

AGENDA

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Friday, July 20, 2012 - 10:00 a.m.

Virginia Housing Center - 4224 Cox Road  
Glen Allen, Virginia

TABS

1. Roll Call

2. Approval of March 16, 2012 Minutes

3. Approval of Final Order

In Re: Appeal of Charles E. Bird  
Appeal No. 11-16

4. Appeal Hearing

In Re: Appeal of Lee Roy Trent (Firewater Transport, LLC)  
Appeal No. 12-2

5. Secretary's Report

Code Change Proposals

STATE BUILDING CODE TECHNICAL REVIEW BOARD

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# DRAFT MINUTES

## STATE BUILDING CODE TECHNICAL REVIEW BOARD

MEETING  
March 16, 2012

RICHMOND, VIRGINIA

### Members Present

Mr. J. Robert Allen, Chairman  
Mr. R. Schaefer Oglesby, Vice-Chairman  
Mr. Matthew Arnold  
Mr. W. Keith Brower, Jr.  
Mr. J. Daniel Crigler  
Mr. Joseph A. Kessler, III  
Mr. John A. Knepper, Jr.  
Mr. James N. Lowe  
Mr. Eric Mays  
Ms. Joanne D. Monday

### Members Absent

Mr. James R. Dawson  
Mr. John H. Epperson  
Ms. Patricia S. O'Bannon

### Call to Order

The meeting of the State Building Code Technical Review Board (Review Board) was called to order by the Chairman at approximately 10:00 a.m.

### Roll Call

The attendance was established by Mr. Vernon W. Hodge, Secretary, and constituted a quorum. Mr. Steven Jack, Assistant Attorney General in the Office of the Attorney General, was present and serving as the Board's legal counsel.

### Approval of Minutes

Mr. Oglesby moved to approve the minutes of the November 18, 2011 meeting as presented in the Review Board members' agenda package. The motion was seconded by Mr. Lowe and passed unanimously with Mr. Arnold abstaining from the vote.

### Final Orders

#### Appeal of Esther B. Coleman and Beverly A. Bell; Appeal No. 11-14:

After consideration, Mr. Oglesby moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Mr. Crigler and passed unanimously with Mr. Arnold abstaining from the vote.

#### Appeal of Walter Stanley Jennings; Appeal No. 11-11:

After consideration, Mr. Oglesby moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Mr. Crigler and passed unanimously with Mr. Arnold abstaining from the vote.

Final Orders

Appeal of Glenn Yates, Jr., AIA; Appeal No. 11-13:

After consideration, Mr. Oglesby moved to approve the final order as presented in the Review Board members' agenda package with editorial corrections to insert the word "as" in line three and strike the word "as" in line five of the second paragraph on page six of the order. The motion was seconded by Mr. Lowe and passed unanimously with Mr. Arnold abstaining from the vote.

Old Business

Appeal of Sovereign Homes, Inc.; Appeal No. 10-23:

Mr. Hodge briefed the Board members on the procedures for handling post-hearing submittals in appeals as they are only submitted infrequently. The Board members then considered post-hearing submittals received in the Sovereign Homes appeal. Mr. Hodge distributed correspondence received after the Board members' agenda package was mailed. In the latest correspondence, the parties agreed not to attend the meeting and asked only for a correction of the final order concerning the time which transpired between the completion of the house and the discovery of the violations by Frederick County. Mr. Hodge verified that the timeframe in the final order was incorrect and suggested striking the words "less than a year" in the first line of the second paragraph on page two of the order, and inserting "approximately four years" in its place. The Board members approved the rewording and it was noted that a corrected final order would be sent to the parties.

New Business

Appeal of Charles E. Bird; Appeal No. 11-16:

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned a ruling by the Town of Pulaski building official that the barrier for a newly constructed above-ground swimming pool at Mr. Bird's residence, located at 1975 Peppers Ferry Road in the Town of Pulaski, did not meet the requirements of the Virginia Uniform Statewide Building Code (USBC). The ruling of the building official had been appealed by Mr. Bird to the Town of Pulaski Housing Board of Adjustment and Appeals and the building official's ruling was upheld.

New Business

Appeal of Charles E. Bird; Appeal No. 11-16 (continued):

The following persons were sworn in and given the opportunity to present testimony:

Charles Bird  
Tom Compton, building official for the Town of Pulaski

Mr. Kessler arrived at approximately 10:15 a.m.

No exhibits were submitted by the parties to supplement the documents in the Review Board members' agenda package.

After testimony concluded, the Chairman closed the preliminary hearing and stated a decision from the Review Board would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision – Appeal of Charles E. Bird; Appeal No. 11-16:

After deliberation, Mr. Mays moved to overturn the decision of the Town of Pulaski building official and the decision of the Town of Pulaski Housing Board of Adjustment and Appeals and to rule instead that the only USBC violation present was that the equipment located next to the pool was a climbing hazard and not protected by a barrier. It was further noted that the International Residential Code rather than the International Building Code was applicable to the installation. The motion was seconded by Mr. Crigler and passed unanimously.

Interpretations

An interpretation request from Mr. David Beahm, building official for the County of Warren was considered. Mr. Beahm was present and provided the Review Board members with an overview of the request. In consideration of the request, during discussion among the Board members and with staff, Mr. Hodge suggested that the questions presented could be narrowed to a single question and answer if the Board members determined that all the unsafe provisions of the Virginia Maintenance Code were applicable.

Interpretations

After further discussion, Mr. Arnold moved to issue the following interpretation of Section 104.1 of the Virginia Construction Code:

Question: Do all the provisions for unsafe structures in the Virginia Maintenance Code, wherever located, apply in enforcing the second paragraph of Section 104.1?

Answer: Yes.

The motion was seconded by Mr. Mays and passed unanimously. The interpretation is designated as Interpretation No. 3/2009.

Secretary's Report

The Board members considered four proposals drafted by staff for the 2012 USBC based on Interpretation Nos. 2/2003 (shipping containers), 6/2006 (electronic notices), 7/1990 (energizing electrical services) and 26/1990 (separation of dwelling units). After discussion, Mr. Oglesby moved to forward the proposals to the Board of Housing and Community Development. The motion was seconded by Ms. Monday and passed unanimously.

An additional proposal concerning USBC violations caused by defective materials, which the Review Board members had directed staff to develop as the result of an appeal case, was considered. After discussion, staff was given direction to revise the proposal for consideration at a future meeting.

Board members then reviewed a revised appeal application form and directed staff to change the number of days from the certificate of service to the receipt of the form to be five (5) days instead of three (3) days.

A calendar of meeting dates for 2012 was then considered. Mr. Knepper moved to approve the following meeting dates if needed:

April 20	September 21
May 18	October 19
June 15	November 16
July 20	December 21
August 17	

Secretary's Report                      The motion was seconded by Mr. Brower and passed unanimously.

Adjournment                              There being no further business, the meeting was adjourned by motion of Mr. Lowe at approximately 1:00 p.m.

Approved: July 20, 2012

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Chairman, State Building Code Technical Review Board

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Secretary, State Building Code Technical Review Board

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Charles E. Bird  
Appeal No. 11-16

Hearing Date: March 16, 2012

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of the Virginia Uniform Statewide Building Code (USBC) and other regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. Enforcement of the USBC in other than state-owned buildings is by local city, county or town building departments. See § 36-105 of the Code of Virginia. An appeal under the USBC is first heard by a local board of building code appeals and then may be further appealed to the Review Board. See § 36-105 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

## II. CASE HISTORY

Charles E. Bird ("Bird"), a resident of the Town of Pulaski, appeals a determination under the USBC, Part I, the Virginia Construction Code (VCC), by the Town building official concerning the construction of the barrier around a newly installed above-ground swimming pool.

During 2011, Bird contracted with a pool company to install an above-ground swimming pool adjacent to his home at 1975 Peppers Ferry Road. The installer obtained a VCC building permit from the Town building official and the installation was approved except for the barrier for the pool, which was to be installed by Bird.

Bird obtained a VCC permit for the installation of the barrier and a deck at the end of the pool closest to the rear of the house. The barrier for the pool was to consist of the pool wall in areas where there was no deck and a guardrail on top of the deck in the deck area.

In September of 2011, the Town building official inspected the pool barrier and deck and issued a notice of violation under the VCC for noncompliance with the provisions for barriers for swimming pools located at commercial and multi-family residential buildings. The notice indicated that the pool wall could not be used as the required barrier.

Bird appealed the citation to the Town of Pulaski Housing Board of Adjustment and Appeals (Town USBC board), which heard the appeal and ruled to uphold the citation. Bird then further appealed to the Review Board.

### III. FINDINGS OF THE REVIEW BOARD

The Review Board finds that the citation issued by the Town building official is in error due to applying the International Building Code rather than the International Residential Code (IRC). The correct application of the VCC for residential swimming pools and barriers is to the IRC, Appendix G, which is referenced in Section 310.6 of the VCC by establishing a new Section R325.1 of the IRC, entitled, "Use of Appendix G for swimming pools, spas and hot tubs."

Item 1 of Section AG105.2 of Appendix G, for barriers, states in pertinent part that "[w]here the top of the pool structure is above grade, such as an above-ground pool, the barrier may be at ground level, such as the pool structure, or mounted on top of the pool structure." This provision makes it clear that the pool wall may be used as the barrier provided it complies with all other barrier requirements.

Bird's pool wall does satisfy the height requirements for a barrier and is in compliance with the additional requirements for barriers in Appendix G. In addition, the portion of the

pool connected to the deck is protected by the deck guardrail, which also complies with the barrier requirements of Appendix G.

However, the Review Board finds that the filter/pump assembly located adjacent to Bird's pool is a climbing hazard and in violation of Section AG105.4 of Appendix G. Section AG105.4, of Appendix G, states that "[b]arriers shall be located to prohibit permanent structures, equipment and similar objects from being used to climb them." The filter/pump assembly is within several feet of the pool wall and is over half the height of the wall. Therefore, it could be used to climb the wall.

#### IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decision of the Town USBC board and the Town building official that the pool wall may not serve as the barrier to the pool to be, and hereby is, overturned. The Review Board further orders the notice issued by the Town building official to be, and hereby is, corrected to be a notice of noncompliance with Section AG105.4 of Appendix G of the IRC for the lack of a barrier around the filter/pump assembly.

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Chairman, State Technical Review Board

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Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Vernon W. Hodge, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Lee Roy Trent (Firewater Transport LLC)  
Appeal No. 12-2

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VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Lee Roy Trent (Firewater Transport LLC)  
Appeal No. 12-2

REVIEW BOARD STAFF DOCUMENT

Suggested Statement of Case History and Pertinent Facts

1. Lee Roy Trent (Mr. Trent) is the owner of a fuel delivery company known as Firewater Transport LLC, and operates the business out of his residence and an adjacent shop building on an approximately two acre parcel of land located at 1329 Scenic Drive in Patrick County. Mr. Trent purchased the property in 1978, constructed his house in 1983 and a thirty-foot by thirty-foot shop building in 1987. A new larger shop replaced the original shop in 2010.
2. The business uses tractor-trailer type tank vehicles to deliver diesel fuel and gasoline to clients. The vehicles are parked at night and at other times when not in use in a driveway area adjacent to the shop. The tanks are empty of fuel when parked.
3. In 1986, a manufactured home was placed, and subsequently a house to replace the manufactured home was constructed, on an approximately four acre parcel adjacent to, and to the west of, Mr. Trent's property. In 1999, Mr. Trent's son built a house on an approximately four acre parcel adjacent to, and to the south of, Mr. Trent's property. In 2005, a house was constructed on an approximately five acre parcel adjacent to, and to the east of, Mr. Trent's property. Also, in 2005, a manufactured home was placed on an approximately 20 acre parcel to the north of, and across Scenic Drive from, Mr. Trent's property. All the homes delineated above are within 500 feet of Mr. Trent's shop.

4. In July of 2011, the owner of the home to the east of Mr. Trent's property communicated with the Western Regional State Fire Marshal's Office his belief that Mr. Trent's business was a fire and explosion hazard to his home and neighboring homes. The State Fire Marshal's Office has authority to enforce the Virginia Statewide Fire Prevention Code (VSFPC) in areas where the local government has not elected to enforce the code and that is the case in Patrick County.

5. After investigation, the State Fire Marshal's Office determined that a violation of the VSFPC existed and issued a notice to Mr. Trent. Subsequently, additional notices were issued if tank vehicles were found to be parked at or partially in the shop.

6. In February of 2012, Mr. Trent, through legal counsel, appealed the most recent notice issued to the Review Board. Review Board staff scheduled an informal fact-finding conference to clarify the issues in the appeal and to review the documents submitted by the parties.

7. The informal fact-finding conference resulted in the establishment of a briefing schedule for the parties' legal counsel to submit written arguments and responses and to review this staff document to submit additions, corrections or objections and to submit additional documents for the record. Additional issues discussed and clarified at the informal fact-finding conference, not incorporated into the above statements of case history and pertinent facts, were that (i) the parking of tank vehicles at Mr. Trent's shop was ongoing so the issue of whether or not the appeal may be moot due to the correction of the violations by removing the vehicles did not have to be raised, (ii) the International Fire Code Commentary used the term "residential district" synonymously with the term "residential area" in the section cited, (iii) Patrick County does not have a zoning ordinance, and (iv) Section 3406.6.2.3 of the International Fire Code, which addresses parking of tank vehicles for durations exceeding one hour, appeared to be

applicable to Mr. Trent's situation, but was not cited or addressed by the State Fire Marshal's Office.

8. In subsequent correspondence in response to the Review Board staff asking for clarification of the State Fire Marshal's Office position concerning the application of Section 3406.6.2.3, the State Fire Marshal's Office, through legal counsel, indicated that it was not an issue under appeal, but that their position was that there were no approved locations or structures at Mr. Trent's property to park the tank vehicles.

Suggested Issue for Resolution by the Review Board

1. Whether to overturn the State Fire Marshal's Office issuance of the VSFPC notice for Mr. Trent's tank trucks being parked within 500 feet of a residential area.

STATE FIRE MARSHAL'S OFFICE  
RESPONSE TO STAFF DOCUMENT

**VIRGINIA:**

**BEFORE THE STATE BUILDING CODE TECHNICAL REVIEW BOARD**

**IN RE: Appeal of Lee Roy Trent (Firewater Transport LLC)**

**Appeal No. 12-2**

**STATE FIRE MARSHAL'S OFFICE COMMENTS ON:**

*Appeal of Lee Roy Trent (Firewater Transport, LLC), Appeal No. 12-2  
Suggested Statement of Case History and Pertinent Facts  
Prepared by Review Board Staff*

The State Fire Marshal's Office (the SFMO) submits the following for its comments on the Review Board Staff Document prepared for Appeal No. 12-2, Lee Roy Trent (Firewater Transport, LLC):

1. Paragraph 1: Please include the date of incorporation for Firewater Transport, LLC.
2. Paragraph 2: The SFMO does not agree that the tanks are empty of fuel when parked at 1329 Scenic Drive. Please revise accordingly.
3. Paragraph 5: Revise as follows: "After investigation, the State Fire Marshal's Office determined that a violation of the VSFPC existed and issued an Inspection Notice to Mr. Trent on September 9, 2011 for an alleged violation of VSFPC Section 3406.6.2.1. Subsequently, the SFMO issued two (2) additional Inspection Notices to Mr. Trent when the SFMO observed tank vehicles on the property. The additional Inspection Notices were issued on October 26, 2011 and January 20, 2012."
4. Paragraph 6: Revise as follows: "On February 2, 2012, Mr. Trent, through legal counsel, appealed to the TRB the Inspection Notice issued on January 20, 2012. Review Board Staff scheduled an informal fact-finding conference on May 14, 2012, to clarify issues in the appeal and to review the documents submitted by the parties."
5. Paragraph 7: The SFMO concurs that the IFFC resulted in the establishment of a briefing schedule. As outlined below, the SFMO does not agree with the additional issues as presented in paragraph 7 of the Review Board Staff Document. Regarding (i), the SFMO believes there is no relevant reason to raise the issue of mootness in this staff document or at the July 20 hearing. The parties never raised the issue of mootness because the parties knew and never disputed that the alleged violation was of a continuing nature. There is no relevant reason to raise an issue that the parties never disputed. Regarding (ii), what is the relevance of referring to the undefined

term “residential district” as used in the commentary section of a document that was not cited by the SFMO? The term at issue is “residential area” as used in the VSFPC. Regarding (iii), the SFMO concurs that Patrick County does not have a zoning ordinance. Regarding (iv), the SFMO objects to the inclusion of and does not see the relevance of any discussion relating to provisions of the VSFPC that were not cited in the Inspection Notice. Moreover, the DHCD Staff appear to be engaging in argument by stating in the document that Section 3406.6.2.3 of the VSFPC “appeared to be applicable...but was not cited or addressed by the SFMO.” This statement has no bearing on the citation that was issued by the SFMO and is not applicable to the appeal. All references to Section 3406.6.2.3 should be stricken from this document, including paragraph 8 in its entirety.

The SFMO understands that the purpose of the Review Board Staff Document is to present a brief background of the matter along with pertinent facts. Instead, this Review Board Staff Document goes beyond merely stating facts and appears to make arguments and comments which are beyond the scope of this document. Accordingly, the SFMO respectfully requests that Review Board Staff revise the document to strip out the argument and present the facts as known.

Respectfully submitted,

FOR THE STATE FIRE MARSHAL,  
VIRGINIA DEPARTMENT OF FIRE PROGRAMS

By *Catherina F. Hutchins*  
Counsel

Dated: June 11, 2012

Kenneth T. Cuccinelli, II  
Attorney General

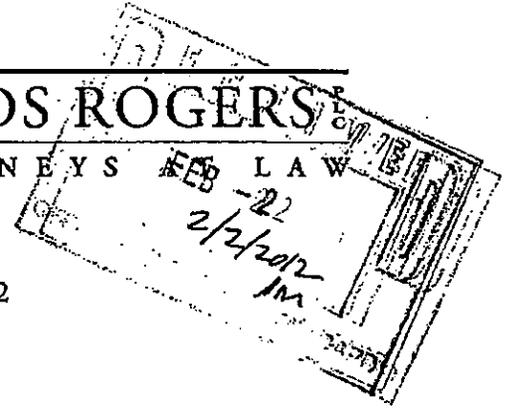
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DOCUMENTS SUBMITTED  
BY FIREWATER TRANSPORT

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(540) 983-7546  
SUMMERLIN@WOODSROGERS.COM

**WOODS ROGERS**  
ATTORNEYS AT LAW

February 2, 2012



Office of the State Technical Review Board  
Main Street Centre  
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Richmond, Virginia 23219  
Tel: (804) 371-7150  
Fax: (804) 371-7092,  
TASO@dhcd.virginia.gov

**Re: Statement of Specific Relief Sought**

To whom it concern,

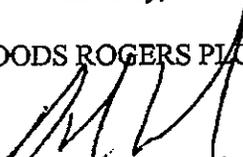
Woods Rogers PLC has been retained by Mr. Lee Roy Trent and Firewater Transport, LLC ("Firewater Transport") to represent its interests relating to an issue that has arisen regarding the operation of tank vehicles on the property located at 1329 Scenic Drive, Stuart, Virginia 24171. Particularly, Mr. Trent was issued a violation under Virginia Statewide Fire Prevention Code (the "Fire Code") Section 3406.6.2, which we now appeal.

In this appeal, we request that the Office of the State Technical Review Board find that Mr. Trent is not in violation of the Fire Code in the storage of the tank vehicles on his private property. We further request that Mr. Trent be allowed to continue the business he has owned and operated at the Scenic Drive property for over 20 years without further interruption.

I look forward to the opportunity to meet with you and discuss any thoughts or insight you may have into this matter.

Sincerely,

WOODS ROGERS PLC

  
Daniel C. Summerlin

Attachments

{#1490150-1, 113208-00001-01}

P.O. Box 14125 / Roanoke, Virginia 24038-4125  
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(540) 983-7600 / Fax (540) 983-7711  
Offices also in Charlottesville, Danville and Richmond, Virginia

**COMMONWEALTH OF VIRGINIA**  
**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**  
**Technical Assistance Services Office (TASO) and Office of the State Technical Review Board**  
**Main Street Centre, 600 E. Main Street, Suite 300, Richmond, Virginia 23219**  
**Tel: (804) 371-7150, Fax: (804) 371-7092, Email: TASO@dhcd.virginia.gov**

**APPLICATION FOR ADMINISTRATIVE APPEAL**

Regulation Serving as Basis of Appeal (check one):

- Uniform Statewide Building Code
- Statewide Fire Prevention Code
- Industrialized Building Safety Regulations
- Amusement Device Regulations

Appealing Party Information (name, address, telephone number and email address):

Lee Roy Trent, 1329 Scenic Drive Stuart , VA 42171,

Contact:

Daniel C. Summerlin, III, Esq.  
Woods Rogers PLC.  
10 South Jefferson Street, Suite 1400  
Roanoke, VA 24011  
(540) 983-7546  
summerlin@woodsrogers.com

Opposing Party Information (name, address, telephone number and email address of all other parties):

Kenneth Kent  
Assistant Fire Marshal  
Virginia Department of Fire Programs  
State Fire Marshal's Office  
6744 Thirlane Road  
Roanoke, VA 24019  
(540) 561-7033

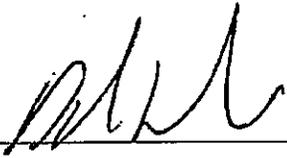
Additional Information (to be submitted with this application)

- Copy of enforcement decision being appealed
- Copy of record and decision of local government appeals board (if applicable and available)
- Statement of specific relief sought

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of February, 2012, a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

**Note:** This application must be received by the Office of the State Technical Review Board within three (3) working days of the date on the above certificate of service for that date to be considered as the filing date of the appeal. If not received within three (3) working days, the date this application is actually received by the Office of the Review Board will be considered to be the filing date.

Signature of Applicant: 

Name of Applicant: Daniel C. Summerlin, III  
(please print or type)

DOCUMENTS SUBMITTED BY  
STATE FIRE MARSHAL'S OFFICE

Virginia:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Firewater Transport, LLC  
Appeal No. 12-2

**STATEMENT OF THE STATE FIRE MARSHAL**

1. Pursuant to Virginia Code § 9.1-206, the Executive Director of the Virginia Department of Fire Programs is authorized to employ the State Fire Marshal and other personnel necessary to carry out the provisions of the Statewide Fire Prevention Code Act, Virginia Code §§ 27-94 through -101. See Virginia Code § 9.1-206. The Mission of the State Fire Marshal's Office is to provide safety to life and property from fire for the citizens of the Commonwealth, to ensure a safe and healthy living environment through effective administration, public education, enforcement, plans review, inspections, and technical assistance by requiring compliance with mandated federal and state building, fire, life safety codes and regulations, industrialized building regulations, and all referenced model codes and standards. To accomplish this mission, the SFMO utilizes inspectors and engineers to complete fire safety inspections in localities that do not have their own fire code official; conducts building plan reviews for fire safety measures; conducts construction inspections for fire safety systems in state buildings; provides assistance to local building and fire code officials; and responds to complaints and questions from private citizens.<sup>1</sup>

2. Pursuant to Virginia Code § 27-97 the Board of Housing and Community Development is authorized to adopt and promulgate a Statewide Fire Prevention Code

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<sup>1</sup> See website of the State Fire Marshal at [http://www.vafire.com/state\\_fire\\_marshall/index.html](http://www.vafire.com/state_fire_marshall/index.html).

("SFPC") which shall be cooperatively developed with the Fire Services Board pursuant to procedures agreed to by the two Boards. The SFPC shall prescribe regulations to be complied with for the protection of life and property from the hazards of fire or explosion and for the handling, storage, sale and use of fireworks, explosives or blasting agents, and shall provide for the administration and enforcement of such regulations. Virginia Code § 29-97.

3. Pursuant to Virginia Code § 27-98, any local government may enforce the SFPC in its entirety or with respect only to those provisions of the SFPC relating to open burning, fire lanes, fireworks, and hazardous materials. If a local governing body elects to enforce only those provisions of the SFPC relating to open burning, it may do so in all or in any designated geographic areas of its jurisdiction. The State Fire Marshal shall also have the authority, in cooperation with any local governing body, to enforce the SFPC. The State Fire Marshal shall also have authority to enforce the SFPC in those jurisdictions in which the local governments do not enforce the SFPC and may establish such procedures or requirements as may be necessary for the administration and enforcement of the SFPC in such jurisdictions. Virginia Code § 27-98.

