sentenced to jail for a period or term not exceeding 90 days. Such sentences may not be suspended.

The penalties provision of this Ordinance is meaningless, due to the fact that the definitions and requirements of the Ordinance are preempted by operation of 49 U.S.C. § 5125 and the authorized regulations, 49 CFR §§ 171-173.

It is respectfully requested that the Provisions of Ordinance No. 902 of the Borough of Morrisville be preempted pursuant to 49 U.S.C. § 5125 and 49 CFR § 201-213 because the provisions are: (1) in conflict with the designations, description and classification of hazardous materials as stated in the Hazardous Materials Regulations; (2) in conflict with the preparation, execution and use of shipping papers as stated in the Hazardous Materials Regulations; and (3) compliance with the routing requirement of the Ordinance is impossible for the SMI permitted facility located within Morrisville.

Moreover, the enforcement of the Morrisville Ordinance with its redefined hazardous material classification scheme, additional requirement for shipping papers and impossible requirements would create an obstacle to the accomplishment and execution of the Hazardous Materials Transportation Uniform Safety Act and Hazardous Materials Regulations; *Chlorine Institute v. California Highway Patrol*, 29 F. 3d 495, 498 (9th Cir. 1994).

Please address all correspondence regarding this application to the undersigned attorney.

Certification: I certify that a copy of this application has been mailed this 30th day of December to Borough Manager, Borough of Morrisville, 35 Union Street, Morrisville, PA 19067, with instructions that the Borough of Morrisville may submit comments regarding this application to the Associate Administrator.

Sincerely,
Med/Waste, Inc. and its Subsidiary Sanford Motors, Inc.

Ross M. Johnston,
Vice President for Legal Affairs.

cc: Craig Sanford, Sanford Motors, Inc.
Gary Lightman.

List of Exhibits

A. Borough of Morrisville, PA, Ordinance No. 902, enacted September 20, 1999.

B. Pennsylvania Department of Environmental Protection letter to Sanford Motors, Inc., dated September 29, 1999, and enclosed Infectious & Chemotherapeutic Waste Transporter License.

Appendix B

March 1, 2000

Hazardous Materials Preemption Docket,
Associate Administrator for Hazardous Materials Safety, Research and Special Administration, U.S. Department of Transportation, Washington, DC.

Re: Preemption Application of Med/Waste, Inc. dated December 30, 1999

Dear Sir or Madam: I am the solicitor to the Borough of Morrisville, Bucks County, Pennsylvania whose "Dangerous Waste Ordinance" is being challenged in the above-captioned application. By this letter, I would like to set forth Morrisville Borough's position in asking that the preemption application be dismissed. I apologize for the delay in responding, but I did not receive a copy of Med/Waste's letter/application to you until on or after January 27, 2000.

Initially, I would like to point out that the U.S. Supreme Court has established a two-part test to determine if a federal law impliedly preempts a local government regulation: (1) Is compliance with both federal and local law impossible? and (2) Does the local law impede congressional objectives? See *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 158 (1978).

A federal statute may also expressly preempt a local ordinance where the act on its face, and by its explicit language, supersedes any inconsistent local regulation.

The U.S. Supreme Court has also held that federal environmental statutes set minimum standards that must be met by a state or local government while permitting the local governments to enact more stringent regulations. In *City of Philadelphia v. New Jersey*, 437 U.S. 617 (1978), the Court stated that Congress intended the Resource Conservation and Recovery Act of 1976 (RCRA) to allow state, regional and local authorities to control the collection and disposal of solid waste as one of their primary functions. The Court further found

that the RCRA contained "no clear and manifest purpose of Congress to preempt the entire field of interstate waste management." *Id.* at 620. Furthermore, in *Ensco, Inc. vs. Dumas*, 807 F.2d 743 (8th Cir., 1986), the federal court held that states and local municipalities are permitted to establish waste management standards more stringent than those imposed by federal law and that only local regulations which totally prohibit storage, transportation or treatment should be preempted.

The applicant in the instant case complains that the elements of the definitions of the terms "Infectious Waste", "Hospital Waste" and "Dangerous Waste" in the Morrisville ordinance are substantially different from those contained in 49 CFR §§ 173.134(a)(4) and 173.197. A closer look reveals that this is simply not true. (Also, it must be pointed out that 49 CFR § 173.197 deals exclusively with waste packaging and contains no definitions).