4. Patrick County has elected not to enforce the SFPC at the local level. The State Fire Marshal is the enforcing authority, or authority having jurisdiction, in Patrick County. SFPC § 104.2. (Exhibit A.)

5. On July 19, 2011, Teri Robinson, Fire Marshal Supervisor in the State Fire Marshal's Office ("SFMO"), Western Region, located at 6744 Thirlane Road, Roanoke, VA 24019, received an electronic mail message regarding fuel delivery tank vehicles parked at a home located at 1329 Scenic Drive, Stuart, Virginia. That same day, by

electronic mail, Ms. Robinson notified Kenneth L. Kent (“Kent”), Assistant Fire Marshal, State Fire Marshal’s Office, Western Region, of the complaint. (Exhibit 1.)

6. Kent is employed by the Commonwealth of Virginia, Department of Fire Programs, State Fire Marshal’s Office as an Assistant Fire Marshal in the State Fire Marshal’s Office Western Region. His duties as an Assistant Fire Marshal require him to inspect a variety of private and public buildings, *e.g.*, institutional, industrial, commercial, and residential, to ensure compliance with required fire safety regulations including the Virginia Statewide Fire Prevention Code, Virginia Uniform Statewide Building Code, Life Safety Code, the Virginia Public Building Safety Regulations, and all referenced model codes and standards. Other duties include responding to complaints and providing technical assistance to fire and building officials incidental to normal duties regarding building and fire code related requirements. Prior to joining the SFMO, Kent was employed as a professional firefighter by Arlington County, Virginia.

7. The July 19, 2011, electronic mail message regarding tank vehicles parked at a home at 1329 Scenic Drive in Stuart, Virginia, was written by Richard Kreh (“the Complainant”) who resides at 1309 Scenic Drive, Stuart, Virginia. The Complainant observed up to four (4) tank vehicles, with an approximate capacity of 9,000 gallons of fuel each, parked at 1329 Scenic Drive, Stuart, Virginia. The Complainant expressed concern about fire and explosion risks to himself and other neighbors due to the presence of the fuel delivery tank vehicles. The Complainant also noted that the only security for the tank vehicles appeared to be a night light.

8. On July 28, 2011, Kent drove by 1329 Scenic Drive and from the road observed two (2) tank vehicles attached to tractor trailers parked on the property. Kent also

observed that a red brick single family residence, as well as a metal garage building, is located at the property on which the tank vehicles were parked. Kent observed that, as viewed from the road, the two tank vehicles with tractor trailers were parked in the area between the residence and the metal garage building. (Attached as Photographs 1 and 2.)

9. Kent observed that the area is a rural residential neighborhood with single family residences located on wooded lots.

10. On July 28, 2011, Kent met with the Complainant at Complainant's residence, 1309 Scenic Drive, Stuart, Virginia. After discussing Complainant's observations and the Statewide Fire Prevention Code ("SFPC"), Kent took additional photographs of 1329 Scenic Drive. (Attached as Photographs 3, 4, and 5.)

11. Photograph 5 documents a placard on the tank vehicle bearing the number "1203".

12. On August 4, 2011, Kent contacted the Patrick County Building Official and determined that the garage building at 1329 Scenic Drive was a permitted structure, but it was not constructed to garage tank vehicles.

13. On August 5, 2011, Kent contacted the Virginia State Police, Motor Carrier Safety Unit and determined that the Motor Carrier Safety Unit did not have a role in this matter.

14. On August 25, 2011, the Complainant sent Kent two additional photographs of 1329 Scenic Drive showing a tank vehicle in the garage. (Attached as Photographs 6 and 7.)

15. On September 9, 2011, Kent and State Fire Marshal David Brown conducted an on-site inspection of 1329 Scenic Drive, Stuart, Virginia. Kent observed two tank

vehicles on the property. Kent observed and photographed one of the tank vehicles parked in the garage. Section 3406.6.2.1 of the Statewide Fire Prevention Code (“SFPC”) states, “Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the fire chief, pose an extreme life hazard.” Kent also observed that the tank vehicle attached to the semi-trailer was partially located in the garage at the time of inspection. Section 3406.6.3 of the SFPC states, “Tank vehicles shall not be parked or garaged in buildings other than those specifically approved for such use by the fire code official.” (Attached as Photographs 8a-8d.)

16. On September 9, 2011, Kent interviewed the property owner/business owner, Lee Roy Trent (“Trent”), Mrs. Trent, Trent’s son, and the bookkeeper for Trent’s business. Trent owns and operates Firewater Transport, Inc., LLC (“FWT”), a fuel delivery business, from his residence at 1329 Scenic Drive.

17. On September 9, 2011, Kent explained to Trent that he was issuing a SFMO Inspection Notice to Trent for parking tank vehicles on the property. On September 9, 2011, Kent delivered by hand the Inspection Notice to FWT. The Inspection Notice required abatement by October 9, 2012. (Ex. 2.)

18. On September 28, 2011, Kent was in Patrick County conducting inspections, and he drove by 1329 Scenic Drive. He observed and photographed three (3) tank vehicles on the property. (Attached as Photograph 9.)

19. On October 26, 2011, Kent conducted a follow-up inspection at 1329 Scenic Drive. Kent observed two tank vehicles parked on the property. Section 3406.6.2.1 of

the SFPC states, "Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the fire chief, pose an extreme life hazard." Kent issued a second Inspection Notice to Trent for parking tank vehicles on the property. The Inspection Notice required abatement by November 9, 2011. (Ex. 3.)

20. On November 21, 2011, Kent conducted a follow-up inspection at 1329 Scenic Drive. Kent observed no tank vehicles on the property at that time. Kent issued an Inspection Notice to Mrs. Trent noting that a previous violation had been corrected. (Ex. 4.)

21. On January 16, 2012, Kent received an electronic mail message from Complainant that tank vehicles were parked at 1329 Scenic Drive. (Ex. 5.)

22. On January 20, 2012, Kent drove by 1329 Scenic Drive. Kent observed a tank vehicle parked on the property at approximately 1145 hours. (Attached as Photograph 10.) FWT regularly parks its tank vehicles at 1329 Scenic Drive, Stuart, Virginia, 24171. Parking of tank vehicles occurs both during the day and overnight. Such parking is not incidental to a fuel delivery.

23. On January 20, 2012, Kent returned to 1329 Scenic Drive at approximately 1550 hours accompanied by Patrick County Deputy Sheriff J. Kruse. Kent observed a tank vehicle on the property. Section 3406.6.2.1 of the SFPC states, "Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of

the fire chief, pose an extreme life hazard.” Kent knocked on the Trent’s door and spoke with Mrs. Trent regarding the tank vehicle parked on the property. Kent explained that he would issue an Inspection Notice because the tank vehicle was parked on the property. On January 20, 2012 at 1608 hours, Kent issued the Inspection Notice to Mrs. Trent. The Inspection Notice required an abatement date of January 25, 2012. (Ex. 6.)

24. On January 27, 2012, while in Patrick County for other Fire Safety Inspections, Kent drove by 1329 Scenic Drive and observed and photographed a tank vehicle parked on the property. (Attached as Photograph 11.)

25. On February 2, 2012, FWT, by counsel, filed with the Technical Review Board a Notice of Appeal of the January 20, 2012, Inspection Notice.

26. On February 3, 2012, while in Patrick County for other Fire Safety Inspections, Kent drove by 1329 Scenic Drive and observed a tank vehicle parked on the property.

27. On February 22, 2012, while in Patrick County for other Fire Safety Inspections, Kent drove by 1329 Scenic Drive and observed two (2) tank vehicles parked on the property.

28. On March 1, 2012, while in Patrick County for a meeting, Kent drove by 1329 Scenic Drive and observed a tank vehicle parked on the property.

29. On March 22, 2012, while in Patrick County for other Fire Safety Inspections, Kent drove by 1329 Scenic Drive and observed and photographed three (3) tank vehicles parked on the property. (Attached as Photograph 12.)

30. On May 2, 2012, while in Patrick County for other Fire Safety Inspections, Kent drove by 1329 Scenic Drive and observed two (2) tank vehicles parked on the property.

31. FWT tank vehicles transport petroleum products that are both flammable and combustible. Fire and explosive risks are present whether the tank vehicle contains petroleum products or not.

32. Photograph 13 is an aerial view photograph of 1329 Scenic Drive, Stuart, Virginia. This information is available to the public on the website maintained by Patrick County, Virginia. Photograph 13 documents the presence of multiple residences, and other structures, within 500 feet of the area used by FWT to park tank vehicles. Section 3406.6.2.1 of the SFPC states, "Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the fire chief, pose an extreme life hazard." (Ex. 7.)

33. The State Fire Marshal asks the Technical Review Board to uphold the Inspection Notice issued on January 20, 2012, direct Mr. Trent not to park tank vehicles on his property as the parking area is within 500 feet of residential areas, and require Mr. Trent to park FWT tank vehicles in a location that is more than 500 feet from a residential area. Parking tank vehicles within 500 feet of a residential area poses a risk of fire and explosion to the Trent residence and the other nearby residences on Scenic Drive. The risk of fire and explosion in this residential area can be reduced by moving the tank vehicles to an appropriate parking area located more than 500 feet from a residential area.

Respectfully submitted,

FOR THE STATE FIRE MARSHAL  
VIRGINIA DEPARTMENT OF FIRE PROGRAMS

By Catherina F. Hutchins  
Counsel

Dated: May 14, 2012

Kenneth T. Cuccinelli, II  
Attorney General

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Virginia Bar No. 33825  
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SFMO  
Ex. A

**Localities enforcing the VIRGINIA STATEWIDE FIRE PREVENTION CODE – Revised August 10, 2011**

LOCALITY	LOCALITY TYPE	FIRE OFFICIAL	MAILING ADDRESS	CITY & STATE	ZIP	PHONE #	FAX #	SFMO REGION	E-MAIL ADDRESS
<p><b>IMPORTANT NOTICE:</b> This is a list of localities that have adopted the enforcement provisions of the Statewide Fire Prevention Code (SFPC) and lists the locally appointed fire official who is the authority for the administration and enforcement of the SFPC. If a city, county or town is not listed here, then the administration and enforcement of the SFPC is provided by the State Fire Marshal's Office (SFMO). Additional contact information for the SFMO can be obtained at the following web site: <a href="http://www.vafire.com/state_fire_marshal/state_fire_marshal_regional_offices.html">http://www.vafire.com/state_fire_marshal/state_fire_marshal_regional_offices.html</a></p> <p>The name, address, phone numbers and emails of local fire officials on this list is not guaranteed and is subject to change without notice.</p>									
<p>See page 8 for 'Enforcement Density' information.</p>									
<p>(*) In the absence of documents or copy of local ordinance to the contrary, assumes county provides SFPC enforcement to pre-1971 towns, incorporated towns, or portions of towns within a county's boundaries.</p>									
Accomack	Town	See Accomack County							
Accomack	County	David Fluhart	P. O. Box 93	Accomack, VA	23301	757-787-5721	757-787-8948	Tidewater	<a href="mailto:dfluhart@co.accomack.va.us">dfluhart@co.accomack.va.us</a>
Albemarle	County	J. Dan Eggleston	401 McIntire Rd.	Charlottesville, VA	22902	434-296-5833	434-972-4123	Orange	<a href="mailto:deggleston@albemarle.org">deggleston@albemarle.org</a>
Alexandria	City	Rudolph Thomas	900 Second Street	Alexandria, VA	22314	703-746-5227	703-838-5093	Orange	<a href="mailto:Rudolph.thomas@alexandriava.gov">Rudolph.thomas@alexandriava.gov</a>
Allavista	Town	See Campbell County							
Amherst	County	Gary M. Roakes	P O Box 140	Amherst, VA	24521	434-946-9307	434-946-9470	Roanoke	<a href="mailto:gmrakes@countyofamherst.com">gmrakes@countyofamherst.com</a>
Amherst (*)	Town	See Amherst County							
Appomattox	County	Lonny Hamlett	P. O. Box 787	Appomattox, VA	24522	434-352-8183	434-352-4214	Roanoke	<a href="mailto:Lonny.hamlett@appomattoxcountyva.gov">Lonny.hamlett@appomattoxcountyva.gov</a>
Appomattox (*)	Town	See Appomattox County							
Arlington	County	Michael Woodson, Interim	1020 N. Hudson St. 2nd floor	Arlington, VA	22201	703-228-4641	703-228-4655	Orange	<a href="mailto:mwoods@arlingtonva.us">mwoods@arlingtonva.us</a>
Ashland	Town	See Hanover County							
Bedford	City	Jimmy English	215 E. Main St.	Bedford, VA	24523	540-587-6021	540-586-7198	Roanoke	<a href="mailto:jenGLISH@bedfordva.gov">jenGLISH@bedfordva.gov</a>
Belle Haven	Town	See Accomack County							
Big Stone Gap	Town	Charles B. Burke, Jr.	505 5th St. S.	Big Stone Gap, VA	24219	276-523-0115	276-523-5625	Marion	<a href="mailto:churke@bigstonegap.org">churke@bigstonegap.org</a>
Blacksburg	Town	Wayne Garst	407 Hubbard St	Blacksburg, VA	24060	540-961-1175	540-558-0791	Marion	<a href="mailto:wgarst@blacksburg.gov">wgarst@blacksburg.gov</a>
Bloxom	Town	See Accomack County							
Boones Mill	Town	See Franklin County							

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LOCALITY	LOCALITY TYPE	FIRE OFFICIAL	MAILING ADDRESS	CITY & STATE	ZIP	PHONE #	FAX #	SFMO REGION	E-MAIL ADDRESS
Bridgewater (*)	Town	See Rockingham County							
Bristol	City	Eric Blevins	211 Lee St.	Bristol, VA	24201	276-645-7304	276-645-7302	Marion	<a href="mailto:firemarshal@bristolva.org">firemarshal@bristolva.org</a>
Broadway (*)	Town	See Rockingham County							
Brookneal (*)	Town	See Campbell County							
Campbell	County	Randall Johnson	P O Box 500	Rusburg, VA	24588	434-332-9640	434-332-2957	Roanoke	<a href="mailto:rjohnson@campbellcountyva.gov">rjohnson@campbellcountyva.gov</a>
Cape Charles	Town	Jeb Brady	2 Plum Street	Cape Charles, VA	23310	757-331-3259	757-331-4820	Tidewater	<a href="mailto:codeofficial@capecharles.org">codeofficial@capecharles.org</a>
Charlottesville	City	William A. Hogsten	203 Ridge Street	Charlottesville, VA	22902	434-970-3325	434-295-9302	Orange	<a href="mailto:hogsten@charlottesville.org">hogsten@charlottesville.org</a>
Chatham	Town	See Pittsylvania County							
Chesapeake	City	Michael X. Hoag	304 Albemarle Dr.	Chesapeake, VA	23322	757-382-6123	757-382-8313	Tidewater	<a href="mailto:mhoag@cityofchesapeake.net">mhoag@cityofchesapeake.net</a>
Chesterfield	County	J. Robert Dawson	P. O. Box 40	Chesterfield, VA	23832-0040	804-748-1426	804-751-4713	Richmond	<a href="mailto:dawsonj@chesterfield.gov">dawsonj@chesterfield.gov</a>
Chincoteague (*)	Town	See Accomack County							
Christiansburg	Town	Billy Hanks	110 Depot Street	Christiansburg, VA	24073	540-382-4388	540-381-5027	Marion	<a href="mailto:bhanks@christiansburg.org">bhanks@christiansburg.org</a>
Clifton	Town	See Fairfax County							
Colonial Heights	City	A. G. Moore	201 James Ave.	Colonial Heights, VA	23834	804-520-9298	804-524-5755	Richmond	
Covington	City	R. Wayne Irbey	333 W. Locust St.	Covington, VA	24426	540-965-6356	540-965-6303	Roanoke	<a href="mailto:wirby@covington.va.us">wirby@covington.va.us</a>
Cumberland	County	Kevin Ingle	60 Foster Road	Cumberland, VA	23040	804-492-4356		Richmond	<a href="mailto:cumberlandivfd@msn.com">cumberlandivfd@msn.com</a>
Danville	City	David R Eagle	297 Bridge Street	Danville, VA	24541	434-799-5226	434-797-8943	Roanoke	<a href="mailto:eaqledr@ci.danville.va.us">eaqledr@ci.danville.va.us</a>
Dayton (*)	Town	See Rockingham County							
Dinwiddie	County	Tony Williams	P. O. Drawer 70	Dinwiddie, VA	23841	804-469-5388	804-469-7663	Richmond	<a href="mailto:twilliams@dinwiddieva.us">twilliams@dinwiddieva.us</a>
Dublin	Town	Robert D Cecil	P. O. Box 689	Dublin, VA	24084	540-674-6890	540-674-8142	Marion	<a href="mailto:rcecil@dublinfo.com">rcecil@dublinfo.com</a>
Dumfries	Town	See Prince William County							
Edinburg	Town	See Shenandoah County							
Elkton (*)	Town	See Rockingham County							

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LOCALITY	LOCALITY TYPE	FIRE OFFICIAL	MAILING ADDRESS	CITY & STATE	ZIP	PHONE #	FAX #	SFMO REGION	E-MAIL ADDRESS
Emporia	City	Randy Pearce	P. O. Box 511	Emporia, VA	23847	434-634-6315	434-634-0003	Tidewater	r.pearce@ci.emporia.va.us
Fairfax	City	Andrew S. Wilson	10455 Armstrong St.	Fairfax, VA	22030	703-385-7830	703-385-9265	Orange	andrew.wilson@fairfaxva.gov
Fairfax	County	Ronald Mastin	4100 Chain Bridge Road	Fairfax, VA	22030	703-246-2646	703-324-3908	Orange	ronald.mastin@fairfaxcounty.gov
Falls Church	City	Thomas Polera	300 Park Ave, G2 East	Falls Church, VA	22046	703-248-5058	703-248-5158	Orange	tpolera@fallschurchva.gov
Farmville	Town	Timothy McKay	P. O. Box 368	Farmville, VA	23901	434-392-5886	434-392-3160	Roanoke	
Fauquier	County	Thomas Billington	62 Culppeper Street	Warrenton, VA	20186	540-422-8800	540-422-8813	Orange	thomas.billington@lauquierecounty.gov
Franklin	County	Bennie Russell	70 E. Court Street	Rocky Mount, VA	24151	540-483-3091	540-483-3086	Roanoke	brussell@franklincountyva.org
Frederick	County	Dennis Linaburg	1080 Coverstone Dr.	Winchester, VA	22602	540-665-6360	540-678-4739	Orange	dlinabur@co.frederick.va.us
Fredericksburg	City	Parris K Sachs	601 Princess Ann St.	Fredericksburg, VA	22401	540-372-1059	540-372-1050	Orange	psachs@fd.fredericksburgva.gov
Goochland	County	William MacKay	P. O. Box 306	Goochland, VA	23063	804-556-5319	804-338-3022	Richmond	wmackay@co.goochland.va.us
Greensville	County	Charles M Veliky	1781 Greensville County Circle	Emporia, VA	23847	434-348-4232	434-348-0696	Tidewater	mveliky@greensvillecountyva.gov
Gretna	Town	See Pittsylvania County							
Grattoes (*)	Town	See Rockingham County							
Hallwood	Town	See Accomack County							
Hamilton	Town	See Loudoun County							
Hampton	City	Maurice Wilson	1300 Thomas Street, Rm 220	Hampton, VA	23669	757-727-1210	757-727-1213	Tidewater	mwilson@hampton.gov
Hanover	County	M. Judson Flournoy	P. O. Box 470	Hanover, VA	23069	804-365-4851	804-637-5458	Richmond	miflournoy@co.hanover.va.us
Harrisonburg	City	Larry Shifflett	101 North Main St.	Harrisonburg, VA	22802	540-432-7703	540-434-7780	Orange	larrys@ci.harrisonburg.va.us
Haymarket (*)	Town	See Prince William County							
Henrico	County	W. David Seay	P.O. Box 90775	Henrico, VA	23273	804-501-4900	804-501-7378	Richmond	sead09@co.henrico.va.us
Henry	County	Rodney Howell	1022 DuPont Road	Mathinsville, VA	24112	276-634-4663	276-634-4770	Roanoke	rhowell@co.henry.va.us
Hemdon	Town	See Fairfax County							
Hillsboro	Town	See Loudoun County							

**Localities enforcing the VIRGINIA STATEWIDE FIRE PREVENTION CODE -- Revised August 10, 2011**

LOCALITY	LOCALITY TYPE	FIRE OFFICIAL	MAILING ADDRESS	CITY & STATE	ZIP	PHONE #	FAX #	SFMO REGION	E-MAIL ADDRESS
Hopewell	City	John Turnstall, Jr	200 S. Hopewell St.	Hopewell, VA	23860	804-541-2290	804-541-2309	Richmond	<a href="mailto:jturnstall@hopewellva.gov">jturnstall@hopewellva.gov</a>
Hurt	Town	See Pittsylvania County							
James City	County	John Black	300 McLaws Circle, Suite 200	Williamsburg, VA	23185	757-220-0626	757-220-9125	Tidewater	<a href="mailto:jblack@james-city.va.us">jblack@james-city.va.us</a>
Jarrett	Town	See Greensville County							
Keller	Town	See Accomack County							
Kenbridge	Town	Richard Harris	P. O. Box 404	Kenbridge, VA	23944	434-676-8281	434-676-8068	Tidewater	<a href="mailto:harris@meckcom.net">harris@meckcom.net</a>
King George	County	David W Moody	8122 Kings Highway	King George, VA	22485	540-775-4584	540-775-9060	Richmond	<a href="mailto:dmoody@co.kinggeorge.state.va.us">dmoody@co.kinggeorge.state.va.us</a>
King William	County	(Position Vacant, contact Trent Funkshouser)	P. O. Box 215	King William, VA	23086	804-769-3011	804-769-4964	Richmond	
Leesburg	Town	See Loudoun County							
Lexington	City	Steve Paulk	P O Box 922	Lexington, VA	24450	540-462-3738	540-463-5310	Roanoke	<a href="mailto:spaulk@ci.lexington.va.us">spaulk@ci.lexington.va.us</a>
Loudoun	County	Linda Hale	803 Sycolin Road, Suite 104	Leesburg, VA	20175	703-737-8600	703-737-8895	Orange	<a href="mailto:Linda.Hale@loudoun.gov">Linda.Hale@loudoun.gov</a>
Lovettsville	Town	See Loudoun County							
Lynchburg	City	Gregory Wormser	800 Madison St.	Lynchburg, VA	24504	434-455-6345	434-847-1742	Roanoke	<a href="mailto:gregory_wormser@lynchburgva.gov">gregory_wormser@lynchburgva.gov</a>
Manassas	City	Francis Teevan	9324 West Street, Suite 204	Manassas, VA	22110	703-257-8458	703-257-5831	Orange	<a href="mailto:fteevan@ci.manassas.va.us">fteevan@ci.manassas.va.us</a>
Manassas Park	City	Mark Joyner	9080 Manassas Drive	Manassas Park, VA	20111	703-335-0010	703-335-8665	Orange	<a href="mailto:m.joyner@manassasparkva.gov">m.joyner@manassasparkva.gov</a>
Martinsville	City	Ted Anderson	P O Box 1112	Martinsville, VA	24112	276-403-6202	276-403-5381	Roanoke	<a href="mailto:twanderson@ci.martinsville.va.us">twanderson@ci.martinsville.va.us</a>
McKenny	Town	See Dinwiddie County							
Meifa	Town	See Accomack County							
Middleburg	Town	See Loudoun County							
Middletown	Town	Fred Wharton	7875 Church Street	Middletown, VA	22645	540-869-2226	540-869-4306	Orange	<a href="mailto:whartonfred@yahoo.com">whartonfred@yahoo.com</a>
Mount Jackson	Town	See Shenandoah Co.							
Mt. Crawford (*)	Town	See Rockingham County							

**Localities enforcing the VIRGINIA STATEWIDE FIRE PREVENTION CODE -- Revised August 10, 2011**

LOCALITY	LOCALITY TYPE	FIRE OFFICIAL	MAILING ADDRESS	CITY & STATE	ZIP	PHONE #	FAX #	SFMO REGION	E-MAIL ADDRESS
New Kent	County	E. Thomas Hicks, IV	P. O. Box 209	New Kent, VA	23124	804-966-9618	804-966-2903	Richmond	<a href="mailto:ethicks@co.newkent.state.va.us">ethicks@co.newkent.state.va.us</a>
New Market	Town	See Shenandoah Co.							
Newport News	City	R. Lee Ware, Jr.	5844 Marshal Ave.	Newport News, VA	23605	757-247-8873	757-247-2630	Tidewater	<a href="mailto:lware@nngov.com">lware@nngov.com</a>
Norfolk	City	Roger Burris - Interim	100 Brooke Ave. Suite 400	Norfolk, VA	23510	757-664-2337	757-441-2637	Tidewater	<a href="mailto:roger.burris@norfolk.gov">roger.burris@norfolk.gov</a>
Ocoquan (*)	Town	See Prince William County							
Onancock (*)	Town	See Accomack County							
Onley	Town	See Accomack County							
Painter	Town	See Accomack County							
Pamplin City (*)	Town	See Appomattox County for those portions of the town within Appomattox County							
Parkley	Town	See Accomack County							
Petersburg	City	Rufus Atkins	106 W. Tabb St.	Petersburg, VA	23803	804-733-2392	804-863-2780	Richmond	<a href="mailto:ratkins@petersburgfire-va.org">ratkins@petersburgfire-va.org</a>
Pittsylvania	County	Steven M. Bowman	P O Box 426	Chatham, VA	24531	434-432-7936	434-432-4814	Roanoke	<a href="mailto:steve.bowman@pilotgov.org">steve.bowman@pilotgov.org</a>
Poquoson	City	Robert Holloway	830 Poquoson Ave	Poquoson, VA	23662	757-868-3510	757-868-3514	Tidewater	<a href="mailto:rholloway@poquoson-va.gov">rholloway@poquoson-va.gov</a>
Portsmouth	City	Mike Stockton	645 Broad St.	Portsmouth, VA	23707	757-393-8689	757-391-3272	Tidewater	<a href="mailto:stocktonm@portsmouthva.gov">stocktonm@portsmouthva.gov</a>
Powhatan	County	W. Kevin Zoll	3834 Old Buckingham Rd., Suite F	Powhatan, VA	23139	804-598-5622	804-598-5877	Richmond	<a href="mailto:kzoll@powhatanva.gov">kzoll@powhatanva.gov</a>
Prince George	County	Julie Wallon	P. O. Box 68	Prince George, VA	23875	804-733-2636	804-722-0702	Richmond	
Prince William	County	C. Hadden Culp	1 County Complex Cl., MC 470	Prince William, VA	22192	703-792-6648	703-792-7891	Orange	<a href="mailto:cculp@pwccgov.org">cculp@pwccgov.org</a>
Pulaski	Town	Timothy Garwood	P O Box 680	Pulaski, VA	24301	540-994-8664	540-994-8669	Marion	<a href="mailto:lgarwood@pulaskitown.org">lgarwood@pulaskitown.org</a>
Purcellville	Town	See Loudoun County							
Quantico	Town	See Prince William County							
Radford	City	Lee Simpkins	1500 Wadsworth St.	Radford, VA	24141	540-731-3618		Marion	<a href="mailto:lsimpkins@radford.va.us">lsimpkins@radford.va.us</a>
Remington	Town	See Fauquier County							

**Localities enforcing the VIRGINIA STATEWIDE FIRE PREVENTION CODE – Revised August 10, 2011**

LOCALITY	LOCALITY TYPE	FIRE OFFICIAL	MAILING ADDRESS	CITY & STATE	ZIP	PHONE #	FAX #	SFMO REGION	E-MAIL ADDRESS
Richmond	City	David C. Creasy	201 E. Franklin St.	Richmond, VA	23219	804-646-6640	804-646-7465	Richmond	david.creasy@richmondgov.com
Ridgeway (*)	Town	See Henry County							
Roanoke	City	Daniel J. Rakes	713 Third Street SW	Roanoke, VA	24016	540-853-2795	540-853-1172	Roanoke	daniel.rakes@roanokeva.gov
Roanoke	County	Gary Huffman	5925 Cove Road	Roanoke, VA	24019	540-777-8701	540-777-9773	Roanoke	ghuffman@roanokecountyva.gov
Rockingham	County	Robert Symons	20 E. Gay Street	Harrisonburg, VA	22802	540-564-3175	540-564-1823	Orange	rsymons@rockinghamcountyva.gov
Rocky Mount (*)	Town	See Franklin County							
Round Hill	Town	See Loudoun County							
Salem	City	Doug Moore	114 N. Broad Street	Salem, VA	24153	540-375-7003	540-375-3003	Roanoke	dmoore@salemva.gov
Saxis	Town	See Accomack County							
Scottsville (*)	Town	See Albemarle County for those portions of the town within Albemarle County							
Shenandoah	County	David A. Ferguson	600 North Main St., Suite 109	Woodstock, VA	22664	540-459-6177	540-459-6192	Orange	fire@shenel.net
South Boston	Town	Dwight Spangler	403 Broad St.	South Boston, VA	24592	434-575-4291	434-575-4294	Roanoke	dspangler@southbostonva.us
Spotsylvania	County	R. Chris Eudalley	P. O. Box 818	Spotsylvania, VA	22553	540-507-7900	540-582-6957	Orange	ceudalley@spotsylvania.va.us
Stafford	County	J. Robert Brown, Jr.	P. O. Box 339	Stafford, VA	22555	540-668-7200	540-658-4545	Orange	rbrown@co.stafford.va.us
Staunton	City	R. Scott Garber	500 N. Augusta Street	Staunton, VA	24401	540-332-3884	540-332-3150	Orange	Garbers@ci.staunton.va.us
Stephens City	Town	See Frederick County							
Strasburg	Town	See Shenandoah County							
Suffolk	City	James Dickens	300 Kings Fork Road	Suffolk, VA	23434	757-514-4640	757-514-4598	Tidewater	jdickens@suffolkva.us
Tangier (*)	Town	See Accomack County							
The Plains	Town	See Fauquier County							
Timberville (*)	Town	See Rockingham County							
Toms Brook	Town	See Shenandoah County							
Vienna	Town	See Fairfax County							
Vinton	Town	See Roanoke County							

**Localities enforcing the VIRGINIA STATEWIDE FIRE PREVENTION CODE – Revised August 10, 2011**

LOCALITY	LOCALITY TYPE	FIRE OFFICIAL	MAILING ADDRESS	CITY & STATE	ZIP	PHONE #	FAX #	SFMO REGION	E-MAIL ADDRESS
Virginia Beach	City	James Ramsey	Municipal Complex, Building 21- 2408 Courthouse Dr.	Virginia Beach, VA	23466	757-385-4228	757-385-5676	Tidewater	<a href="mailto:jramsey@vbgov.com">jramsey@vbgov.com</a>
Wachapreague	Town	See Accomack County							
Warrenton	Town	Robert Hale	P. O. Drawer 341	Warrenton, VA	22186	540-347-2405	703-349-2414	Orange	<a href="mailto:thale@warrentonva.gov">thale@warrentonva.gov</a>
Waynesboro	City	Charles F. Scott	300 West Broad St	Waynesboro, VA	22980	540-942-6733	540-942-6731	Orange	<a href="mailto:scottcf@ci.waynesboro.va.us">scottcf@ci.waynesboro.va.us</a>
West Point (*)	Town	See King William County							
Williamsburg	City	James B. Humphrey	444 N. Boundary St	Williamsburg, VA	23185	757-220-6226	757-220-6229	Tidewater	<a href="mailto:bhumphre@williamsburgva.gov">bhumphre@williamsburgva.gov</a>
Winchester	City	Scott Cullers	231 E. Piccadilly St., Ste. 330	Winchester, VA	22601	540-662-2298	540-542-1318	Orange	<a href="mailto:wtrdchief@ci.winchester.va.us">wtrdchief@ci.winchester.va.us</a>
Woodstock	Town	See Shenandoah County							
Wytheville	Town	Albert Newberry	150 East Monroe St	Wytheville, VA	24382	276-223-3340	276-223-3358	Marion	<a href="mailto:dir.newberry@wytheville.org">dir.newberry@wytheville.org</a>
York	County	Steve Koczynski	P. O. Box 532	Yorktown, VA	23690	757-890-3600	757-890-3609	Tidewater	<a href="mailto:koczynski@yorkcounty.gov">koczynski@yorkcounty.gov</a>

Localities enforcing the VIRGINIA STATEWIDE FIRE PREVENTION CODE -- Revised August 10, 2011

Enforcement Density of the VSFP

08/09/2011

<u>Localities Enforcing*</u>	(Enforcing Percentage)	<u>Population</u>	(Population Percentage)	<u>Land Area**</u> (sq mi)	(Land Area Percentage)
33 of 95 Counties	35%	3,868,263	48.3%	13,347.39	32.7%
35 of 39 Cities	90%	2,432,395	30.4%	1,712.59	4.2%
73 of 190 Towns	38%	313,298	3.9%	232.461	0.6%
141 of 324 Localities	44%	6,613,956	82.7%	15,292.45	37.4%

SFMO Enforced areas

62 of 95 Counties	65%	1,172,560	14.7%	25,312.93	61.9%
4 of 39 Cities	10%	26,232	0.3%	30.64	0.1%
117 of 190 Towns	62%	188,276	2.4%	239.06	0.6%
183 of 324 Localities	56%	1,387,068	17.3%	25,582.63	62.6%

Total Locality Count for State

	<u>Population</u>	<u>Land area**</u>
Counties	95	38,660.3
Cities	39	1,743.2
Towns	190	471.5
<b>State Total</b>	<b>324</b>	<b>40,875.1</b>

\* Based on SFMO maintained Fire Officials list. Represents 80 local Fire Officials and staff who enforce the VSFP within their respective jurisdictions.

\*\*Land area figures based on content of Virginia Review Directory, '09 Edition.

**Kent, Kenneth (VDFFP)**

**From:** Robinson, Teri (VDFFP)

**Sent:** Tuesday, July 19, 2011 12:54 PM

**To:** Kent, Kenneth (VDFFP)

**Subject:** FW: Compliance request

**Follow Up Flag:** Follow up

**Flag Status:** Completed

Here's the one I mentioned, but don't do anything else, yet. Just want you to know it's coming.

**Teri Robinson**

Fire Marshal Supervisor

State Fire Marshal's Office

6744 Thirlane Rd

Roanoke, VA 24019

Cell Phone 540-266-4011

Office Phone 540-561-7033

Fax 540-561-7544

**From:** RICHARD KREH [mailto:rckreh@embarqmail.com]

**Sent:** Tuesday, July 19, 2011 10:42 AM

**To:** Robinson, Teri (VDFFP)

**Subject:** Compliance request

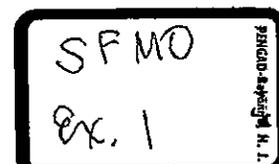
Hi: My name is Richard Kreh and I live at 1309 Scenic Dr, Stuart,VA Patrick County. My neighbor is operating a Hazmat fuel oil (gas,diesel,heating oil) delivery business (DBA: FIREWATER, LLC) out of his home residence, 1329 Scenic DR,Stuart,VA.. Currently there are up to four (9,000 gal ea.) delivery trucks with attached tanker trailers parked at this address when not in use. I am very concerned about the threat to life and property that this explosion and fire risk exposes us to and to our neighbors . There is no security fence or other protection other than a nite lite.

I am also concerned that if a catastrophe happened , insurance coverage would be null and void if it requires a level of security he is not providing.

Thanks

Richard Kreh,

PH: 276-694-3072



W. G. Shelton, Jr., CEM  
Executive Director

Charles E. Altizer, P.E.  
State Fire Marshal



**Commonwealth of Virginia**  
**Department of**  
**Fire Programs**  
**State Fire Marshal's Office**  
**Inspection Notice**

**Western Regional Office**  
State Fire Marshals Office  
6744 Thirlane Road  
Roanoke, VA 24019  
Phone: (540)561-7033  
Fax: (540)561-7544  
Claude O. Hutton, P.E.  
Fire Marshal Manager

Owner / Occupant: Lee Roy Trent Building: Lee Roy Trent Address: 1329 Scenic Drive Stuart, VA 24171	Date of Inspection: September 09, 2011  File Number: W-8225-904 Occ / Use Group: R  Phone Number: Fax Number:
--	---

**Inspection**

The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

Code Section	Violation(s)	Correct By
3406.6.2	Parking of tank vehicles shall be in accordance with Sections 3406.6.2.1 through 3406.6.2.3. Exception: In cases of accident, breakdown or other emergencies, tank vehicles are allowed to be parked and left unattended at any location while the operator is obtaining assistance.  3406.6.2.1 Parking near residential, educational and institutional occupancies and other high-risk areas. Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152 m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the fire chief, pose an extreme life hazard.  Two tank vehicles on property at time of inspection. Both vehicles had placards visible with with Hazard Classification System number 1203.	09-Oct-2011
3406.6.6.3	Garaging. Tank vehicles shall not be parked or garaged in buildings other than those specifically approved for such use by the fire code official. Tank vehicle attached to semi truck was partially located in garage at time of inspection.	09-Oct-2011
106.3.1	Observations. When, during an inspection, the fire official or an authorized representative observes an apparent or actual violation of another law, ordinance or code not within the officials authority to enforce, such official shall report the findings to the official having jurisdiction in order that such official may institute the necessary measures. Local Building Official shall be notified of tank vehicle being partially located in building.	09-Oct-2011

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.

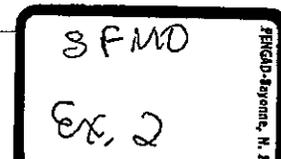
Notice Issued To: Lee Roy Trent

Date: September 9, 2011

Inspected By: Kenneth Kent Assistant Fire Marshal



Sunday, September 11, 2011



Page 1 of 1

W. G. Shelton, Jr., CEM  
Executive Director

Charles E. Alizer, P.E.  
State Fire Marshal



**Commonwealth of Virginia**  
**Department of**  
**Fire Programs**  
**State Fire Marshal's Office**  
**Inspection Notice**

**Western Regional Office**  
State Fire Marshals Office  
6744 Thirlane Road  
Roanoke, VA 24019  
Phone: (540)561-7033  
Fax: (540)561-7544  
Claude O. Hutton, P.E.  
Fire Marshal Manager

Owner / Occupant: Lee Roy Trent Building: Lee Roy Trent Address: 1329 Scenic Drive Stuart, VA 24171	Date of Inspection: October 26, 2011  File Number: W-8225-904 Occ / Use Group: R  Phone Number: Fax Number:
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**Inspection**

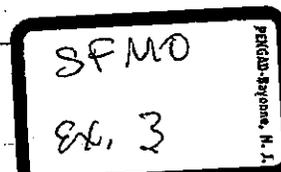
The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

Code Section	Violation(s)	Correct By
3406.6.2	Parking of tank vehicles shall be in accordance with Sections 3406.6.2.1 through 3406.6.2.3. Exception: In cases of accident, breakdown or other emergencies, tank vehicles are allowed to be parked and left unattended at any location while the operator is obtaining assistance. 3406.6.2.1 Parking near residential, educational and institutional occupancies and other high-risk areas. Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152 m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the fire chief, pose an extreme life hazard. Two tank vehicles on property at time of inspection. Both vehicles had placards visible with Hazard Classification System number 1203.	09-Nov-2011
3406.6.6.3	Garaging. Tank vehicles shall not be parked or garaged in buildings other than those specifically approved for such use by the fire code official. Tank vehicle attached to semi truck was partially located in garage at time of inspection.	Violation Corrected 10/26/2011
106.3.1	Observations. When, during an inspection, the fire official or an authorized representative observes an apparent or actual violation of another law, ordinance or code not within the officials authority to enforce, such official shall report the findings to the official having jurisdiction in order that such official may institute the necessary measures. Local Building Official shall be notified of tank vehicle being partially located in building.	Violation Referred to Building Official
111.3	Failure to correct violations. Arrived on the property at approximately 1805 hours. A single tank vehicle attached to a tractor trailer was parked in the gravel parking area in front of the garage. Mr. Trent was in the driveway of near his home, speaking with a male. The male that Mr. Trent was speaking with returned to the tank vehicle, started the vehicle, and moved the vehicle from the property.	09-Nov-2011

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.



Friday, December 09, 2011



Page 1 of 2

Notice Issued To: Lee Roy Trent

Date: October 26, 2011

Inspected By: Kenneth Kent Assistant Fire Marshal

*Kent L. Kent*

W. G. Shelton, Jr., CEM  
Executive Director

Charles E. Altizer, P.E.  
State Fire Marshal



**Commonwealth of Virginia**  
**Department of**  
**Fire Programs**  
**State Fire Marshal's Office**  
Inspection Notice

**Western Regional Office**  
State Fire Marshals Office  
6744 Thirlane Road  
Roanoke, VA 24019  
Phone: (540)561-7033  
Fax: (540)561-7544  
Claude O. Hutton, P.E.  
Fire Marshal Manager

Owner / Occupant: Lee Roy Trent Building: Lee Roy Trent Address: 1329 Scenic Drive Stuart, VA 24171	Date of Inspection: November 21, 2011  File Number: W-8225-904 Occ / Use Group: R  Phone Number: Fax Number:
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**Inspection**

The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

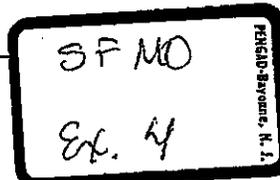
Code Section	Violation(s)	Correct By
Previous Violation 3406.6.2	Parking of tank vehicles shall be in accordance with Sections 3406.6.2.1 through 3406.6.2.3. Exception: In cases of accident, breakdown or other emergencies, tank vehicles are allowed to be parked and left unattended at any location while the operator is obtaining assistance.  3406.6.2.1 Parking near residential, educational and institutional occupancies and other high-risk areas. Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152 m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the fire chief, pose an extreme life hazard.  Two tank vehicles on property at time of inspection. Both vehicles had placards visible with with Hazard Classification System number 1203.  .11/21/2011, at 1610 hours. There were no tank vehicles parked on the property at the time of inspection.	Violation Corrected 11/21/2011

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.

Notice Issued To: Lee Roy Trent

Date: November 21, 2011

Inspected By: Kenneth Kent Assistant Fire Marshal



**Kent, Kenneth (VDFP)**

**From:** RICHARD KREH [rckreh@embarqmail.com]

**Sent:** Monday, January 16, 2012 5:17 PM

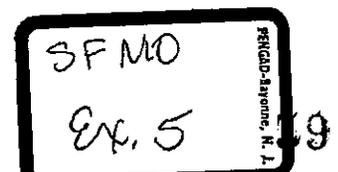
**To:** Kent, Kenneth (VDFP)

**Subject:** Firewater tankers are back

Hi Ken: Trust you had a pleasant holiday. Today (16 Jan.) at about 3:30pm, two tankers were parked in front of there building. Have they found a way out of compliance? This is the first time I have seen them in here since you caught them.

Regards

Richard



W. G. Shelton, Jr., CEM  
Executive Director

Charles E. Altzer, P.E.  
State Fire Marshal



**Commonwealth of Virginia**  
**Virginia Department of Fire Programs**  
**State Fire Marshal's Office**  
Inspection Notice

Western Regional Office  
State Fire Marshal's Office  
6744 Thirtane Road  
Roanoke, VA 24019  
Phone: (540)561-7033  
Fax: (540)561-7544  
Claude O. Hutton, P.E.  
Fire Marshal Manager

<b>Owner / Occupant:</b> Lee Roy Trent <b>Building:</b> Lee Roy Trent <b>Address:</b> 1329 Scenic Drive Stuart, VA 24171	<b>Date of Inspection:</b> January 20, 2012  <b>File Number:</b> W-8225-004 <b>Occ / Use Group:</b> R  <b>Phone Number:</b> <b>Fax Number:</b>
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**Inspection**

The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

Code Section	Violation(s)	Correct By
3406.6.2	Parking of tank vehicles shall be in accordance with Sections 3406.6.2.1 through 3406.6.2.3. Exception: In cases of accident, breakdown or other emergencies, tank vehicles are allowed to be parked and left unattended at any location while the operator is obtaining assistance. 3406.6.2.1 Parking near residential, educational and institutional occupancies and other high-risk areas. Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152 m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the fire chief, pose an extreme life hazard.  A tank vehicle on property at time of inspection. Vehicle has placards visible with Hazard Classification System number 1203.	25-Jan-2012

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.

Notice Issued To: Lee Roy Trent, Firewater LLC

Date: 1/20/2012

Inspected By: Kenneth Kent Assistant Fire Marshal

1608



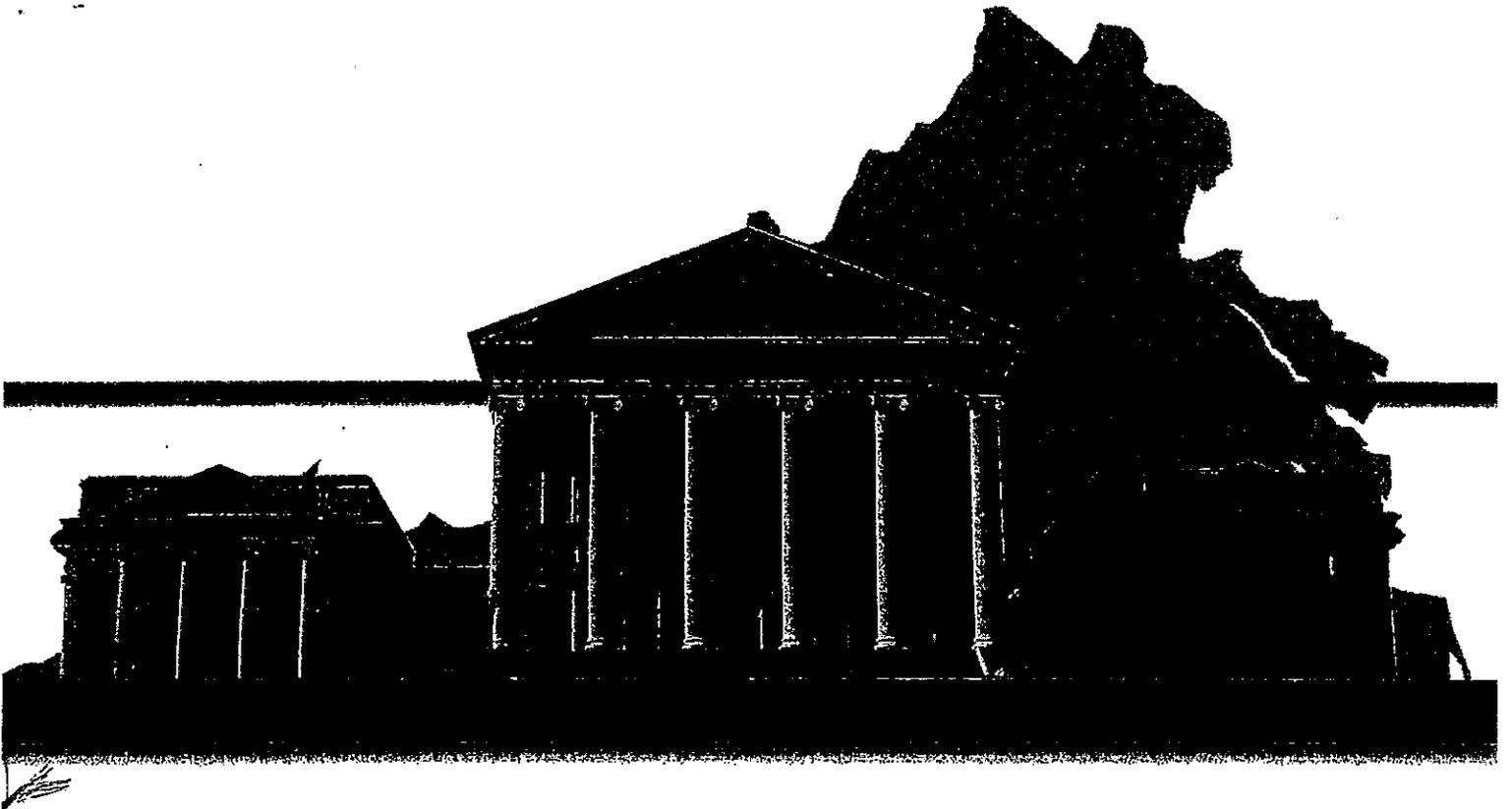
Friday, January 20, 2012

Page 1 of 1

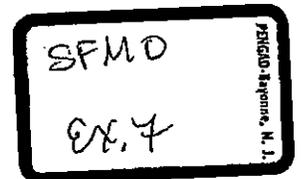
SFMO  
Ex. 6

FRANCIS BAYBORN, N.J.