Morrisville ordinance	49 CFR 173.134(a)(4)
1. "any disease producing micro-organism or material".	1. "a viable micro-organism, or its toxin, that causes or may cause disease in humans or animals"
2. "generated by hospitalized patients [with] severe and communicable diseases".	2. "an infectious substance * * * generated in the diagnosis, treatment or immunization of human beings or animals"
3. "[a]ll cultures and stocks of etiologic agents".	3. "infectious substances and etiologic agents"
4. "[a]ll waste blood and blood products" "[t]issues, organs, body parts, blood and body fluids".	4. "excreta, secreta, blood, blood components, tissue, and tissue fluids"
5. "wastes that were in contact with pathogens in any type of laboratory work".	5. "waste or reusable material * * * that contains an infectious substance"
6. "waste biologicals (e.g., vaccines)".	6. "biological products"

The applicant's contention that Morrisville borough's use of the word "Dangerous" conflicts with 49 CFR § 173.124(c) is similarly misguided. The federal regulation cited deals with "dangerous when wet material" (emphasis added) and is inapposite to the Morrisville Borough ordinance.

Applicant also claims that the Morrisville ordinance should be preempted because it requires drivers to carry written manifests when hauling "Dangerous Wastes" (as defined in the ordinance) while federal law only requires manifests if the cargo is "Hazardous Waste" (as defined in 40 CFR § 261.3). While the Morrisville ordinance may be different from the federal regulation, it certainly does not render the applicant's ability to comply with 40 CFR § 261.3 impossible, nor does it impede the objectives of the federal law.

Finally, the applicant argues that the route restrictions contained in the Morrisville ordinance are violative of 49 U.S.C. § 31114, prohibiting interference with access to the interstate highway system. I can say, with all assuredness, that no interstate highways traverse the Borough of Morrisville. However, the availability of U.S. Route 1 to the applicant has not been restricted. 49 U.S.C. § 5112, cited by the applicant, appears to give the states the right to designate specific highway routes over which hazardous material may and may not be transported by motor vehicle. In Pennsylvania, this right is further delegated to counties and municipalities by section 304 of the Municipal Waste, Planning, Recycling and Waste Reduction Act, 53 Pa. C.S.A. § 4000.304.

The Morrisville ordinance provides standards for the transportation of hazardous waste within the borough which are different, though no less stringent than federal regulations. 49 U.S.C.S. § 5101 states that the purpose of the chapter is "to provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce by improving the regulation and enforcement authority of the Secretary of Transportation." Morrisville Ordinance No. 902 espouses the same concern for the "health, safety and general welfare of its residents." The ordinance in question breaks no new legislative ground regarding the transportation of hazardous waste but only serve to clarify and specify areas already addressed by federal law. Therefore, the two-part preemption test is not satisfied.

49 U.S.C.S. § 5125 clearly states the criteria by which a local hazardous waste ordinance will be evaluated for the purpose of determining whether it is preempted. Section 5125(a) states that a "requirement of a [local government] is preempted if complying with the requirement of the * * * political subdivision * * * and a requirement of this chapter * * * is not possible." Nothing in the Morrisville ordinance prevents any hauler of dangerous waste to comply with any of the provisions of the federal statutes or any of the rules that have been promulgated in furtherance of environmental legislation. Section 5125(b) states that no local ordinance may be substantively different from federal regulations. The definitions espoused by the Morrisville ordinance and the federal statutes address essentially the same types of materials.

Sincerely,

Stephen L. Needles,
Stuckert and Yates.

cc: Ross M. Johnston,
Gary P. Lightman,
George Mount, Manager
[FR Doc. 00-9257 Filed 4-13-00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-33 (Sub-No. 145X)]

Union Pacific Railroad Company— Abandonment Exemption—in Stanislaus County, CA

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon a 5.62-mile line of railroad over the Tidewater Subdivision from milepost 26.43 near McHenry to milepost 32.05 in Modesto, in Stanislaus County, CA.¹ The line traverses United States Postal Service Zip Codes 95350 through 95356.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line;² (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected

¹ UP states that it had authority to abandon the line between mileposts 27 and 30 pursuant to a joint relocation project with the Southern Pacific Transportation Company that was the subject of a notice of exemption in *Union Pacific Railroad Company and Southern Pacific Transportation Company—Joint Relocation Project Exemption*, Finance Docket No. 32086 (ICC served June 30, 1992), but that the abandonment authority was never exercised.

The City of Modesto (City) filed a request for issuance of a notice of interim trail use (NITU) for a portion of the right-of-way between milepost +26.43 and milepost +30.63 pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The Board will address the City's trail use request and any others that may be filed in a subsequent decision.

² UP states that in connection with track construction in downtown Modesto, it plans to temporarily detour some overhead traffic over the line for approximately one week beginning on or about April 14, 2000. UP states that the detour is necessary to maintain access to the Modesto & Empire Traction line between Modesto and Empire, CA.

employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 16, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,³ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),⁴ and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 24, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 4, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James P. Gatlin, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 19, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by UP's filing of a notice of consummation

³ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

⁴ Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1000. See 49 CFR 1002.2(f)(25).