01



# VIRGINIA STATEWIDE FIRE PREVENTION CODE



# 2009

EFFECTIVE MARCH 1, 2011

## CHAPTER 34

# FLAMMABLE AND COMBUSTIBLE LIQUIDS

### SECTION 3401 GENERAL

**3401.1 Scope and application.** Prevention, control and mitigation of dangerous conditions related to storage, use, dispensing, mixing and handling of flammable and *combustible liquids* shall be in accordance with Chapter 27 and this chapter.

**3401.2 Nonapplicability.** This chapter shall not apply to liquids as otherwise provided in other laws or regulations or chapters of this code, including:

1. Specific provisions for flammable liquids in motor fuel-dispensing facilities, repair garages, airports and marinas in Chapter 22.
2. Medicines, foodstuffs, cosmetics, and commercial, institutional and industrial products in the same concentration and packaging containing not more than 50 percent by volume of water-miscible liquids and with the remainder of the solution not being flammable, and alcoholic beverages in retail or wholesale sales or storage uses when packaged in individual containers not exceeding 1.3 gallons (5 L).
3. Storage and use of fuel oil in tanks and containers connected to oil-burning equipment. Such storage and use shall be in accordance with Section 603. For abandonment of fuel oil tanks, this chapter applies.
4. Refrigerant liquids and oils in refrigeration systems (see Section 606).
5. Storage and display of aerosol products complying with Chapter 28.
6. Storage and use of liquids that have no fire point when tested in accordance with ASTM D 92.
7. Liquids with a *flash point* greater than 95°F (35°C) in a water-miscible solution or dispersion with a water and inert (noncombustible) solids content of more than 80 percent by weight, which do not sustain combustion.
8. Liquids without *flash points* that can be flammable under some conditions, such as certain halogenated hydrocarbons and mixtures containing halogenated hydrocarbons.
9. The storage of distilled spirits and wines in wooden barrels and casks.

**3401.3 Referenced documents.** The applicable requirements of Chapter 27, other chapters of this code, the *International Building Code* and the *International Mechanical Code* pertaining to flammable liquids shall apply.

**3401.4 Permits.** Permits shall be required as set forth in Sections 105.6 and 105.7.

**3401.5 Material classification.** Flammable and *combustible liquids* shall be classified in accordance with the definitions in Section 3402.1.

When mixed with lower flash-point liquids, Class II or III liquids are capable of assuming the characteristics of the lower flash-point liquids. Under such conditions the appropriate provisions of this chapter for the actual *flash point* of the mixed liquid shall apply. When heated above their *flash points*, Class II and III liquids assume the characteristics of Class I liquids. Under such conditions, the appropriate provisions of this chapter for flammable liquids shall apply.

### SECTION 3402 DEFINITIONS

**3402.1 Definitions.** The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

**ALCOHOL-BASED HAND RUB.** An alcohol-containing preparation designed for application to the hands for reducing the number of viable microorganisms on the hands and containing ethanol or isopropanol in an amount not exceeding 70 percent by volume.

**BULK PLANT OR TERMINAL.** That portion of a property where flammable or *combustible liquids* are received by tank vessel, pipelines, tank car or tank vehicle and are stored or blended in bulk for the purpose of distributing such liquids by tank vessel, pipeline, tank car, tank vehicle, portable tank or container.

**BULK TRANSFER.** The loading or unloading of flammable or *combustible liquids* from or between tank vehicles, tank cars or storage tanks.

**COMBUSTIBLE LIQUID.** A liquid having a closed cup flash point at or above 100°F (38°C). Combustible liquids shall be subdivided as follows:

**Class II.** Liquids having a closed cup flash point at or above 100°F (38°C) and below 140°F (60°C).

**Class IIIA.** Liquids having a closed cup flash point at or above 140°F (60°C) and below 200°F (93°C).

**Class IIIB.** Liquids having closed cup *flash points* at or above 200°F (93°C).

The category of combustible liquids does not include *compressed gases* or *cryogenic fluids*.

**FIRE POINT.** The lowest temperature at which a liquid will ignite and achieve sustained burning when exposed to a test flame in accordance with ASTM D 92.

**FLAMMABLE LIQUID.** A liquid having a closed cup flash point below 100°F (38°C). Flammable liquids are further categorized into a group known as Class I liquids. The Class I category is subdivided as follows:

**Class IA.** Liquids having a flash point below 73°F (23°C) and having a *boiling point* below 100°F (38°C).

24. The *fire code official* and other appropriate authorities shall be notified when a reportable spill or unauthorized discharge occurs.
25. Operators shall place a drip pan or an absorbent pillow under each fuel fill opening prior to and during dispensing operations. Drip pans shall be liquid-tight. The pan or absorbent pillow shall have a capacity of not less than 3 gallons (11.36 L). Spills retained in the drip pan or absorbent pillow need not be reported. Operators, when fueling, shall have on their *person* an absorbent pad capable of capturing diesel foam overfills. Except during fueling, the nozzle shall face upward and an absorbent pad shall be kept under the nozzle to catch drips. Contaminated absorbent pads or pillows shall be disposed of regularly in accordance with local, state and federal requirements.

**3406.6 Tank vehicles and vehicle operation.** Tank vehicles shall be designed, constructed, equipped and maintained in accordance with NFPA 385 and Sections 3406.6.1 through 3406.6.4.

**3406.6.1 Operation of tank vehicles.** Tank vehicles shall be utilized and operated in accordance with NFPA 385 and Sections 3406.6.1.1 through 3406.6.1.11.

**3406.6.1.1 Vehicle maintenance.** Tank vehicles shall not be operated unless they are in proper state of repair and free from accumulation of grease, oil or other flammable substance, and leaks.

**3406.6.1.2 Leaving vehicle unattended.** The driver, operator or attendant of a tank vehicle shall not remain in the vehicle cab and shall not leave the vehicle while it is being filled or discharged. The delivery hose, when attached to a tank vehicle, shall be considered to be a part of the tank vehicle.

**3406.6.1.3 Vehicle motor shutdown.** Motors of tank vehicles or tractors shall be shut down during the making or breaking of hose connections. If loading or unloading is performed without the use of a power pump, the tank vehicle or tractor motor shall be shut down throughout such operations.

**3406.6.1.4 Outage.** A cargo tank or compartment thereof used for the transportation of flammable or *combustible liquids* shall not be loaded to absolute capacity. The vacant space in a cargo tank or compartment thereof used in the transportation of flammable or *combustible liquids* shall not be less than 1 percent. Sufficient space shall be left vacant to prevent leakage from or distortion of such tank or compartment by expansion of the contents caused by rise in temperature in transit.

**3406.6.1.5 Overfill protection.** The driver, operator or attendant of a tank vehicle shall, before making delivery to a tank, determine the unfilled capacity of such tank by a suitable gauging device. To prevent overfilling, the driver, operator or attendant shall not deliver in excess of that amount.

**3406.6.1.6 Securing hatches.** During loading, hatch covers shall be secured on all but the receiving compartment.

**3406.6.1.7 Liquid temperature.** Materials shall not be loaded into or transported in a tank vehicle at a temperature above the material's ignition temperature unless safeguarded in an *approved* manner.

**3406.6.1.8 Bonding to underground tanks.** An external bond-wire connection or bond-wire integral with a hose shall be provided for the transferring of flammable liquids through open connections into underground tanks.

**3406.6.1.9 Smoking.** Smoking by tank vehicle drivers, helpers or other personnel is prohibited while they are driving, making deliveries, filling or making repairs to tank vehicles.

**3406.6.1.10 Hose connections.** Delivery of flammable liquids to underground tanks with a capacity of more than 1,000 gallons (3785 L) shall be made by means of *approved* liquid and vapor-tight connections between the delivery hose and fill tank pipe. Where underground tanks are equipped with any type of vapor recovery system, all connections required to be made for the safe and proper functioning of the particular vapor recovery process shall be made. Such connections shall be made liquid and vapor tight and remain connected throughout the unloading process. Vapors shall not be discharged at grade level during delivery.

**3406.6.1.10.1 Simultaneous delivery.** Simultaneous delivery to underground tanks of any capacity from two or more discharge hoses shall be made by means of mechanically tight connections between the hose and fill pipe.

**3406.6.1.11 Hose protection.** Upon arrival at a point of delivery and prior to discharging any flammable or *combustible liquids* into underground tanks, the driver, operator or attendant of the tank vehicle shall ensure that all hoses utilized for liquid delivery and vapor recovery, where required, will be protected from physical damage by motor vehicles. Such protection shall be provided by positioning the tank vehicle to prevent motor vehicles from passing through the area or areas occupied by hoses, or by other *approved* equivalent means.

**3406.6.2 Parking.** Parking of tank vehicles shall be in accordance with Sections 3406.6.2.1 through 3406.6.2.3.

**Exception:** In cases of accident, breakdown or other emergencies, tank vehicles are allowed to be parked and left unattended at any location while the operator is obtaining assistance.

**3406.6.2.1 Parking near residential, educational and institutional occupancies and other high-risk areas.** Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152 m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not

## FLAMMABLE AND COMBUSTIBLE LIQUIDS

be left unattended at any other place that would, in the opinion of the fire chief, pose an extreme life hazard.

**3406.6.2.2 Parking on thoroughfares.** Tank vehicles shall not be left unattended on a public street, highway, public avenue or public alley.

### Exceptions:

1. The necessary absence in connection with loading or unloading the vehicle. During actual fuel transfer, Section 3406.6.1.2 shall apply. The vehicle location shall be in accordance with Section 3406.6.2.1.
2. Stops for meals during the day or night, if the street is well lighted at the point of parking. The vehicle location shall be in accordance with Section 3406.6.2.1.

**3406.6.2.3 Duration exceeding 1 hour.** Tank vehicles parked at one point for longer than 1 hour shall be located off of public streets, highways, public avenues or alleys, and:

1. Inside of a bulk plant and either 25 feet (7620 mm) or more from the nearest *lot line* or within a building *approved* for such use; or
2. At other *approved* locations not less than 50 feet (15 240 mm) from the buildings other than those *approved* for the storage or servicing of such vehicles.

**3406.6.3 Garaging.** Tank vehicles shall not be parked or garaged in buildings other than those specifically *approved* for such use by the *fire code official*.

**3406.6.4 Portable fire extinguisher.** Tank vehicles shall be equipped with a portable fire extinguisher complying with Section 906 and having a minimum rating of 2-A:20-B:C.

During unloading of the tank vehicle, the portable fire extinguisher shall be out of the carrying device on the vehicle and shall be 15 feet (4572 mm) or more from the unloading valves.

**3406.7 Refineries.** Plants and portions of plants in which flammable liquids are produced on a scale from crude petroleum, natural gasoline or other hydrocarbon sources shall be in accordance with Sections 3406.7.1 through 3406.7.3. Petroleum-processing plants and facilities or portions of plants or facilities in which flammable or *combustible liquids* are handled, treated or produced on a commercial scale from crude petroleum, natural gasoline, or other hydrocarbon sources shall also be in accordance with API 651, API 653, API 752, API 1615, API 2001, API 2003, API 2009, API 2015, API 2023, API 2201 and API 2350.

**3406.7.1 Corrosion protection.** Above-ground tanks and piping systems shall be protected against corrosion in accordance with API 651.

**3406.7.2 Cleaning of tanks.** The safe entry and cleaning of petroleum storage tanks shall be conducted in accordance with API 2015.

**3406.7.3 Storage of heated petroleum products.** Where petroleum-derived asphalts and residues are stored in

heated tanks at refineries and bulk storage facilities or in tank vehicles, such products shall be in accordance with API 2023.

**3406.8 Vapor recovery and vapor-processing systems.** Vapor-processing systems in which the vapor source operates at pressures from vacuum, up to and including 1 psig (6.9 kPa) or in which a potential exists for vapor mixtures in the flammable range, shall comply with Sections 3406.8.1 through 3406.8.5.

### Exceptions:

1. Marine systems complying with federal transportation waterway regulations such as DOTn 33 CFR, Parts 154 through 156, and CGR 46 CFR, Parts 30, 32, 35 and 39.
2. Motor fuel-dispensing facility systems complying with Chapter 22.

**3406.8.1 Over-pressure/vacuum protection.** Tanks and equipment shall have independent venting for over-pressure or vacuum conditions that might occur from malfunction of the vapor recovery or processing system.

**Exception:** For tanks, venting shall comply with Section 3404.2.7.3.

**3406.8.2 Vent location.** Vents on vapor-processing equipment shall be not less than 12 feet (3658 mm) from adjacent ground level, with outlets located and directed so that flammable vapors will disperse to below the lower flammable limit (LFL) before reaching locations containing potential ignition sources.

**3406.8.3 Vapor collection systems and overfill protection.** The design and operation of the vapor collection system and overfill protection shall be in accordance with this section and Section 19.5 of NFPA 30.

**3406.8.4 Liquid-level monitoring.** A liquid knock-out vessel used in the vapor collection system shall have means to verify the liquid level and a high-liquid-level sensor that activates an alarm. For unpopulated facilities, the high-liquid-level sensor shall initiate the shutdown of liquid transfer into the vessel and shutdown of vapor recovery or vapor-processing systems.

**3406.8.5 Overfill protection.** Storage tanks served by vapor recovery or processing systems shall be equipped with overfill protection in accordance with Section 3404.2.7.5.8.

MEMORANDUM IN SUPPORT  
FROM FIREWATER TRANSPORT

DANIEL C. SUMMERLIN  
(540) 983-7546  
summerlin@woodsrogers.com

June 12, 2012

**VIA EMAIL AND REGULAR MAIL**

Vernon Hodge, Technical Services Manager  
Division of Building and fire Regulations  
Virginia Department of Housing and Community  
Development  
600 Main Street, Suite 300  
Richmond, VA 23219

**Re: Appeal of Lee Roy Trent / Appeal No. 12-2**

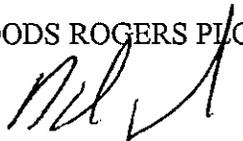
Dear Mr. Hodge:

Please find enclosed Mr. Lee Roy Trent's Memorandum in Support of Appeal in accordance with the agreement of the parties and your office. By copy of this correspondence I am sending Ms. Hutchins the enclosed as well.

Please let me know if you have any questions.

Sincerely,

WOODS ROGERS P L C



Daniel C. Summerlin

DCS/mnf  
Enclosure

cc: Cathie F. Hutchins, Asst. AG (w/encl., via Email and Regular Mail)

VIRGINIA:

BEFORE THE STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Lee Roy Trent (Firewater Transport LLC)

Appeal No. 12-2

**MEMORANDUM IN SUPPORT OF APPEAL**

Lee Roy Trent and Firewater Transport, LLC (“Trent”), by counsel, hereby file this Memorandum in Support of Appeal pursuant to the schedule agreed upon by the parties and the staff of the Technical Review Board.

**PRELIMINARY STATEMENT**

This case arises out of a dispute between neighbors in which the State Fire Marshall’s Office (“SFMO”) is the latest state agency to be used by the complaining neighbor (“Complainant”) against Trent. Trent has operated his petroleum transport business from his home office in rural Southwest Virginia for approximately thirty years. Trent’s business was established for nearly 20 years when the Complainant decided to build a house on property adjoining Trent’s. Complainant was well aware of Trent’s business and the two were good friends for years after Complainant moved in. After an unrelated personal dispute arose between the two, however, Complainant began to systematically contact various state agencies regarding Trent’s business with the intent of shutting it down. Multiple inspections by various state agencies proved unsuccessful in finding anything improper in the operation of Trent’s business. Complainant eventually contacted the SFMO, who subsequently cited Trent for violating Statewide Fire Prevention Code (“SFPC”) section 3406.6.2.1.

Trent appeals the SFMO's citation on the grounds that 1) section 3406.6.2.1 does not apply to this situation; 2) Trent's operation began and has operated continuously since 198\_, thus rendering the provisions of SFPC inapplicable; 3) application of the parking provisions of the SFPC violates Trent's due process rights; and 4) even if section 3406.6.2.1 applies, the tank vehicles are not unattended within 500 feet of a residential area.

### STATEMENT OF FACTS

In 1978 Trent purchased and cleared several acres of land for the purpose of operating a petroleum transport business. Trent purposefully chose property that was located in a remote and rural area. Trent ultimately selected a plot of land located off of a private gravel road outside of the town of Stuart in Patrick County, Virginia (the "Property"). On or about 1983, Trent began operation of his business on the Property and has continued his operations until the present. Firewater Transport is and always has been a small family owned and run business with fewer than 10 employees. Trent's wife and son are both employees of Firewater Transport and his office manager is his cousin.

When Trent began his business there were no other structures or homes located anywhere near the Property, let alone within 500 feet. Each of the homes identified in the Staff Document were constructed well after Trent began operating his business. Of the four houses in the vicinity of the Property, one belongs to Trent's son who works at Firewater and another belongs to his cousin and longtime office manager Robin Letchworth. The house located across Scenic Drive was also added after operations began and may not be within 500 feet of where the trucks are actually parked. The diagram provided by the SFMO purports to show a 500 foot radius from the center of Trent's property. Trent's trucks, however, are parked in the southeastern section of

the property and not in the center of the property thus rendering SFMO's illustration largely irrelevant in deciding which houses are within 500 feet.

Trent's Property is not in a residential area. A review of Ex. 13 to the SFMO's Statement shows the incredibly rural nature of the area. Ex. 13 clearly demonstrates that there are only a handful of homes in the area at large, and with regard to homes in the vicinity of Trent's Property, two of the four homes are owned by Trent or by his close family members. In fact, there are virtually no structures, let alone homes, located anywhere to the east, south and southwest of the Property. To the south of the Property, there are farming operations.

Trent has operated his business in essentially the same manner since its inception. The tanker trucks are parked at the Property overnight or for other periods of inactivity such as holidays or for service. At all times while on the property the trucks are empty.

On or about 1987, Trent constructed a small shop on the property to service the trucks. On or about 2010 Trent constructed a larger shop on the Property for the same purpose. Trent applied for and obtained a building permit from Patrick County for the construction of the shop.

For the past 30 years, Trent has not had any violations or incidents of any kind relating to the operation of his business. Because of his dispute with the Complainant, various state agencies have been out to inspect the property, including: the Virginia Department of Environmental Quality ("DEQ"); local building inspectors; and the Virginia Occupational Safety and Health Department ("VOSH"). Despite these agencies' repeated and thorough inspections, no violations or issues were noted.

Trent has operated his business openly and honestly for 30 years. He and his operations are well known within the local community by all levels of local government including the local fire officials. Over the years the local firefighters in Stuart have come to the Trent's Property to conduct training exercises. At no time has anyone mentioned or indicated in any way that Trent's operations were inappropriate.

Finally, it is worth noting that this regulation is sparingly, if ever, enforced. During one inspection, the SFMO official acknowledged to Trent that this regulation is only enforced if someone complains. Any drive in or around Southwest Virginia reveals the total lack of enforcement of the regulation, demonstrated by numerous tanker trucks parked within 500 feet of homes and small private residences in plain sight from public roadways. At one of the meetings with SFMO, Trent shared photos of several tankers parked immediately adjacent to houses, all observed within the surrounding area.

## **ARGUMENT and AUTHORITIES**

### **I. SECTION 3406.6.2.1 OF THE SFPC IS NOT APPLICABLE.**

Trent is cited with violation of Section 3406.6.2.1 of the SFPC. However, that section is not applicable to Trent's situation because his trucks are parked for longer than one hour. Additionally, Trent's operations predate the enactment of the provision and/or his operations existed long before there were any houses surrounding the Property.

Section 3406.2.1. is a subsection of 3406.6.2 which states "**Parking.** Parking of tank vehicles shall be in accordance with Sections 3406.6.2.1 through 3406.6.2.3." In other words, the Parking section is divided into three separate but equal subsections.

The first of these subsections, and the one Trent is charged with violating, is section 3406.6.2.1 which states:

**3406.6.2.1. Parking near residential educational and institutional occupancies and other high risk areas.** Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the fire chief, pose an extreme life hazard.

The second subsection is section 3406.6.2.2, which prohibits parking on public streets, highways or public avenues or alleys unless it is necessary for the loading or unloading of fuel or in case of stops for meals during the day or night. In either case, the regulation expressly states that “the vehicle location shall be in accordance with section 3406.6.2.1.”

The third and final section on parking of tank vehicles, section 3406.6.2.3 states:

**3406.6.2.3. Duration exceeding 1 hour.** Tank vehicles parked at one point for longer than 1 hour shall be located off of public streets, highways, public avenues or alleys, and:

1. Inside a bulk plant and either 25 feet (7620 mm) or more from the nearest lot line or within a building approved for such use; or
2. At other approved locations not less than 50 feet (15240 mm) from buildings other than those approved for the storage or servicing of such vehicles.

This section does not carry with it the same language as the previous section requiring that the vehicle location shall be in accordance with section 3406.6.2.1.

When read together as the regulation directs, it is clear that the SFMO is applying the wrong regulation to Trent. Trent parks his tank vehicles at the Property overnight or for

servicing. At all times, it is clear that he is parking them for durations exceeding one hour and, thus, if any regulation applies it would be 3406.6.2.3.

Additionally, 3406.6.2.1 does not apply because Trent's operations on the Property began in 1983, well before the implementation of the relevant regulations. A review of the history of the Code reveals that 3406.6.2.1 was not promulgated in any fashion until the 2000 International Fire Code, some 17 years after Trent began storing and servicing his tank vehicles on the Property. The previous versions of the BOCA Code did not contain a similar 500 foot provision. A copy of the 1987 and 1996 BOCA Codes are attached hereto as Ex. 1 and Ex. 2 respectively.

## **II. THE SFPC PARKING REGULATIONS AND THE SFMO ENFORCEMENT OF THE REGULATIONS VIOLATE TRENT'S DUE PROCESS RIGHTS.**

The provisions of the SFPC regarding parking are, at best, ambiguous and confusing. A citizen of the Commonwealth is entitled to fair notice of the law prior to being cited for a violation. *See Volkswagen of America, Inc. v. Smit*, 279 Va. 327, 337, 689 S.E.2d 679, 685 (2010). In *Volkswagen*, the Virginia Supreme Court stated that “[d]ue process requires that a statute be sufficiently precise and definite to give fair warning to those who are subject to it what the statute prohibits and what is expected of them by the state.” *Id.* The court went on to hold that “[a] vague statute violates the ‘important values’ of fair notice to its citizens and the prevention of arbitrary enforcement....” *Id.* The language of Section 3406.6.2 related to the parking of tank vehicles clearly violates *Volkswagen's* due process analysis. The language of the statute is clumsily worded and its subsections seemingly contradictory, making interpretation by a layperson virtually impossible. Further, the vagueness of the statute fails to put individuals like Trent on notice as to what actions constitute a violation of the statute. As discussed more fully below, Trent has operated his business for the past 30 years with the knowledge and approval of

various local regulatory agencies, none of whom has ever put Trent on notice that his parking of tank vehicles on the Property is a violation of the Code.

Moreover, in addition to being ambiguous in terms of which regulation might actually apply, if any, the regulations themselves are simply not available to the public and are completely unfamiliar to the local officials who are interacting with Trent and others similarly situated. Local firefighters do not have or understand the SFPC, as evidenced by their training trips to Trent's property without a mention of the issue. Local building officials are also completely unaware of any violation of the regulations, as evidenced by the issuance of the building permit to construct the garage on the Property in 2010.

Finally, according to the SFMO, the provision is enforced only at such times when someone complains. Such a random and unsupported policy clearly shows the arbitrary nature of the enforcement, thereby violating Trent's due process rights. The arbitrariness of the SFMO's enforcement is plainly evidenced by a drive around Southwest Virginia, which reveals numerous tanker trucks parked alongside homes well within 500 feet of such residences.

When one considers the ambiguous nature of the regulations, the unavailability of the SFPC, the total lack of awareness and knowledge of the SFPC by local officials and its arbitrary enforcement, it is clear that Trent has not been afforded the due process that he is owed prior to being found in violation of the regulations by the Commonwealth.

**III. EVEN IF 3406.6.2.1 IS APPLICABLE TRENT IS NOT IN VIOLATION AS THE TRUCKS ARE NOT PARKED WITHIN 500 FEET OF A RESIDENTIAL AREA.**

Assuming *arguendo* that section 3406.6.2.1 applies to Trent's situation, Trent is not in violation of the section as his trucks are not parked within 500 feet of a residential area. Parking

within 500 feet of a house in the middle of rural Patrick County is not the type of activity prohibited by section 3406.6.2.1. The section does not use the term home, house or residence to describe the prohibition when clearly such a use was available to the drafters. Rather, the section states that the trucks cannot be parked within 500 feet of a “residential area.” The term “residential area” clearly intends more than a dwelling or two. It intends a grouping of homes within a certain area creating a sufficient density of homes, thus creating an increased risk from the parking of tank vehicles in the near vicinity.

Such a reading is entirely consistent with the other terms listed in 3406.6.2.1. The section prohibits parking within 500 feet of a “residential area, apartment or hotel complex, educational facility, hospital or care facility.” All of these specific, delineated terms imply having many people in close proximity to one another and the tanker truck. Under well established precedent, a work is “known by the company it keeps” under the doctrine of *noscitur a sociis*. *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 575 (1995). This rule avoids ascribing to one word a meaning “so broad that it is inconsistent with its accompanying words.” *Id.* In this case, therefore, residential area should be interpreted to be consistent with the accompanying words and apply to more densely populated areas containing many homes within a short distance.<sup>1</sup>

This reading is also consistent with the remainder of the section. The title of the section states “Parking near residential, educational and institutional occupancies and **other high risk areas**.” The phrase “other high risk areas” clearly implies a heightened risk such as high

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<sup>1</sup> This reading is also apparently consistent with the commentary to the International Fire Code which uses the term residential district interchangeably with residential area. The IFC commentary, however, is not available at any library or fire house that was checked nor is it available online.

population densities found in hospitals, schools and hotels. Moreover, the final sentence of the section states that “Tank vehicles shall not be left unattended at any other place that would, in the opinion of the fire chief, pose an extreme life hazard.” Once again, the language supports the concept of an extreme or heightened risk area consistent with hospitals and hotels. Trent has been parking his trucks in the same location for decades with no incidents. Moreover, truckers across Virginia have been parking within 500 feet of single-family residences for decades and the SFMO has done nothing to enforce this supposed restriction. All of these actions suggest that there is no extreme life hazard posed by parking an empty tank trucker within 500 feet of a handful of single-family residences, and that the regulation was not intended to apply to such circumstances.

A review of the history of the regulation is consistent with the interpretation above. The 1987 edition of the BOCA National Fire Code is completely silent as to any language requiring a 500 foot distance between parked tank vehicles and other structures. *See* Exhibit 1, Section F-2807.1.2.1. Instead, the 1987 Code mandates in part that tank vehicles “shall not be parked or left unattended on any street, highway, avenue or alley, ...” Moreover, the 1996 edition of the BOCA National Fire Prevention Code is similarly silent as to a 500 foot limitation, requiring only that “[t]ank vehicles shall not be parked or left unattended on any street, highway, avenue or alley.” *See* Exhibit 2, Section F-3210.1.2.1.

The 2000 edition of the International Fire Code marks the first time that tank vehicles were restricted from being left unattended within 500 feet of a “residential area, apartment or hotel complex, educational facility, hospital or care facility.” Significantly, the 2000 edition was also the first time the Code included separate provisions for the parking of vehicles on thoroughfares and for durations exceeding one hour. With regard to parking on thoroughfares,

the relevant section contains identical language to that discussed above in earlier Code versions. Further, the section relating to parking in excess of one hour, provides that: "Tank vehicles parked at any one point for longer than 1 hour *shall be located off of streets, highways, avenues or alleys, ....*" (emphasis added). Neither of these two sections contain similar 500 foot restrictions. When read along with the earlier editions of the Code, it becomes clear that Section 3406.6.2.1's 500 foot requirement is concerned only with parking near educational facilities, hospitals and other "high-risk areas" which "present an extreme life hazard" due to a high concentration of people in the near vicinity. The 500 foot requirement is not related to the parking of vehicles "off of streets, highways, avenues or alleys, ...." Section 3406.6.2.1's concern with a 500 foot distance between temporarily parked tank vehicles and structures containing a high concentration of individuals is simply inapplicable to the circumstances involved in the present case dealing with a handful of small residential homes in a rural area.

### CONCLUSION

For the foregoing reasons, Trent respectfully requests that the citation be overturned.

LEE ROY TRENT

  
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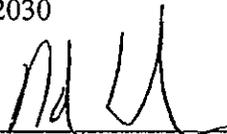
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of this Memorandum in Support of Appeal was sent by e-mail and first class mail to the following:

Cathie F. Hutchins  
Senior Assistant Attorney general  
10555 Main Street, Suite 350  
Fairfax, Virginia 22030



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Daniel C. Summerlin, Esquire



2. **Garages:** Tank vehicles shall not be parked or garaged in any building or structure other than those specifically approved for such use.
3. **Fire extinguishers:** Each tank vehicle shall be provided with at least one portable fire extinguisher having a rating of not less than 2-A:20-B:C.

**F-2807.2 Filling and discharging:** The driver, operator or attendant of any tank vehicle shall neither remain in the vehicle cab nor leave the vehicle while it is being filled or discharged. The delivery hose, when attached to a tank vehicle, shall be considered to be a part of the tank vehicle. When making or breaking hose connections, the motors of tank trucks or tractors shall be shut down. If loading or unloading is done without the use of a power pump, the tank truck or tractor motor shall be shut down throughout such operations.

**F-2807.2.1 Hose connections:** Delivery of flammable liquids to underground tanks of more than 1,000 gallons (3.79 m<sup>3</sup>) capacity shall be made by means of vapor-tight connections between the hose and the fill pipe. In all cases where underground tanks are equipped with any type of vapor recovery system, all connections required to be made for the safe and proper functioning of the particular vapor recovery process shall be made. Such connections shall be made liquid and vapor-tight and shall remain connected throughout the unloading process. Vapors shall not be discharged at grade level during delivery.

**F-2807.2.2 Hose protection:** Upon arrival at a point of delivery and prior to discharging any flammable or combustible liquids into underground tanks, the driver, operator or attendant of the tank vehicle shall ensure that all liquid delivery and vapor recovery (if required) hoses will be protected from physical damage by motor vehicles. Such protection shall be provided by positioning the tank vehicle so as to prevent motor vehicles from passing through the area(s) occupied by hoses or shall consist of portable traffic warning devices, such as traffic cones.

**ART**

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## FLAMMABLE AND COMBUSTIBLE LIQUIDS

## SECTION F-3209.0 FIRE CONTROL

**F-3209.1 Interior storage rooms:** At least one portable fire extinguisher with a minimum 20-B:C rating shall be located outside of but not more than 10 feet (3048 mm) from the door opening into any interior storage room where *flammable* or *combustible liquids* are stored.

**F-3209.2 Inside buildings:** At least one portable fire extinguisher with a minimum 20-B:C rating shall be located not less than 10 feet (3048 mm) nor more than 25 feet (7620 mm), from any *flammable* or *combustible liquid* storage area located outside of an interior storage room but inside the building.

**F-3209.3 Ignition sources:** Open flames and smoking shall not be permitted in *flammable* or *combustible liquid* storage areas.

**F-3209.4 Water-reactive materials:** Materials that react with water shall not be stored in the same room with *flammable* or *combustible liquids*.

**F-3209.5 Electrical grounding:** Containers and portable tanks utilized for *flammable liquids* shall be electrically bonded or grounded during the transfer of liquids so as to eliminate or mitigate the fire hazard of static electricity by dissipating the charge.

## SECTION F-3210.0 TANK VEHICLES

**F-3210.1 Scope:** This section shall apply to tank vehicles utilized for the transportation of asphalt or *flammable* or *combustible liquids*. The design, construction and operation of cargo tanks and their appurtenances shall comply with this section.

**F-3210.1.1 Design:** All tank vehicles shall be designed and constructed in accordance with NFPA 385 listed in Chapter 44.

**F-3210.1.2 Operation of tank vehicles:** Tank vehicles shall be utilized and operated in accordance with NFPA 385 listed in Chapter 44, and as follows:

1. Tank vehicles shall not be parked or left unattended on any street, highway, avenue or alley. This restriction shall not prevent a driver from the necessary absence from the vehicle in connection with the delivery of the load, except that during actual discharge of the liquid, a responsible person shall be present at the vehicle. This restriction shall also not prevent stops for meals during the day or night when the street is well-lighted at the point of parking. Tank vehicles shall not be parked out-of-doors at any one point for longer than 1 hour, except at *flammable liquid* bulk terminals, bulk plants and other approved locations.
2. Tank vehicles shall not be parked or garaged in any structure, except structures specifically approved for such purpose.
3. Each tank vehicle shall be provided with at least one portable fire extinguisher with a minimum 2-A:20-B:C rating.

**F-3210.2 Filling and discharging:** The driver, operator or attendant of any tank vehicle shall not remain in the vehicle cab and shall not leave the vehicle while the vehicle is being filled or discharged. The delivery hose, when attached to a tank vehicle, shall be considered a part of the tank vehicle. When making or

breaking hose connections, the motors of tank trucks or tractors shall be shut down. If loading or unloading is performed without a power pump, the tank truck or tractor motor shall be shut down throughout such operations.

**F-3210.2.1 Hose connections:** Delivery of *flammable liquids* to underground tanks of more than 1,000 gallons (3785 L) in capacity shall be made by means of vapor-tight connections between the hose and fill pipe. Where underground tanks are equipped with any type of vapor recovery system, all connections required to be made for the safe and proper functioning of the particular vapor recovery process shall be made. Such connections shall be made liquid and vapor tight and remain connected throughout the unloading process. Vapors shall not be discharged at grade level during delivery.

**F-3210.2.2 Hose protection:** Upon arrival at a point of delivery and prior to discharging any *flammable* or *combustible liquids* into underground tanks, the driver, operator or attendant of the tank vehicle shall ensure that all hoses utilized for liquid delivery and vapor recovery, where required, will be protected from physical damage by motor vehicles. Such protection shall be provided by positioning the tank vehicle to prevent motor vehicles from passing through the area or areas occupied by hoses, or consist of portable traffic-warning devices, such as traffic cones.

BRIEF IN OPPOSITION FROM  
STATE FIRE MARSHAL'S OFFICE



COMMONWEALTH of VIRGINIA  
*Office of the Attorney General*

Kenneth T. Cuccinelli, II  
Attorney General

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7-1-1

June 26, 2012

**VIA ELECTRONIC MAIL AND U.S. MAIL**

Vernon Hodge, Technical Services Manager  
Technical Assistance Services Office  
Division of Building and Fire Regulations  
Virginia Department of Housing and Community Development  
600 East Main Street, Suite 300  
Richmond, Virginia 23219

**Re: Appeal of Lee Roy Trent/Firewater Transport, LLC  
Appeal No. 12-2**

Dear Mr. Hodge:

I enclose for filing with the Technical Review Board the State Fire Marshal's Brief in Opposition to Lee Roy Trent's Memorandum in Support of Appeal. Please file this with the other papers already submitted by the State Fire Marshal.

If you have any questions, please let me know.

Very truly yours,

A handwritten signature in cursive script that reads "Cathie F. Hutchins".

Cathie F. Hutchins  
Senior Assistant Attorney General

Enclosure

cc: Daniel C. Summerlin, Esq. (w/enclosure, by U.S. Mail and Electronic Mail)  
Woods Rogers PLC  
10 South Jefferson Street, Suite 1400  
Roanoke, Virginia 24011

Charles E. Altizer, State Fire Marshal  
Kenneth L. Kent, Assistant Fire Marshal

Virginia:

BEFORE THE STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Lee Roy Trent and Firewater Transport, LLC  
Appeal No. 12-2

**BRIEF IN OPPOSITION TO MEMORANDUM IN SUPPORT OF APPEAL**

On June 12, 2012, Lee Roy Trent and Firewater Transport, LLC (“Trent” or “FWT”) by counsel filed a Memorandum in Support of Petition for Appeal challenging the January 20, 2012 Inspection Notice issued by the Department of Fire Programs, State Fire Marshal’s Office (the “SFMO”). The SFMO, by counsel, submits this Brief in Opposition<sup>1</sup> for the reasons set forth below:

**BACKGROUND and STATEMENT OF FACTS**

**Authority and Jurisdiction of the State Fire Marshal**

Pursuant to Va. Code Ann. § 9.1-206, the Executive Director of the Virginia Department of Fire Programs is authorized to employ the State Fire Marshal and other personnel necessary to carry out the provisions of the Statewide Fire Prevention Code Act, Va. Code Ann. §§ 27-94 through -101. See Va. Code Ann. § 9.1-206. The mission of the SFMO is to provide safety to life and property from fire for the citizens of the Commonwealth, to ensure a safe and healthy living environment through effective administration, public education, enforcement, plans review, inspections, and technical assistance by requiring compliance with mandated federal and state building, fire, and life safety codes and regulations, industrialized building regulations, and

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<sup>1</sup> For consistency, with some additions, the Exhibits referred to herein correspond to the Exhibits submitted by the SFMO at the informal fact-finding conference May 14, 2012.

all referenced model codes and standards. To accomplish this mission, the SFMO utilizes inspectors and engineers to complete fire safety inspections in localities that do not have their own fire code official; conducts building plan reviews for fire safety measures; conducts construction inspections for fire safety systems in state buildings; provides assistance to local building and fire code officials; and *responds to complaints* and questions from private citizens (emphasis added).<sup>2</sup>

Pursuant to Va. Code Ann. § 27-97 the Board of Housing and Community Development is authorized to adopt and promulgate a Statewide Fire Prevention Code (“SFPC”) which shall be cooperatively developed with the Virginia Fire Services Board pursuant to procedures agreed to by the two Boards. The SFPC shall prescribe regulations to be complied with for the protection of life and property from the hazards of fire or explosion and for the handling, storage, sale and use of fireworks, explosives or blasting agents, and shall provide for the administration and enforcement of such regulations. Va. Code Ann. § 29-97.

Pursuant to Va. Code Ann. § 27-98, any local government may enforce the SFPC in its entirety or with respect only to those provisions of the SFPC relating to open burning, fire lanes, fireworks, and hazardous materials. If a local governing body elects to enforce only those provisions of the SFPC relating to open burning, it may do so in all or in any designated geographic areas of its jurisdiction. The State Fire Marshal shall also have the authority, in cooperation with any local governing body, to enforce the SFPC. The State Fire Marshal shall also have authority to enforce the SFPC in those jurisdictions in which the local governments do not enforce the SFPC and may establish such procedures or requirements as may be necessary for the administration and enforcement of the SFPC in such jurisdictions. Va. Code Ann. § 27-98; SFPC § 104.2.

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<sup>2</sup> See website of the State Fire Marshal at [http://www.vafire.com/state\\_fire\\_marshall/index.html](http://www.vafire.com/state_fire_marshall/index.html).

Patrick County has elected not to enforce the SFPC at the local level. The State Fire Marshal is the enforcing authority, or authority having jurisdiction, in Patrick County. SFPC § 104.2. (Exhibit A.)

### Chronology of Events

On July 19, 2011, Teri Robinson, Fire Marshal Supervisor in the SFMO, Western Region, located at 6744 Thirlane Road, Roanoke, Virginia, received an electronic mail message regarding fuel delivery tank vehicles parked at a home located at 1329 Scenic Drive, Stuart, Virginia. That same day, by electronic mail, Ms. Robinson notified Kenneth L. Kent (“Kent”), Assistant Fire Marshal, SFMO, Western Region, of the complaint. (Exhibit 1.)

Kent is employed by the Commonwealth of Virginia, Department of Fire Programs, SFMO as an Assistant Fire Marshal in the SFMO Western Region. His duties as an Assistant Fire Marshal require him to inspect a variety of private and public buildings, *e.g.*, institutional, industrial, commercial, and residential, to ensure compliance with required fire and building safety regulations including the Virginia SFPC, Virginia Uniform Statewide Building Code, Life Safety Code, the Virginia Public Building Safety Regulations, and all referenced model codes and standards. Other duties include *responding to complaints* and providing technical assistance to fire and building officials incidental to normal duties regarding building and fire code related requirements. Prior to joining the SFMO, Kent was employed as a professional firefighter by Arlington County, Virginia.

The July 19, 2011, electronic mail message regarding tank vehicles parked at a home at 1329 Scenic Drive in Stuart, Virginia, was written by Richard Kreh (“the Complainant”) who resides at 1309 Scenic Drive, Stuart, Virginia. The Complainant observed up to four (4) tank vehicles, with an approximate capacity of 9,000 gallons of fuel each, parked at 1329 Scenic

Drive, Stuart, Virginia. The Complainant expressed concern about fire and explosion risks to himself and other neighbors due to the presence of the fuel delivery tank vehicles. The Complainant also noted that the only security for the tank vehicles appeared to be a night light.

On July 28, 2011, Kent drove by 1329 Scenic Drive and from the road observed two (2) tank vehicles attached to tractor trailers parked on the property. Kent also observed a red brick single family residence, as well as a metal garage building, located at the property on which the tank vehicles were parked. Kent observed that, as viewed from the road, the two tank vehicles with tractor trailers were parked in the area between the residence and the metal garage building. (Attached as Photographs 1 and 2.)

Kent observed that the area in which the tank vehicles are parked is a rural residential neighborhood with single family residences located on wooded lots.

On July 28, 2011, Kent met with the Complainant at Complainant's residence, 1309 Scenic Drive, Stuart, Virginia. After discussing Complainant's observations and the SFPC, Kent took additional photographs of 1329 Scenic Drive. (Attached as Photographs 3, 4, and 5.)

Photograph 5 documents a placard on the tank vehicle bearing the number "1203". This classification is developed by the United States Department of Transportation and identifies hazardous materials for the safety of first responders. The "1203" designation indicates that FWT tank vehicles contain gasoline.

On August 4, 2011, Kent contacted the Patrick County Building Official and determined that the garage building at 1329 Scenic Drive was a permitted structure, but it was not constructed to garage tank vehicles.

On August 5, 2011, Kent contacted the Virginia State Police, Motor Carrier Safety Unit and determined that the Motor Carrier Safety Unit did not have a role in this matter.

On August 25, 2011, the Complainant sent Kent two additional photographs of 1329 Scenic Drive showing a tank vehicle in the garage. (Attached as Photographs 6 and 7.)

On September 9, 2011, Kent and State Fire Marshal David Brown conducted an on-site inspection of 1329 Scenic Drive, Stuart, Virginia. Kent observed two tank vehicles on the property. Kent observed and photographed one of the tank vehicles parked in the garage. Section 3406.6.2.1 of the SFPC states, "Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the fire chief, pose an extreme life hazard." Kent also observed that the tank vehicle attached to the semi-trailer was partially located in the garage at the time of inspection. Section 3406.6.3 of the SFPC states, "Tank vehicles shall not be parked or garaged in buildings other than those specifically approved for such use by the fire code official." (Attached as Photographs 8a-8d.)

On September 9, 2011, Kent interviewed Trent, who is the property owner/business owner, Mrs. Trent, Trent's son, and the bookkeeper for Trent's business. Trent owns and operates FWT, a fuel delivery business, from his residence at 1329 Scenic Drive. According to records from the State Corporation Commission, Trent registered FWT as a corporate entity in May 2003. (Ex. 1.a).

On September 9, 2011, Kent explained to Trent that he was issuing a SFMO Inspection Notice to Trent/FWT for parking tank vehicles on the property. FWT tank vehicles transport petroleum products that are both flammable and combustible. Fire and explosive risks are present whether the tank vehicle contains petroleum products or not. A tank vehicle continues to present a severe risk of fire or explosion even after the flammable product has been unloaded

if the tank has not been properly purged or cleaned. On September 9, 2011, Kent delivered by hand the Inspection Notice to FWT. The Inspection Notice required abatement by October 9, 2012. (Ex. 2.)

On September 28, 2011, Kent was in Patrick County conducting inspections, and he drove by 1329 Scenic Drive. He observed and photographed three (3) tank vehicles on the property. (Attached as Photograph 9.)

On October 26, 2011, Kent conducted a follow-up inspection at 1329 Scenic Drive. Kent observed two tank vehicles parked on the property. Kent issued a second Inspection Notice to Trent for parking tank vehicles on the property in violation of SFPC § 3406.6.2.1. The Inspection Notice required abatement by November 9, 2011. (Ex. 3.)

On November 21, 2011, Kent conducted a follow-up inspection at 1329 Scenic Drive. Kent observed no tank vehicles on the property at that time. Kent issued an Inspection Notice to Mrs. Trent noting that a previous violation had been corrected. (Ex. 4.)

On January 16, 2012, Kent received an electronic mail message from Complainant that tank vehicles were parked at 1329 Scenic Drive. (Ex. 5.)

On January 20, 2012, Kent drove by 1329 Scenic Drive. Kent observed a tank vehicle parked on the property at approximately 1145 hours. (Attached as Photograph 10.)

On January 20, 2012, Kent returned to 1329 Scenic Drive at approximately 1550 hours accompanied by Patrick County Deputy Sheriff J. Kruse. Kent observed a tank vehicle on the property. Kent knocked on the Trent's door and spoke with Mrs. Trent regarding the tank vehicle parked on the property. Kent explained that he would issue an Inspection Notice because the tank vehicle was parked on the property in violation of SFPC § 3406.6.2.1. On January 20,

2012 at 1608 hours, Kent issued the Inspection Notice to Mrs. Trent. The Inspection Notice required an abatement date of January 25, 2012. (Ex. 6.)

On January 27, 2012, while in Patrick County for other Fire Safety Inspections, Kent drove by 1329 Scenic Drive and observed and photographed a tank vehicle parked on the property. (Attached as Photograph 11.)

On February 2, 2012, FWT, by counsel, filed with the Technical Review Board a Notice of Appeal of the January 20, 2012, Inspection Notice.

On February 3, 2012, while in Patrick County for other Fire Safety Inspections, Kent drove by 1329 Scenic Drive and observed a tank vehicle parked on the property.

On February 22, 2012, while in Patrick County for other Fire Safety Inspections, Kent drove by 1329 Scenic Drive and observed two (2) tank vehicles parked on the property.

On March 1, 2012, while in Patrick County for a meeting, Kent drove by 1329 Scenic Drive and observed a tank vehicle parked on the property.

On March 22, 2012, while in Patrick County for other Fire Safety Inspections, Kent drove by 1329 Scenic Drive and observed and photographed three (3) tank vehicles parked on the property. (Attached as Photograph 12.)

On May 2, 2012, while in Patrick County for other Fire Safety Inspections, Kent drove by 1329 Scenic Drive and observed two (2) tank vehicles parked on the property.

Photograph 13 is an aerial view photograph of 1329 Scenic Drive, Stuart, Virginia. This information is available to the public on the website maintained by Patrick County, Virginia. Photograph 13 documents the presence of multiple residences, and other structures, within 500 feet of the area used by FWT to park tank vehicles. Section 3406.6.2.1 of the SFPC states, "Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet

(152m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the fire chief, pose an extreme life hazard.” (Ex. 7.)

### ARGUMENT

The State Fire Marshal’s Office correctly cited Firewater Transport for violating Section 3406.6.2.1 of the Statewide Fire Prevention Code.

1. **FWT IS PARKING ITS TANK VEHICLES WITHIN 500 FEET OF A RESIDENTIAL AREA.**

FWT admits that it regularly parks its tank vehicles at 1329 Scenic Drive, Stuart, Virginia. FWT claims SFPC § 3406.6.2.1 does not apply because (i) the area is not a residential area and, if it is a residential area then (ii) the tank vehicles are not parked within 500 feet of a residential area. FWT is parking its tank vehicles in a residential area where not only Trent, but relatives, friends, and neighbors live, and the tank vehicles are within 500 feet of this residential area. Because FWT’s claims do not withstand scrutiny, the State Fire Marshal asks the Technical Review Board to uphold the Inspection Notice issued on January 20, 2012.

**A. Parking.**

Section 3406.6.2 of the SFPC governs the parking of tank vehicles. The first item listed is an exception providing that in case of accident, breakdown or emergency, tank vehicles are allowed to be parked and left unattended at any location while the operator is obtaining assistance. *See* SFPC § 3406.6.2. Aside from this unambiguous exception for emergencies, tank vehicles may be parked only in specified locations. Section 3406.6.2.1 provides that tank vehicles may not be parked and left unattended at any time on residential streets or within 500 feet of residential, educational and institutional occupancies and other high-risk areas.

Section 3406.6.2.2, though not applicable to FWT's situation, addresses additional tank vehicle parking restrictions by prohibiting unattended tank vehicles on public streets, highways, public avenues, or public alleys. The SFPC does provide an exception to this tank vehicle parking restriction by allowing the tank vehicle to be unattended for necessary absences in connection with loading and unloading the vehicle and for meal stops provided the street is well lighted. *See* SFPC § 3406.6.2.2. In both cases, the tank vehicle shall be parked in accordance with SFPC § 3406.6.2.1, in other words, the tank vehicle cannot be parked and left unattended in a residential, institutional, or educational setting.

Finally, SFPC § 3406.6.2.3 provides that tank vehicles parked at one point for longer than 1 hour shall be located off of public thoroughfares and shall be (i) inside a bulk plant or (ii) at other approved locations. *See* SFPC § 3406.6.2.3. Even if FWT is off a public thoroughfare when parking tank vehicles at 1329 Scenic Drive, SFPC § 3406.6.2.3 still does not apply. There is no bulk plant location at 1329 Scenic Drive, and 1329 Scenic Drive is not an approved structure or location for parking of tank vehicles since parking in a residential area is specifically prohibited by SFPC § 3406.6.2.1. Given that the parking of tank vehicles at 1329 Scenic Drive falls squarely under SFPC § 3406.6.2.1 the analysis stops. There is no need to consider the remaining provisions of SFPC § 3406.6.2.

Simply stated, FWT does not dispute that it regularly parks fuel delivery tank vehicles at 1329 Scenic Drive, Stuart, Virginia. The tank vehicles are parked during the day, in addition to overnight, such parking is not incidental to any type of fuel delivery, and the tank vehicles are not parked there merely on a temporary basis due to accident, breakdown, or other emergency.

## **B. Residential Area.**

The SFMO issued Inspection Notices to FWT for parking tank vehicles within 500 feet of a residential area. FWT asserts that the area in question is not a “residential area” pursuant to SFPC § 3406.6.2.1 in spite of acknowledging that he and other people live in nearby homes.

The term “residential area” is not defined in the SFPC. Section 201.4 of the SFPC provides that where terms are not defined, such terms shall have ordinarily accepted meanings such as the context implies. The SFPC states that *Merriam Webster’s Collegiate Dictionary, 11<sup>th</sup> Edition*, shall be considered as providing the ordinarily accepted meanings. *Id.* Additionally, case law provides that when a term is not defined in the regulation, the analysis turns to the plain meaning of the words. If language is clear and unambiguous, there is no need for construction by the court; the plain meaning will be given. *Brown v. Lukhard*, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985); *Taylor v. Shaw & Cannon, Co.*, 236 Va. 15, 372 S.e.2d 128 (1988). *See also Ruby v. Cashnet, Inc.*, 28 Va. 604, 708 S.e.2d 871 (2011) (pursuant to rules of statutory construction, the terms must be read in accordance with their ordinary meaning).

*Merriam Webster’s* defines the term “residential” as, among other things, “used as a residence.” “Residence” is “defined as a place of dwelling, living, a building used as a home.”

Although the term “residential area” is not defined in the SFPC, in the context of Section 3406.6.2.1 and the ordinary meaning analysis the term clearly refers to a broad array of living situations, including the rural residential setting where Trent lives and parks the tank vehicles. Section 3406.6.2.1 extends protection from the hazards of fire and explosions due to flammable and combustible liquids to people living in a variety of residential settings, including a rural residential setting such as 1329 Scenic Drive and the surrounding area. To hold that Trent’s residence, as well as the surrounding homes, is not a residential area leaves those residents

unprotected against the hazards of fire and explosion. Also, such a holding improperly carves out a “rural exemption” for which there is simply no support. There is nothing in the SFPC to suggest that fire protections apply only to people living in densely populated areas. The resulting gap in protection would be wholly contradictory to the purpose of the SFPC which is protection of life and property from the risks of fire and explosion. “The plain, obvious, and rational meaning of the [regulation] is to be preferred over any curious, narrow, or strained construction.” *Commonwealth v. Zamini*, 256 Va. 391, 395, 507 S.E.2d 608, 609 (1988).

At 1329 Scenic Drive, there are no apartments, hotels, educational, hospital or care facilities, but Trent and his relatives, friends, and neighbors are living in a residential area to which the 500 foot setback applies.

**C. 500 Foot Distance.**

Trent’s home at 1329 Scenic Drive and the surrounding homes comprise a “residential area” as that term is used in the SFPC. When FWT parks tank vehicles at 1329 Scenic Drive the tank vehicles are within 500 feet of several residences. Kent, the Assistant Fire Marshal, observed the distance between the tank vehicles and residences when he was on site. Additionally, Photograph 13 is an aerial view map of 1329 Scenic Drive downloaded from the official website of Patrick County, Virginia. A circle with a 500 foot diameter is superimposed on Photograph 13 documenting the presence of multiple residences, and other structures, within 500 feet of the area used by FWT to park tank vehicles.

There is simply no merit to FWT’s claim that it is not parking tank vehicles within 500 feet of a residential area because multiple homes are within 500 feet of the tank vehicle parking area.

Even if no residences other than Trent's are within 500 feet of the tank parking area, the SFPC still protects Trent and his family. Trent's home is a residential area because he and his family live there. As the tank vehicles are parked well within 500 feet of Trent's home, SFPC § 3406.6.2.1 protects Trent, himself, from the fire and explosive hazards created by parking a tank vehicle near his home. To find that the SFPC does not protect Trent and his family would contradict the purpose of the regulation. Endangerment of self alone is sufficient to support the SFMO's actions, yet Trent also endangers his family and neighbors by parking tank vehicles at 1329 Scenic Drive. *See Phelps v. Commonwealth*, 275 Va. 139, 654 S.E.2d 926 (2008) (a person endangering himself through his own conduct is nevertheless within the class of persons the statute is intended to protect).

FWT mistakenly relies on the regulatory history of the fire code to arrive at the conclusion that the 500 foot distance only applies in areas with a high concentration of people. In fact, the regulatory history for tank vehicle parking has always been protective of residential areas, regardless of the concentration of people. Each edition of the BOCA National Fire Prevention Code, incorporated by reference in the SFPC, beginning with the first edition adopted in 1987 through 2003 restricted the parking of tank vehicles. As pertaining to FWT, the restrictions were that "[t]ank vehicles shall not be parked or left unattended on any street, highway, avenue or alley,..." and that "[t]ank vehicles shall not be parked out of doors at any one point for longer than one hour, except at flammable liquid bulk terminals, bulk plants and other approved locations." (Ex. 8, 1987 BOCA National Fire Prevention Code, Section F-2807.1.2.1; and Ex. 9, 1996 BOCA National Fire Prevention Code, Section F-3210.1.2.1.)

The 2000 edition of the SFPC, incorporating the International Fire Code, was effective in 2003. (Ex. 10, 2000 SFPC § 3406.6.2.1.) Each edition of the SFPC since the 2000 edition has

contained the 500 foot setback in residential areas that is found in SFPC § 3406.6.2.1. *See* Ex. 7, SFPC § 3406.6.2.1.

FWT's Memorandum in Support of Appeal pulls selective quotes from the tank vehicle parking section; not surprisingly, FWT fails to quote other relevant portions of the very same section because the omitted quotes show that in all editions of the fire code beginning in 1987 through the present, parking of tank vehicles has been restricted by either location or duration.

**D. Unattended.**

Section 3406.6.2.1 provides that tank vehicles shall not be left unattended on residential streets or within 500 feet of a residential, educational, or institutional occupancy. The term "unattended" is not defined in the SFPC; however, as noted *supra*, the Virginia Supreme Court, as well as SFPC § 201.4, provides that where terms are not defined, such terms shall have ordinarily accepted meanings such as the context implies. According to *Merriam Webster*, "attended" means "to pay attention to" and "to be present with"; "un" means "not". Applying the ordinary meaning test of the Virginia Supreme Court and SFPC § 201.4, the operator of a tank vehicle must be present with the tank vehicle at all times when on a residential street or within 500 feet of residential, educational, and institutional occupancies, unless there has been an emergency. FWT leaves the tank vehicles unattended when parking overnight at 1329 Scenic Drive.

This interpretation is consistent with the SFPC regarding tank vehicles. For example, Section 3406.6.1.2 of the SFPC, entitled "Leaving the Vehicle Unattended," provides that the "driver, operator, or attendant of a tank vehicle shall not remain in the vehicle cab and shall not leave the vehicle while it is being filled or discharged." Also, Section 3406.6.2.2 allows a driver to leave the vehicle only for a necessary absence in connection with loading or unloading the

tank vehicle and allows the driver to leave the vehicle during a meal stop. In the context of Section 3406.6 regarding tank vehicles, the SFPC does not allow tank vehicles to be left unattended except in very specific instances.

Allowing unattended tank vehicles only in limited circumstances promotes public safety and reduces the risks of fire and explosion. Requiring that tank vehicles be attended means the driver can control sources of ignition, give immediate attention to spills or releases, and be prepared to use appropriate fire extinguishing equipment or place an emergency call. None of those safety measures can be carried out if the vehicle is unattended.

In its Memorandum in Support of Appeal, FWT admits that it parks tank vehicles at 1329 Scenic Drive overnight which, unless the driver is awake in the vehicle, means that the tank vehicle is left unattended within 500 feet of a residential area.

The SFMO correctly cited Trent for violating SFPC § 3406.6.2.1 because Trent is parking and leaving unattended tank vehicles within 500 feet of a residential area.

**2. THE SFMO'S ENFORCEMENT OF THE SFPC TANK VEHICLE REGULATIONS IS PROPER.**

The SFMO's application of the SFPC tank vehicle regulations to FWT is proper because FWT's activities fall under the SFPC, the regulations are available to the public, and are applied appropriately.

The SFPC, and Section 3406.6.2 in particular, advances the significant governmental interest of promoting public safety by protecting citizens from the fire and explosive hazards associated with the parking in residential areas of tank vehicles carrying flammable and combustible liquids. Reading the regulation under the ordinary meaning test articulated *supra*, the regulation gives Trent fair notice of the restrictions on parking tank vehicles. For this reason, FWT's due process arguments are without merit.

FWT was incorporated in 2003, well after adoption of the SFPC. At all times during the corporate existence of FWT, the SFPC parking regulations have been in effect, and FWT is subject to the SFPC.

When a party challenges an ordinance, or as here a regulation, the burden is on the party challenging the ordinance to prove that it is clearly unreasonable, arbitrary or capricious, and that it bears no reasonable or substantial relation to the public health, safety, morals, or general welfare. *Cupp v. Board of Supervisors*, 227 Va. 580, 596-597, 318 S.E.2d 407 (1984) quoting *Board of Supervisors v. Carper*, 200 Va. 653, 660, 107 S.E.2d 390, 395 (1959).

Moreover, courts review statutes and regulations under the well established principle that duly enacted laws are presumed to be constitutional. *Tanner v. City of Virginia Beach*, 277 Va. 432, 438, 674 S.E.2d 848, 852 (2009). “We are required to resolve any reasonable doubt concerning the constitutionality of a law in favor of its validity. Thus, if a statute or ordinance can be construed reasonably in a manner that will render its terms definite and sufficient, such an interpretation is required.” *Id.* at 438-39, 674 S.E.2d at 852 (citations omitted). *Volkswagen v. Smit*, 279 Va. 327, 336, 689 S.E.2d 679 (2010). Here, Trent claims that the regulation is confusing, is difficult to obtain, and is not often enforced. Those claims do not withstand scrutiny. Therefore, Trent failed to carry his burden.

The language of SFPC § 3406.6.2.1 regarding the parking of tank vehicles plainly states the prohibition against parking within 500 feet of residential and other specified areas. The whole regulatory scheme of the SFPC is protection of life and property from the hazards of fire and explosions. There can be no question that the SFPC regulations are designed to protect public health, safety, and welfare. *See* Va. Code Ann. § 27-97.

Any person reading the regulation is immediately put on notice that tankers containing flammable and combustible liquids shall not be parked within 500 feet of certain areas. Section 3406.6.2.1 identifies the regulated activity as the parking of tank vehicles and puts the reader on notice of the parking prohibitions in residential areas. The plain language of the regulation fully informs Trent and other tank vehicle operators what is expected of them.<sup>3</sup>

Trent next claims that the SFPC regulations are not available to the public. To the contrary, the SFPC is available for viewing online by accessing the website of the State Fire Marshal at [http://www.vafire.com/state\\_fire\\_marshall/index.html](http://www.vafire.com/state_fire_marshall/index.html). Scrolling to the bottom of that page brings the reader to a link entitled, "Free Viewing of the Complete Set of Virginia Building and Fire Codes." Following this link brings the reader to [http://www.ecodes.biz/ecodes\\_support/Free\\_Resources/Virginia2009/09Virginia\\_main.html](http://www.ecodes.biz/ecodes_support/Free_Resources/Virginia2009/09Virginia_main.html). This internet page lists ten different codes that are available for viewing, including the SFPC.<sup>4</sup> Also, with certain exceptions not relevant here, all regulations in the Commonwealth, including the SFPC, are promulgated pursuant to the procedures established in the Virginia Administrative Process Act, Va. Code Ann. §§ 2.2-4000 through -4032. These procedures invite public input at several points before a regulation is finalized. It is plainly not feasible for the Commonwealth to individually notify citizens of rulemaking or regulatory changes; however, the Commonwealth provides ample notice to the public through venues such as the Virginia Register of Regulations

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<sup>3</sup> FWT hauls flammable and combustible liquids in interstate commerce and must meet requirements of the U.S. Department of Transportation and the Code of Federal Regulations; consequently, it strains logic to suggest that Trent cannot understand the Virginia SFPC.

<sup>4</sup> The SFPC may also be viewed on line through the website for the Virginia Department of Housing and Community Development at <http://www.dhcd.virginia.gov/>.

and the Virginia Regulatory Town Hall, among other outlets. FWT's claim that the regulations are not available to the public is simply not accurate.<sup>5</sup>

Trent claims that the SFMO enforces the regulation in an arbitrary and capricious manner because elsewhere in the region tank vehicles are parked within 500 feet of residences. This claim falls short upon examination. The SFMO conducts certain Code of Virginia mandated duties including inspections of buildings and the issuing of permits for the storage and handling of explosives. The SFMO *does not* drive around the Commonwealth looking for tank vehicles parked in driveways. First, even if the SFMO observed a tank vehicle in a driveway there is no way of knowing what the tank vehicle contains. A tank vehicle containing non-potable water or orange juice does not fall under the jurisdiction of the SFMO. Second, the SFMO cannot just enter a private driveway to inspect the contents of the tank vehicle; he would need the owner's permission or an inspection warrant to conduct an examination of the tank contents.

However, the SFMO does respond to citizen complaints, as it did in this case. Moreover, Trent, like any other citizen, may contact the SFMO to complain about fire safety matters. In fact, during a meeting of the parties Trent raised the issue of other tank vehicles parking in driveways, yet he was unwilling to lodge a complaint with the SFMO. In the absence of a complaint, the SFMO is not in a position to inspect what is contained in tank vehicles that are parked in private driveways.

Finally, enforcement of SFPC § 3406.6.2.1 against FWT is not arbitrary. As noted above, the enforcement action involving FWT arose from a citizen's complaint. That complaint was the basis for the initial visit by Kent of the SFMO. Since the SFMO received the complaint against FWT, no other complaints have been lodged regarding the parking of tank vehicles. The

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<sup>5</sup> The SFPC incorporates by reference standards set by private code organizations such as the International Fire Code, and the regulations are available for purchase before downloading. Nevertheless, a free version may be viewed online. Thus, the regulations are available to the public.

mere enforcement of the law against one individual and not against others does not amount to a denial of equal protection of the laws. *Union Tanning Co. v. Commonwealth*, 123 Va. 610, 639, 96 S.E. 780, 788 (1918) (taxpayer's equal protection argument rejected when state imposed seven years of previously omitted personal property tax assessments) *quoted in Dick Kelly Enterprises v. City of Norfolk*, 243 Va. 373, 382, 416 S.E.2d 680 (1992). The SFMO is ready and willing to investigate complaints lodged by citizens. The lack of complaints regarding other tank vehicles does not render invalid or make arbitrary the application of the SFPC to FWT's activities.

Finally, Trent's claim that local officials knew about the parking of tank vehicles yet took no action against him is entirely irrelevant to the SFMO's enforcement action. First, Patrick County elected not to enforce the SFPC, therefore, the State Fire Marshal is the only authority having jurisdiction to enforce the SFPC in Patrick County. Also, when the Building Official visited 1329 Scenic Drive he was checking for compliance with the building code relating to a building permit, not checking for compliance with the fire code. Additionally, when other state regulatory bodies visited 1329 Scenic Drive, they were not present to enforce the SFPC; rather they were at 1329 Scenic Drive looking for issues within their scope of authority. Finally, the local firefighters who conducted operational training exercises at 1329 Scenic Drive were not on site to enforce the SFPC, they were on site to train in firefighting techniques.

The Technical Review Board should give no weight to Trent's claims that non-enforcement by government officials with no jurisdiction over tank vehicles somehow invalidates the SFMO action. This claim fails because tank vehicle violations are not within the scope of the Patrick County Building Official, other state agencies, or the local firefighters.

Further, those officials have not been trained to identify tank vehicle violations or authorized to cite violations of the SFPC.

For all of the foregoing reasons, the Technical Review Board should find that Trent violated SFPC § 3406.6.2.1.

**CONCLUSION**

The State Fire Marshal asks the Technical Review Board to uphold the Inspection Notice issued on January 20, 2012, to direct Mr. Trent not to park any tank vehicles within 500 feet of residential areas, and to require Mr. Trent to follow the SFPC with regard to the parking of tank vehicles.

Respectfully submitted,

FOR THE STATE FIRE MARSHAL,  
VIRGINIA DEPARTMENT OF FIRE PROGRAMS

By Catherina F. Hutchins  
Counsel

Dated: June 26, 2012

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the State Fire Marshal's Brief in Opposition to Memorandum in Support of Appeal was sent by U.S. Mail and electronic mail to Daniel C. Summerlin, Esq., Woods Rogers, PLC, 10 South Jefferson Street, Suite 1400, Roanoke, Virginia 24011, counsel for Lee Roy Trent and Firewater Transport, Inc., LLC, on this 26<sup>th</sup> day of June 2012.

*Catherina F. Hutchins*

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Exhibits to  
State Fire Marshal's  
Brief in Opposition  
Appeal No. 12-2  
Filed June 26, 2012

# Localities enforcing the VIRGINIA STATEWIDE FIRE PREVENTION CODE – Revised August 10, 2011

LOCALITY	LOCALITY TYPE	FIRE OFFICIAL	MAILING ADDRESS	CITY & STATE	ZIP	PHONE #	FAX #	SFMO REGION	E-MAIL ADDRESS
<p><b>IMPORTANT NOTICE:</b> This is a list of localities that have adopted the enforcement provisions of the Statewide Fire Prevention Code (SFPC) and lists the locally appointed fire official who is the authority for the administration and enforcement of the SFPC. If a city, county or town is not listed here, then the administration and enforcement of the SFPC is provided by the State Fire Marshal's Office (SFMO). Additional contact information for the SFMO can be obtained at the following web site: <a href="http://www.vafire.com/state_fire_marshal/state_fire_marshal_regional_offices.html">http://www.vafire.com/state_fire_marshal/state_fire_marshal_regional_offices.html</a></p> <p>The name, address, phone numbers and emails of local fire officials on this list is not guaranteed and is subject to change without notice.</p>									
<p>See page 8 for "Enforcement Density" information.</p>									
<p>(*) In the absence of documents or copy of local ordinance to the contrary, assumes county provides SFPC enforcement to pre-1971 towns, incorporated towns, or portions of towns within a county's boundaries.</p>									
Accomack	Town	See Accomack County							
Accomack	County	David Fluhart	P. O. Box 93	Accomack, VA	23301	757-787-5721	757-787-8948	Tidewater	dfluhart@co.accomack.va.us
Albemarle	County	J. Dan Eggleston	401 McIntire Rd.	Charlottesville, VA	22902	434-296-5833	434-972-4123	Orange	deggleston@albemarle.org
Alexandria	City	Rudolph Thomas	900 Second Street	Alexandria, VA	22314	703-746-5227	703-838-5093	Orange	Rudolph.Thomas@alexandriava.gov
Allavista	Town	See Campbell County							
Amherst	County	Gary M. Roakes	P O Box 140	Amherst, VA	24521	434-946-9307	434-946-9470	Roanoke	gmroakes@countyofamherst.com
Amherst (*)	Town	See Amherst County							
Appomattox	County	Lonny Hamlett	P. O. Box 787	Appomattox, VA	24522	434-352-8183	434-352-4214	Roanoke	Lonny.hamlett@appomattoxcountyva.gov
Appomattox (*)	Town	See Appomattox County							
Arlington	County	Michael Woodson, Interim	1020 N. Hudson St. 2nd floor	Arlington, VA	22201	703-228-4641	703-228-4655	Orange	mwoods@arlingtonva.us
Ashland	Town	See Hanover County							
Bedford	City	Jimmy English	215 E. Main St.	Bedford, VA	24523	540-587-6021	540-586-7198	Roanoke	jenglish@bedfordva.gov
Belle Haven	Town	See Accomack County							
Big Stone Gap	Town	Charles B. Burke, Jr.	505 E. 5th St. S.	Big Stone Gap, VA	24219	276-523-0115	276-523-5625	Marion	cburke@bigstonegap.org
Blacksburg	Town	Wayne Garst	407 Hubbard St	Blacksburg, VA	24060	540-961-1175	540-558-0791	Marion	wgarst@blacksburg.gov
Bloxom	Town	See Accomack County							
Boones Mill	Town	See Franklin County							



**Localities enforcing the VIRGINIA STATEWIDE FIRE PREVENTION CODE -- Revised August 10, 2011**

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Bridgewater (*)	Town	See Rockingham County							
Bristol	City	Eric Blevins	211 Lee St.	Bristol, VA	24201	276-645-7304	276-645-7302	Marion	firemarshal@bristolva.org
Broadway (*)	Town	See Rockingham County							
Brookneal (*)	Town	See Campbell County							
Campbell	County	Randall Johnson	P O Box 500	Rustburg, VA	24588	434-332-9640	434-332-2957	Roanoke	rjohnson@campbellcountyva.gov
Cape Charles	Town	Jeb Brady	2 Plum Street	Cape Charles, VA	23310	757-331-3259	757-331-4820	Tidewater	codeofficial@capecharles.org
Charlottesville	City	William A. Hogsten	203 Ridge Street	Charlottesville, VA	22902	434-970-3325	434-295-9302	Orange	hogsten@charlottesville.org
Chatham	Town	See Pittsylvania County							
Chesapeake	City	Michael X. Hoag	304 Albemarle Dr.	Chesapeake, VA	23322	757-382-6123	757-382-8313	Tidewater	mhoag@cityofchesapeake.net
Chesterfield	County	J. Robert Dawson	P. O. Box 40	Chesterfield, VA	23832-0040	804-748-1426	804-751-4713	Richmond	dawson@chesterfield.gov
Chincoteague (*)	Town	See Accomack County							
Christiansburg	Town	Billy Hanks	110 Depot Street	Christiansburg, VA	24073	540-382-4388	540-381-5027	Marion	bhanks@christiansburg.org
Clifton	Town	See Fairfax County							
Colonial Heights	City	A. G. Moore	201 James Ave.	Colonial Heights, VA	23834	804-520-9298	804-524-5755	Richmond	
Covington	City	R. Wayne Iby	333 W. Locust St.	Covington, VA	24426	540-965-6356	540-965-6303	Roanoke	wirby@covington.va.us
Cumberland	County	Kevin Ingle	60 Foster Road	Cumberland, VA	23040	804-492-4356		Richmond	cumberlandvfd@msn.com
Danville	City	David R Eagle	297 Bridge Street	Danville, VA	24541	434-799-5226	434-797-8943	Roanoke	eagletr@ci.danville.va.us
Dayton (*)	Town	See Rockingham County							
Dinwiddie	County	Tony Williams	P. O. Drawer 70	Dinwiddie, VA	23841	804-469-5388	804-469-7663	Richmond	williams@dinwiddieva.us
Dublin	Town	Robert D Cecil	P. O. Box 699	Dublin, VA	24084	540-674-6890	540-674-8142	Marion	rceci@dublind.com
Dumfries	Town	See Prince William County							
Edinburg	Town	See Shenandoah County							
Elkton (*)	Town	See Rockingham County							

**Localities enforcing the VIRGINIA STATEWIDE FIRE PREVENTION CODE – Revised August 10, 2011**

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Emporia	City	Randy Pearce	P. O. Box 511	Emporia, VA	23847	434-634-6315	434-634-0003	Tidewater	r.pearce@ci.emporia.va.us
Fairfax	City	Andrew S. Wilson	10455 Armstrong St.	Fairfax, VA	22030	703-385-7830	703-385-9265	Orange	andrew.wilson@fairfaxva.gov
Fairfax	County	Ronald Mastlin	4100 Chain Bridge Road	Fairfax, VA	22030	703-246-2546	703-324-3908	Orange	ronald.mastlin@fairfaxcounty.gov
Falls Church	City	Thomas Polera	300 Park Ave, G2 East	Falls Church, VA	22046	703-248-5058	703-248-5158	Orange	tpolera@fallschurchva.gov
Farmville	Town	Timothy McKay	P. O. Box 368	Farmville, VA	23901	434-392-5686	434-392-3160	Roanoke	
Fauquier	County	Thomas Billington	62 Culpeper Street	Warrenton, VA	20186	540-422-8800	540-422-8813	Orange	thomas.billington@fauquiercounty.gov
Franklin	County	Bennie Russell	70 E. Court Street	Rocky Mount, VA	24151	540-483-3091	540-483-3086	Roanoke	brussell@franklincountyva.org
Frederick	County	Dennis Linaburg	1080 Coverstone Dr.	Winchester, VA	22602	540-665-6350	540-678-4739	Orange	dlinabur@co.frederick.va.us
Fredericksburg	City	Parris K Sachs	601 Princess Ann St.	Fredericksburg, VA	22401	540-372-1059	540-372-1050	Orange	psachs@fd.fredericksburgva.gov
Goochland	County	William MacKay	P. O. Box 306	Goochland, VA	23063	804-556-5319	804-338-3022	Richmond	wmackay@co.goochland.va.us
Greensville	County	Charles M Veilky	1781 Greensville County Circle	Emporia, VA	23847	434-348-4232	434-348-0696	Tidewater	mveilky@greensvillecountyva.gov
Greina	Town	See Pittsylvania County							
Grottoes (*)	Town	See Rockingham County							
Hallwood	Town	See Accomack County							
Hamilton	Town	See Loudoun County							
Hampton	City	Maurice Wilson	1300 Thomas Street, Rm 220	Hampton, VA	23669	757-727-1210	757-727-1213	Tidewater	mwilson@hampton.gov
Hanover	County	M. Judson Flournoy	P. O. Box 470	Hanover, VA	23069	804-365-4851	804-537-5458	Richmond	miflournoy@co.hanover.va.us
Harrisonburg	City	Larry Shifflett	101 North Main St.	Harrisonburg, VA	22802	540-432-7703	540-434-7780	Orange	larrys@ci.harrisonburg.va.us
Haymarket (*)	Town	See Prince William County							
Henrico	County	W. David Seay	P.O. Box 90775	Henrico, VA	23273	804-501-4900	804-501-7376	Richmond	sead09@co.henrico.va.us
Henry	County	Rodney Howell	1022 DuPont Road	Martinsville, VA	24112	276-634-4663	276-634-4770	Roanoke	rhowell@co.henry.va.us
Herdon	Town	See Fairfax County							
Hillsboro	Town	See Loudoun County							

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Hopewell	City	John Tunstall, Jr	200 S. Hopewell St.	Hopewell, VA	23860	804-541-2290	804-541-2309	Richmond	<a href="mailto:jtunstall@hopewellva.gov">jtunstall@hopewellva.gov</a>
Hurt	Town	See Pittsylvania County							
James City	County	John Black	300 McLaws Circle, Suite 200	Williamsburg, VA	23185	757-220-0626	757-220-9125	Tidewater	<a href="mailto:iblack@james-city.va.us">iblack@james-city.va.us</a>
Jarrett	Town	See Greensville County							
Keller	Town	See Accomack County							
Kenbridge	Town	Richard Harris	P. O. Box 404	Kenbridge, VA	23944	434-676-8281	434-676-8068	Tidewater	<a href="mailto:harris@meckcom.net">harris@meckcom.net</a>
King George	County	David W Moody	8122 Kings Highway	King George, VA	22485	540-775-4584	540-775-9060	Richmond	<a href="mailto:dmoody@co.kinggeorge.state.va.us">dmoody@co.kinggeorge.state.va.us</a>
King William	County	(Position Vacant, contact Trent Funkhouser)	P. O. Box 215	King William, VA	23086	804-769-3011	804-769-4964	Richmond	
Leesburg	Town	See Loudoun County							
Lexington	City	Steve Paulk	P O Box 922	Lexington, VA	24450	540-462-3738	540-463-5310	Roanoke	<a href="mailto:spaulk@ci.lexington.va.us">spaulk@ci.lexington.va.us</a>
Loudoun	County	Linda Hale	803 Sycolin Road, Suite 104	Leesburg, VA	20175	703-737-8600	703-737-8595	Orange	<a href="mailto:Linda.Hale@loudoun.gov">Linda.Hale@loudoun.gov</a>
Lovettsville	Town	See Loudoun County							
Lynchburg	City	Gregory Wormser	800 Madison St.	Lynchburg, VA	24504	434-455-6345	434-847-1742	Roanoke	<a href="mailto:gregory.wormser@lynchburgva.gov">gregory.wormser@lynchburgva.gov</a>
Manassas	City	Francis Teevan	9324 West Street, Suite 204	Manassas, VA	22110	703-257-8458	703-257-5831	Orange	<a href="mailto:feevan@ci.manassas.va.us">feevan@ci.manassas.va.us</a>
Manassas Park	City	Mark Joyner	9080 Manassas Drive	Manassas Park, VA	20111	703-335-0010	703-335-8865	Orange	<a href="mailto:m.joyner@manassasparkva.gov">m.joyner@manassasparkva.gov</a>
Martinsville	City	Ted Anderson	P O Box 1112	Martinsville, VA	24112	276-403-5202	276-403-5381	Roanoke	<a href="mailto:twanderson@ci.martinsville.va.us">twanderson@ci.martinsville.va.us</a>
McKenny	Town	See Dinwiddie County							
Melfa	Town	See Accomack County							
Middleburg	Town	See Loudoun County							
Middletown	Town	Fred Wharton	7875 Church Street	Middletown, VA	22645	540-869-2226	540-869-4306	Orange	<a href="mailto:whartonfred@yahoo.com">whartonfred@yahoo.com</a>
Mount Jackson	Town	See Shenandoah Co.							
Mt. Crawford (*)	Town	See Rockingham County							

**Localities enforcing the VIRGINIA STATEWIDE FIRE PREVENTION CODE -- Revised August 10, 2011**

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New Kent	County	E. Thomas Hicks, IV	P. O. Box 209	New Kent, VA	23124	804-966-9618	804-966-2903	Richmond	<a href="mailto:ethicks@co.newkent.state.va.us">ethicks@co.newkent.state.va.us</a>
New Market	Town	See Shenandoah Co.							
Newport News	City	R. Lee Ware, Jr.	5844 Marshal Ave.	Newport News, VA	23605	757-247-8873	757-247-2630	Tidewater	<a href="mailto:lware@nngov.com">lware@nngov.com</a>
Norfolk	City	Roger Burris - Interim	100 Brooke Ave. Suite 400	Norfolk, VA	23510	757-684-2537	757-441-2537	Tidewater	<a href="mailto:roger.burris@norfolk.gov">roger.burris@norfolk.gov</a>
Occoquan (*)	Town	See Prince William County							
Onancock (*)	Town	See Accomack County							
Onley	Town	See Accomack County							
Painter	Town	See Accomack County							
Pamplin City (*)	Town	See Appomattox County for those portions of the town within Appomattox County							
Parkley	Town	See Accomack County							
Petersburg	City	Rufus Atkins	106 W. Tabb St.	Petersburg, VA	23803	804-733-2392	804-863-2780	Richmond	<a href="mailto:ratkins@petersburgfire-va.org">ratkins@petersburgfire-va.org</a>
Pittsylvania	County	Steven M. Bowman	P O Box 426	Chatham, VA	24531	434-432-7936	434-432-4814	Roanoke	<a href="mailto:steve.bowman@piltgov.org">steve.bowman@piltgov.org</a>
Poquoson	City	Robert Holloway	830 Poquoson Ave	Poquoson, VA	23662	757-868-3510	757-868-3514	Tidewater	<a href="mailto:rholloway@poquoson-va.gov">rholloway@poquoson-va.gov</a>
Portsmouth	City	Mike Stockton	645 Broad St.	Portsmouth, VA	23707	757-393-8689	757-391-3272	Tidewater	<a href="mailto:stocktonm@portsmouthva.gov">stocktonm@portsmouthva.gov</a>
Powhatan	County	W. Kevin Zoll	3834 Old Buckingham Rd., Suite F	Powhatan, VA	23139	804-598-5622	804-598-5877	Richmond	<a href="mailto:kzoll@powhatanva.gov">kzoll@powhatanva.gov</a>
Prince George	County	Julie Walton	P. O. Box 68	Prince George, VA	23875	804-733-2636	804-722-0702	Richmond	
Prince William	County	C. Hadden Culp	1 County Complex Ct., MC 470	Prince William, VA	22192	703-792-6648	703-792-7691	Orange	<a href="mailto:cculp@pwccgov.org">cculp@pwccgov.org</a>
Pulaski	Town	Timothy Garwood	P O Box 660	Pulaski, VA	24301	540-994-8664	540-994-8669	Marion	<a href="mailto:tgarnwood@pulaskitown.org">tgarnwood@pulaskitown.org</a>
Purcellville	Town	See Loudoun County							
Quantico	Town	See Prince William County							
Radford	City	Lee Simpkins	1500 Wadsworth St.	Radford, VA	24141	540-731-3618		Marion	<a href="mailto:lsimpkins@radford.va.us">lsimpkins@radford.va.us</a>
Remington	Town	See Fauquier County							

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Richmond	City	David C. Creasy	201 E. Franklin St.	Richmond, VA	23219	804-646-6640	804-646-7465	Richmond	david.creasy@richmondgov.com
Ridgeway (*)	Town	See Henry County							
Roanoke	City	Daniel J. Rakes	713 Third Street SW	Roanoke, VA	24016	540-853-2795	540-853-1172	Roanoke	daniel.rakes@roanokeva.gov
Roanoke	County	Gary Huffman	5925 Cove Road	Roanoke, VA	24019	540-777-8701	540-777-9773	Roanoke	ghuffman@roanokecountyva.gov
Rockingham	County	Robert Symons	20 E. Gay Street	Harrisonburg, VA	22802	540-564-3175	540-564-1823	Orange	rsymons@rockinghamcountyva.gov
Rocky Mount (*)	Town	See Franklin County							
Round Hill	Town	See Loudoun County							
Salem	City	Doug Moore	114 N. Broad Street	Salem, VA	24153	540-375-7003	540-375-3003	Roanoke	dmoore@salemva.gov
Saxis	Town	See Accomack County							
Scottsville (*)	Town	See Albemarle County for those portions of the town within Albemarle County							
Shenandoah	County	David A. Ferguson	600 North Main St., Suite 109	Woodstock, VA	22664	540-459-6177	540-459-6192	Orange	fire@shentel.net
South Boston	Town	Dwight Spangler	403 Broad St.	South Boston, VA	24592	434-575-4291	434-575-4294	Roanoke	dspangler@southbostonva.us
Spotsylvania	County	R. Chris Eudailey	P. O. Box 818	Spotsylvania, VA	22553	540-507-7900	540-582-6957	Orange	ceudailey@spotsylvania.va.us
Stafford	County	J. Robert Brown, Jr.	P. O. Box 339	Stafford, VA	22555	540-658-7200	540-658-4545	Orange	rbrown@co.stafford.va.us
Staunton	City	R. Scott Garber	500 N. Augusta Street	Staunton, VA	24401	540-332-3884	540-332-3150	Orange	Garbers@ci.staunton.va.us
Stephens City	Town	See Frederick County							
Strasburg	Town	See Shenandoah County							
Suffolk	City	James Dickens	300 Kings Fork Road	Suffolk, VA	23434	757-514-4540	757-514-4598	Tidewater	jdickens@suffolkva.us
Tangier (*)	Town	See Accomack County							
The Plains	Town	See Fauquier County							
Timberville (*)	Town	See Rockingham County							
Toms Brook	Town	See Shenandoah County							
Vienna	Town	See Fairfax County							
Vinton	Town	See Roanoke County							

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Virginia Beach	City	James Ramsey	Municipal Complex, Building 21- 2408 Courthouse Dr.	Virginia Beach, VA	23456	757-385-4228	757-385-5676	Tidewater	jramsey@vbqov.com
Wachapreque	Town	See Accomack County							
Warrenton	Town	Robert Hale	P. O. Drawer 341	Warrenton, VA	22186	540-347-2405	703-349-2414	Orange	rhale@warrentonva.gov
Waynesboro	City	Charles F. Scott	300 West Broad St	Waynesboro, VA	22980	540-942-6733	540-942-6731	Orange	scotcf@ci.waynesboro.va.us
West Point (*)	Town	See King William County							
Williamsburg	City	James B. Humphrey	444 N. Boundary St	Williamsburg, VA	23185	757-220-6226	757-220-6229	Tidewater	bhumphre@williamsburgva.gov
Winchester	City	Scott Cullers	231 E. Piccadilly St., Ste. 330	Winchester, VA	22601	540-662-2298	540-542-1318	Orange	wfrcchief@ci.winchester.va.us
Woodstock	Town	See Shenandoah County							
Wytheville	Town	Albert Newberry	150 East Monroe St	Wytheville, VA	24382	276-223-3340	276-223-3358	Marion	dir_newberry@wytheville.org
York	County	Steve Kopczyński	P. O. Box 532	Yorktown, VA	23690	757-890-3600	757-890-3609	Tidewater	kopczyms@yorkcounty.gov

**Localities enforcing the VIRGINIA STATEWIDE FIRE PREVENTION CODE -- Revised August 10, 2011**

**Enforcement Density of the VSFPC**

08/09/2011

<u>Localities Enforcing*</u>	(Enforcing Percentage)	<u>Population</u>	(Population Percentage)	<u>Land Area**</u> (sq. mi)	(Land Area Percentage)
33 of 95 Counties	35%	3,868,263	48.3%	13,347.39	32.7%
35 of 39 Cities	90%	2,432,395	30.4%	1,712.59	4.2%
<b>73 of 190 Towns</b>	<b>38%</b>	<b>313,298</b>	<b>3.9%</b>	<b>232.461</b>	<b>0.6%</b>
<b>141 of 324 Localities</b>	<b>44%</b>	<b>6,613,956</b>	<b>82.7%</b>	<b>15,292.45</b>	<b>37.4%</b>

**SFMO Enforced areas**

62 of 95 Counties	65%	1,172,560	14.7%	25,312.93	61.9%
4 of 39 Cities	10%	26,232	0.3%	30.64	0.1%
<b>117 of 190 Towns</b>	<b>62%</b>	<b>188,276</b>	<b>2.4%</b>	<b>239.06</b>	<b>0.6%</b>
<b>183 of 324 Localities</b>	<b>56%</b>	<b>1,387,068</b>	<b>17.3%</b>	<b>25,582.63</b>	<b>62.6%</b>

**Total Locality Count for State**

	<u>Population</u>	<u>Land area**</u>
Counties	95	38,660.3
Cities	39	1,743.2
Towns	190	471.5
<b>State Total</b>	<b>324</b>	<b>40,875.1</b>

\* Based on SFMO maintained Fire Officials list. Represents 80 local Fire Officials and staff who enforce the VSFPC within their respective jurisdictions.

\*\*Land area figures based on content of Virginia Review Directory, '09 Edition.

**Kent, Kenneth (VDFP)**

**From:** Robinson, Teri (VDFP)  
**Sent:** Tuesday, July 19, 2011 12:54 PM  
**To:** Kent, Kenneth (VDFP)  
**Subject:** FW: Compliance request  
**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Here's the one I mentioned, but don't do anything else, yet. Just want you to know it's coming.

**Teri Robinson**

Fire Marshal Supervisor  
State Fire Marshal's Office

6744 Thirlane Rd  
Roanoke, VA 24019  
Cell Phone 540-266-4011  
Office Phone 540-561-7033  
Fax 540-561-7544  
From: RICHARD KREH [mailto:rckreh@embarqmail.com]  
Sent: Tuesday, July 19, 2011 10:42 AM  
To: Robinson, Teri (VDFP)  
Subject: Compliance request

Hi: My name is Richard Kreh and I live at 1309 Scenic Dr, Stuart,VA Patrick County. My neighbor is operating a Hazmat fuel oil (gas,diesel,heating oil) delivery business (DBA: FIREWATER, LLC) out of his home residence, 1329 Scenic DR,Stuart,VA.. Currently there are up to four (9,000 gal ea.) delivery trucks with attached tanker trailers parked at this address when not in use. I am very concerned about the threat to life and property that this explosion and fire risk exposes us to and to our neighbors . There is no security fence or other protection other than a nite lite.

I am also concerned that if a catastrophe happened , insurance coverage would be null and void if it requires a level of security he is not providing.

Thanks

Richard Kreh,  
PH: 276-694-3072





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**Business Entity Details**

**FIREWATER TRANSPORT LLC**

SCC ID: S0972663  
 Business Entity Type: Limited Liability Company  
 Jurisdiction of Formation: VA  
 Date of Formation/Registration: 5/14/2003  
 Status: Active

**Principal Office**  
 1329 SCENIC DR

STUART VA 24171-0000

**Registered Agent/Registered Office**  
 LEE ROY TRENT  
 1329 SCENIC DR

STUART VA 24171-0000  
 PATRICK COUNTY 170  
 Status: Active  
 Effective Date: 5/14/2003

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W. G. Shelton, Jr., CEM  
Executive Director

Charles E. Altizer, P.E.  
State Fire Marshal



**Commonwealth of Virginia**  
**Department of**  
**Fire Programs**  
**State Fire Marshal's Office**  
**Inspection Notice**

**Western Regional Office**  
State Fire Marshals Office  
6744 Thirlane Road  
Roanoke, VA 24019  
Phone: (540)561-7033  
Fax: (540)561-7544  
Claude O. Hutton, P.E.  
Fire Marshal Manager

Owner / Occupant: Lee Roy Trent  
Building: Lee Roy Trent  
Address: 1329 Scenic Drive  
Stuart, VA 24171

Date of Inspection: September 09, 2011

File Number: W-8225-904

Occ / Use Group: R

Phone Number:

Fax Number:

**Inspection**

The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

Code Section	Violation(s)	Correct By
3406.6.2	Parking of tank vehicles shall be in accordance with Sections 3406.6.2.1 through 3406.6.2.3. Exception: In cases of accident, breakdown or other emergencies, tank vehicles are allowed to be parked and left unattended at any location while the operator is obtaining assistance.  3406.6.2.1 Parking near residential, educational and institutional occupancies and other high-risk areas. Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152 m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the fire chief, pose an extreme life hazard.  Two tank vehicles on property at time of inspection. Both vehicles had placards visible with with Hazard Classification System number 1203.	09-Oct-2011
3406.6.6.3	Garaging. Tank vehicles shall not be parked or garaged in buildings other than those specifically approved for such use by the fire code official. Tank vehicle attached to semi truck was partially located in garage at time of inspection.	09-Oct-2011
106.3.1	Observations. When, during an inspection, the fire official or an authorized representative observes an apparent or actual violation of another law, ordinance or code not within the officials authority to enforce, such official shall report the findings to the official having jurisdiction in order that such official may institute the necessary measures. Local Building Official shall be notified of tank vehicle being partially located in building.	09-Oct-2011

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.

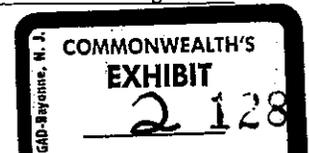
Notice Issued To: Lee Roy Trent

Date: September 9, 2011

Inspected By: Kenneth Kent Assistant Fire Marshal

Sunday, September 11, 2011

Page 1 of 1



W. G. Shelton, Jr., CEM  
Executive Director

Charles E. Altizer, P.E.  
State Fire Marshal



**Commonwealth of Virginia**  
**Department of**  
**Fire Programs**  
**State Fire Marshal's Office**  
**Inspection Notice**

**Western Regional Office**  
State Fire Marshals Office  
6744 Thirlane Road  
Roanoke, VA 24019  
Phone: (540)561-7033  
Fax: (540)561-7544  
Claude O. Hutton, P.E.  
Fire Marshal Manager

Owner / Occupant: Lee Roy Trent Building: Lee Roy Trent Address: 1329 Scenic Drive Stuart, VA 24171	Date of Inspection: October 26, 2011  File Number: W-8225-904 Occ / Use Group: R  Phone Number: Fax Number:
--	---

**Inspection**

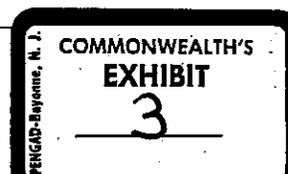
The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

Code Section	Violation(s)	Correct By
3406.6.2	Parking of tank vehicles shall be in accordance with Sections 3406.6.2.1 through 3406.6.2.3. Exception: In cases of accident, breakdown or other emergencies, tank vehicles are allowed to be parked and left unattended at any location while the operator is obtaining assistance. 3406.6.2.1 Parking near residential, educational and institutional occupancies and other high-risk areas. Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152 m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the fire chief, pose an extreme life hazard.	09-Nov-2011
3406.6.6.3	Two tank vehicles on property at time of inspection. Both vehicles had placards visible with Hazard Classification System number 1203.  Garaging. Tank vehicles shall not be parked or garaged in buildings other than those specifically approved for such use by the fire code official. Tank vehicle attached to semi truck was partially located in garage at time of inspection.	Violation Corrected 10/26/2011
106.3.1	Observations. When, during an inspection, the fire official or an authorized representative observes an apparent or actual violation of another law, ordinance or code not within the officials authority to enforce, such official shall report the findings to the official having jurisdiction in order that such official may institute the necessary measures. Local Building Official shall be notified of tank vehicle being partially located in building.	Violation Referred to Building Official
111.3	Failure to correct violations. Arrived on the property at approximately 1805 hours. A single tank vehicle attached to a tractor trailer was parked in the gravel parking area in front of the garage. Mr. Trent was in the driveway of near his home, speaking with a male. The male that Mr. Trent was speaking with returned to the tank vehicle, started the vehicle, and moved the vehicle from the property.	09-Nov-2011

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.

Friday, December 09, 2011

Page 1 of 2



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Notice Issued To: Lee Roy Trent

Date: October 26, 2011

Inspected By: Kenneth Kent Assistant Fire Marshal

Kent L. Kent



W. G. Shelton, Jr., CEM  
Executive Director

Charles E. Altizer, P.E.  
State Fire Marshal



**Commonwealth of Virginia**  
**Department of**  
**Fire Programs**  
**State Fire Marshal's Office**  
**Inspection Notice**

**Western Regional Office**  
State Fire Marshals Office  
6744 Thirlane Road  
Roanoke, VA 24019  
Phone: (540)561-7033  
Fax: (540)561-7544  
Claude O. Hutton, P.E.  
Fire Marshal Manager

Owner / Occupant: Lee Roy Trent  
Building: Lee Roy Trent  
Address: 1329 Scenic Drive  
Stuart, VA 24171

Date of Inspection: November 21, 2011  
File Number: W-8225-904  
Occ / Use Group: R  
Phone Number:  
Fax Number:

**Inspection**

The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

Code Section	Violation(s)	Correct By
Previous Violation 3406.6.2	<p>Parking of tank vehicles shall be in accordance with Sections 3406.6.2.1 through 3406.6.2.3. Exception: In cases of accident, breakdown or other emergencies, tank vehicles are allowed to be parked and left unattended at any location while the operator is obtaining assistance.</p> <p>3406.6.2.1 Parking near residential, educational and institutional occupancies and other high-risk areas. Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152 m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the fire chief, pose an extreme life hazard.</p> <p>Two tank vehicles on property at time of inspection. Both vehicles had placards visible with Hazard Classification System number 1203.</p>	Violation Corrected 11/21/2011
	11/21/2011, at 1610 hours. There were no tank vehicles parked on the property at the time of inspection.	

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.

Notice Issued To: Lee Roy Trent

Date: November 21, 2011

Inspected By: Kenneth Kent Assistant Fire Marshal



**Kent, Kenneth (VDFP)**

**From:** RICHARD KREH [rckreh@embarqmail.com]

**Sent:** Monday, January 16, 2012 5:17 PM

**To:** Kent, Kenneth (VDFP)

**Subject:** Firewater tankers are back

Hi Ken: Trust you had a pleasant holiday. Today (16 Jan.) at about 3:30pm, two tankers were parked in front of there building. Have they found a way out of compliance? This is the first time I have seen them in here since you caught them.

Regards

Richard



W. G. Shelton, Jr., CEM  
Executive Director

Charles E. Alizer, P.E.  
State Fire Marshal



**Commonwealth of Virginia**  
**Virginia Department of Fire Programs**  
**State Fire Marshal's Office**  
**Inspection Notice**

Western Regional Office  
State Fire Marshal's Office  
6744 Thirtane Road  
Roanoke, VA 24018  
Phone: (540)561-7033  
Fax: (540)561-7644  
Claude O. Hutton, P.E.  
Fire Marshal Manager

<b>Owner / Occupant:</b> Lee Roy Trent <b>Building:</b> Lee Roy Trent <b>Address:</b> 1329 Scenic Drive Stuart, VA 24171	<b>Date of Inspection:</b> January 20, 2012  <b>File Number:</b> W-8225-004 <b>Occ / Use Group:</b> R  <b>Phone Number:</b> <b>Fax Number:</b>
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**Inspection**

The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

Code Section	Violation(s)	Correct By
3408.6.2	Parking of tank vehicles shall be in accordance with Sections 3408.6.2.1 through 3408.6.2.3. Exception: In cases of accident, breakdown or other emergencies, tank vehicles are allowed to be parked and left unattended at any location while the operator is obtaining assistance. 3408.6.2.1 Parking near residential, educational and institutional occupancies and other high-risk areas. Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152 m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the fire chief, pose an extreme life hazard.  A tank vehicle on property at time of inspection. Vehicle has placards visible with Hazard Classification System number 1203.	25-Jan-2012

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.

Notice Issued To: Lee Roy Trent, Firewater LLC

Date: 1/20/2012

Inspected By: Kenneth Kent Assistant Fire Marshal

1608

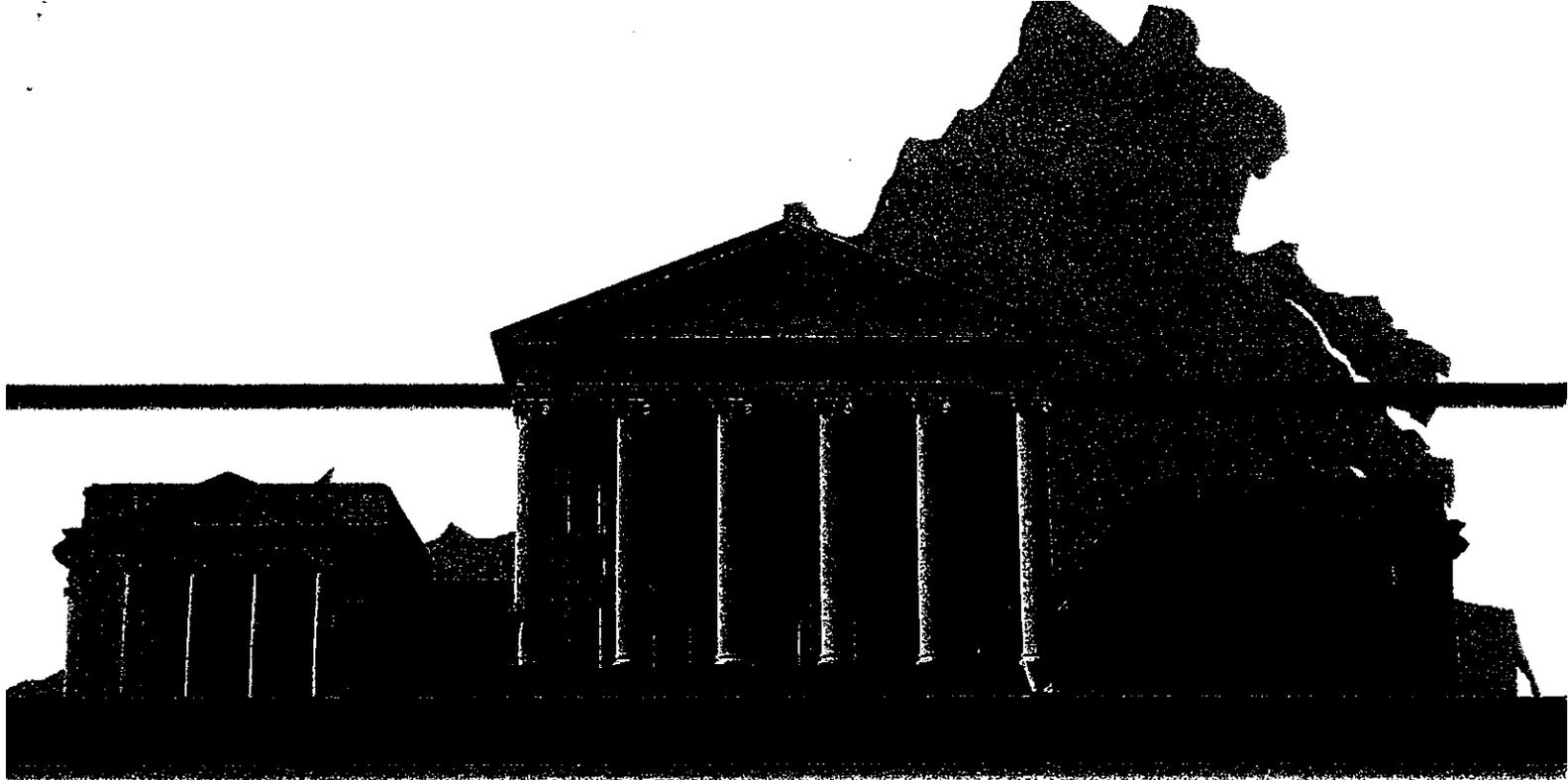


Friday, January 20, 2012

Page 1 of 1



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**VIRGINIA  
STATEWIDE  
FIRE PREVENTION  
CODE**



**2009**

EFFECTIVE MARCH 1, 2013<sup>9</sup>

## CHAPTER 34

# FLAMMABLE AND COMBUSTIBLE LIQUIDS

### SECTION 3401 GENERAL

**3401.1 Scope and application.** Prevention, control and mitigation of dangerous conditions related to storage, use, dispensing, mixing and handling of flammable and *combustible liquids* shall be in accordance with Chapter 27 and this chapter.

**3401.2 Nonapplicability.** This chapter shall not apply to liquids as otherwise provided in other laws or regulations or chapters of this code, including:

1. Specific provisions for flammable liquids in motor fuel-dispensing facilities, repair garages, airports and marinas in Chapter 22.

2. Medicines, foodstuffs, cosmetics, and commercial, institutional and industrial products in the same concentration and packaging containing not more than 50 percent by volume of water-miscible liquids and with the remainder of the solution not being flammable, and alcoholic beverages in retail or wholesale sales or storage uses when packaged in individual containers not exceeding 1.3 gallons (5 L).

3. Storage and use of fuel oil in tanks and containers connected to oil-burning equipment. Such storage and use shall be in accordance with Section 603. For abandonment of fuel oil tanks, this chapter applies.

4. Refrigerant liquids and oils in refrigeration systems (see Section 606).

5. Storage and display of aerosol products complying with Chapter 28.

6. Storage and use of liquids that have no fire point when tested in accordance with ASTM D 92.

7. Liquids with a *flash point* greater than 95°F (35°C) in a water-miscible solution or dispersion with a water and inert (noncombustible) solids content of more than 80 percent by weight, which do not sustain combustion.

8. Liquids without *flash points* that can be flammable under some conditions, such as certain halogenated hydrocarbons and mixtures containing halogenated hydrocarbons.

9. The storage of distilled spirits and wines in wooden barrels and casks.

10. Referenced documents. The applicable requirements Chapter 27, other chapters of this code, the *International Building Code* and the *International Mechanical Code* pertaining to flammable liquids shall apply.

11. Permits. Permits shall be required as set forth in Sections 105.6 and 105.7.

12. Material classification. Flammable and *combustible liquids* shall be classified in accordance with the definitions in Section 3402.1.

When mixed with lower flash-point liquids, Class II or III liquids are capable of assuming the characteristics of the lower flash-point liquids. Under such conditions the appropriate provisions of this chapter for the actual *flash point* of the mixed liquid shall apply. When heated above their *flash points*, Class II and III liquids assume the characteristics of Class I liquids. Under such conditions, the appropriate provisions of this chapter for flammable liquids shall apply.

### SECTION 3402 DEFINITIONS

**3402.1 Definitions.** The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

**ALCOHOL-BASED HAND RUB.** An alcohol-containing preparation designed for application to the hands for reducing the number of viable microorganisms on the hands and containing ethanol or isopropanol in an amount not exceeding 70 percent by volume.

**BULK PLANT OR TERMINAL.** That portion of a property where flammable or *combustible liquids* are received by tank vessel, pipelines, tank car or tank vehicle and are stored or blended in bulk for the purpose of distributing such liquids by tank vessel, pipeline, tank car, tank vehicle, portable tank or container.

**BULK TRANSFER.** The loading or unloading of flammable or *combustible liquids* from or between tank vehicles, tank cars or storage tanks.

**COMBUSTIBLE LIQUID.** A liquid having a closed cup flash point at or above 100°F (38°C). Combustible liquids shall be subdivided as follows:

**Class II.** Liquids having a closed cup flash point at or above 100°F (38°C) and below 140°F (60°C).

**Class IIIA.** Liquids having a closed cup flash point at or above 140°F (60°C) and below 200°F (93°C).

**Class IIIB.** Liquids having closed cup *flash points* at or above 200°F (93°C).

The category of combustible liquids does not include *compressed gases* or *cryogenic fluids*.

**FIRE POINT.** The lowest temperature at which a liquid will ignite and achieve sustained burning when exposed to a test flame in accordance with ASTM D 92.

**FLAMMABLE LIQUID.** A liquid having a closed cup flash point below 100°F (38°C). Flammable liquids are further categorized into a group known as Class I liquids. The Class I category is subdivided as follows:

**Class IA.** Liquids having a flash point below 73°F (23°C) and having a *boiling point* below 100°F (38°C).

24. The *fire code official* and other appropriate authorities shall be notified when a reportable spill or unauthorized discharge occurs.
25. Operators shall place a drip pan or an absorbent pillow under each fuel fill opening prior to and during dispensing operations. Drip pans shall be liquid-tight. The pan or absorbent pillow shall have a capacity of not less than 3 gallons (11.36 L). Spills retained in the drip pan or absorbent pillow need not be reported. Operators, when fueling, shall have on their *person* an absorbent pad capable of capturing diesel foam overfills. Except during fueling, the nozzle shall face upward and an absorbent pad shall be kept under the nozzle to catch drips. Contaminated absorbent pads or pillows shall be disposed of regularly in accordance with local, state and federal requirements.

**3406.6 Tank vehicles and vehicle operation.** Tank vehicles shall be designed, constructed, equipped and maintained in accordance with NFPA 385 and Sections 3406.6.1 through 3406.6.4.

**3406.6.1 Operation of tank vehicles.** Tank vehicles shall be utilized and operated in accordance with NFPA 385 and Sections 3406.6.1.1 through 3406.6.1.11.

**3406.6.1.1 Vehicle maintenance.** Tank vehicles shall not be operated unless they are in proper state of repair and free from accumulation of grease, oil or other flammable substance, and leaks.

**3406.6.1.2 Leaving vehicle unattended.** The driver, operator or attendant of a tank vehicle shall not remain in the vehicle cab and shall not leave the vehicle while it is being filled or discharged. The delivery hose, when attached to a tank vehicle, shall be considered to be a part of the tank vehicle.

**3406.6.1.3 Vehicle motor shutdown.** Motors of tank vehicles or tractors shall be shut down during the making or breaking of hose connections. If loading or unloading is performed without the use of a power pump, the tank vehicle or tractor motor shall be shut down throughout such operations.

**3406.6.1.4 Outage.** A cargo tank or compartment thereof used for the transportation of flammable or *combustible liquids* shall not be loaded to absolute capacity. The vacant space in a cargo tank or compartment thereof used in the transportation of flammable or *combustible liquids* shall not be less than 1 percent. Sufficient space shall be left vacant to prevent leakage from or distortion of such tank or compartment by expansion of the contents caused by rise in temperature in transit.

**3406.6.1.5 Overfill protection.** The driver, operator or attendant of a tank vehicle shall, before making delivery to a tank, determine the unfilled capacity of such tank by a suitable gauging device. To prevent overfilling, the driver, operator or attendant shall not deliver in excess of that amount.

**3406.6.1.6 Securing hatches.** During loading, hatch covers shall be secured on all but the receiving compartment.

**3406.6.1.7 Liquid temperature.** Materials shall not be loaded into or transported in a tank vehicle at a temperature above the material's ignition temperature unless safeguarded in an *approved* manner.

**3406.6.1.8 Bonding to underground tanks.** An external bond-wire connection or bond-wire integral with a hose shall be provided for the transferring of flammable liquids through open connections into underground tanks.

**3406.6.1.9 Smoking.** Smoking by tank vehicle drivers, helpers or other personnel is prohibited while they are driving, making deliveries, filling or making repairs to tank vehicles.

**3406.6.1.10 Hose connections.** Delivery of flammable liquids to underground tanks with a capacity of more than 1,000 gallons (3785 L) shall be made by means of *approved* liquid and vapor-tight connections between the delivery hose and fill tank pipe. Where underground tanks are equipped with any type of vapor recovery system, all connections required to be made for the safe and proper functioning of the particular vapor recovery process shall be made. Such connections shall be made liquid and vapor tight and remain connected throughout the unloading process. Vapors shall not be discharged at grade level during delivery.

**3406.6.1.10.1 Simultaneous delivery.** Simultaneous delivery to underground tanks of any capacity from two or more discharge hoses shall be made by means of mechanically tight connections between the hose and fill pipe.

**3406.6.1.11 Hose protection.** Upon arrival at a point of delivery and prior to discharging any flammable or *combustible liquids* into underground tanks, the driver, operator or attendant of the tank vehicle shall ensure that all hoses utilized for liquid delivery and vapor recovery, where required, will be protected from physical damage by motor vehicles. Such protection shall be provided by positioning the tank vehicle to prevent motor vehicles from passing through the area or areas occupied by hoses, or by other *approved* equivalent means.

**3406.6.2 Parking.** Parking of tank vehicles shall be in accordance with Sections 3406.6.2.1 through 3406.6.2.3.

**Exception:** In cases of accident, breakdown or other emergencies, tank vehicles are allowed to be parked and left unattended at any location while the operator is obtaining assistance.

**3406.6.2.1 Parking near residential, educational and institutional occupancies and other high-risk areas.** Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152 m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not

be left unattended at any other place that would, in the opinion of the fire chief, pose an extreme life hazard.

**3406.6.2.2 Parking on thoroughfares.** Tank vehicles shall not be left unattended on a public street, highway, public avenue or public alley.

**Exceptions:**

1. The necessary absence in connection with loading or unloading the vehicle. During actual fuel transfer, Section 3406.6.1.2 shall apply. The vehicle location shall be in accordance with Section 3406.6.2.1.
2. Stops for meals during the day or night, if the street is well lighted at the point of parking. The vehicle location shall be in accordance with Section 3406.6.2.1.

**3406.6.2.3 Duration exceeding 1 hour.** Tank vehicles parked at one point for longer than 1 hour shall be located off of public streets, highways, public avenues or alleys, and:

1. Inside of a bulk plant and either 25 feet (7620 mm) or more from the nearest *lot line* or within a building *approved* for such use; or
2. At other *approved* locations not less than 50 feet (15 240 mm) from the buildings other than those *approved* for the storage or servicing of such vehicles.

**3406.6.3 Garaging.** Tank vehicles shall not be parked or garaged in buildings other than those specifically *approved* for such use by the *fire code official*.

**3406.6.4 Portable fire extinguisher.** Tank vehicles shall be equipped with a portable fire extinguisher complying with Section 906 and having a minimum rating of 2-A:20-B:C.

During unloading of the tank vehicle, the portable fire extinguisher shall be out of the carrying device on the vehicle and shall be 15 feet (4572 mm) or more from the unloading valves.

**3406.7 Refineries.** Plants and portions of plants in which flammable liquids are produced on a scale from crude petroleum, natural gasoline or other hydrocarbon sources shall be in accordance with Sections 3406.7.1 through 3406.7.3. Petroleum-processing plants and facilities or portions of plants or facilities in which flammable or *combustible liquids* are handled, treated or produced on a commercial scale from crude petroleum, natural gasoline, or other hydrocarbon sources shall also be in accordance with API 651, API 653, API 752, API 1615, API 2001, API 2003, API 2009, API 2015, API 2023, API 2201 and API 2350.

**3406.7.1 Corrosion protection.** Above-ground tanks and piping systems shall be protected against corrosion in accordance with API 651.

**3406.7.2 Cleaning of tanks.** The safe entry and cleaning of petroleum storage tanks shall be conducted in accordance with API 2015.

**3406.7.3 Storage of heated petroleum products.** Where petroleum-derived asphalts and residues are stored in

heated tanks at refineries and bulk storage facilities or in tank vehicles, such products shall be in accordance with API 2023.

**3406.8 Vapor recovery and vapor-processing systems.** Vapor-processing systems in which the vapor source operates at pressures from vacuum, up to and including 1 psig (6.9 kPa) or in which a potential exists for vapor mixtures in the flammable range, shall comply with Sections 3406.8.1 through 3406.8.5.

**Exceptions:**

1. Marine systems complying with federal transportation waterway regulations such as DOTn 33 CFR, Parts 154 through 156, and CGR 46 CFR, Parts 30, 32, 35 and 39.
2. Motor fuel-dispensing facility systems complying with Chapter 22.

**3406.8.1 Over-pressure/vacuum protection.** Tanks and equipment shall have independent venting for over-pressure or vacuum conditions that might occur from malfunction of the vapor recovery or processing system.

**Exception:** For tanks, venting shall comply with Section 3404.2.7.3.

**3406.8.2 Vent location.** Vents on vapor-processing equipment shall be not less than 12 feet (3658 mm) from adjacent ground level, with outlets located and directed so that flammable vapors will disperse to below the lower flammable limit (LFL) before reaching locations containing potential ignition sources.

**3406.8.3 Vapor collection systems and overfill protection.** The design and operation of the vapor collection system and overfill protection shall be in accordance with this section and Section 19.5 of NFPA 30.

**3406.8.4 Liquid-level monitoring.** A liquid knock-out vessel used in the vapor collection system shall have means to verify the liquid level and a high-liquid-level sensor that activates an alarm. For unpopulated facilities, the high-liquid-level sensor shall initiate the shutdown of liquid transfer into the vessel and shutdown of vapor recovery or vapor-processing systems.

**3406.8.5 Overfill protection.** Storage tanks served by vapor recovery or processing systems shall be equipped with overfill protection in accordance with Section 3404.2.7.5.8.

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**F-2805.5 Storage outside of buildings:** Flammable or combustible liquid containers conforming to Sections F-2801.2, F-2801.2.1 and Table F-2805.2 shall be stored as specified in NFPA 30 listed in Appendix A.

**SECTION F-2806.0 FIRE CONTROL**

**F-2806.1 Devices:** Suitable fire control devices, such as small hose or portable fire extinguishers, shall be available at locations where flammable or combustible liquids are stored.

**F-2806.1.1 Interior storage rooms:** At least one portable fire extinguisher having a rating of not less than 20-B:C shall be located outside of but not more than 10 feet (3048 mm) from the door opening into any interior storage room.

**F-2806.1.2 Inside buildings:** At least one portable fire extinguisher having a rating of not less than 20-B:C shall be located not less than 10 feet (3048 mm), nor more than 25 feet (7620 mm), from any flammable liquid storage area located outside of an interior storage room but inside the building.

**F-2806.2 Ignition sources:** Open flames and smoking shall not be permitted in flammable or combustible liquid storage areas.

**F-2806.3 Water reactive materials:** Materials which will react with water shall not be stored in the same room with flammable or combustible liquids.

**F-2806.4 Electrical grounding:** Containers and portable tanks used for flammable liquids shall be electrically bonded or grounded during transfer of liquids in accordance with NFPA 77 listed in Appendix A.

**SECTION F-2807.0 TANK VEHICLES**

**F-2807.1 Scope:** The provisions of this section apply to tank vehicles which are to be used for the transportation of asphalt or flammable or combustible liquids. The intent of the provisions is to provide minimum requirements for the design and construction of cargo tanks and their appurtenances and to set forth certain matters pertaining to tank vehicles.

**F-2807.1.1 Design:** All tank vehicles shall be designed and constructed in compliance with NFPA 385 listed in Appendix A.

**F-2807.1.2 Operation of tank vehicles:** Tank vehicles shall be used and operated as specified in NFPA 385 listed in Appendix A and as follows:

1. **Parking:** Tank vehicles shall not be parked or left unattended on any street, highway, avenue or alley, provided that this shall not prevent a driver from the necessary absence from the vehicle in connection with the delivery of the load, except that during actual discharge of the liquid some responsible person shall be present at the vehicle, nor shall it prevent stops for meals during the day or night if the street is well lighted at point of parking. Tank vehicles shall not be parked out of doors at any one point for longer than one hour, except at flammable liquid bulk terminals, bulk plants and other approved locations.



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2. **Garages:** Tank vehicles shall not be parked or garaged in any building or structure other than those specifically approved for such use.
3. **Fire extinguishers:** Each tank vehicle shall be provided with at least one portable fire extinguisher having a rating of not less than 2-A:20-B:C.

**F-2807.2 Filling and discharging:** The driver, operator or attendant of any tank vehicle shall neither remain in the vehicle cab nor leave the vehicle while it is being filled or discharged. The delivery hose, when attached to a tank vehicle, shall be considered to be a part of the tank vehicle. When making or breaking hose connections, the motors of tank trucks or tractors shall be shut down. If loading or unloading is done without the use of a power pump, the tank truck or tractor motor shall be shut down throughout such operations.

**F-2807.2.1 Hose connections:** Delivery of flammable liquids to underground tanks of more than 1,000 gallons (3.79 m<sup>3</sup>) capacity shall be made by means of vapor-tight connections between the hose and the fill pipe. In all cases where underground tanks are equipped with any type of vapor recovery system, all connections required to be made for the safe and proper functioning of the particular vapor recovery process shall be made. Such connections shall be made liquid and vapor-tight and shall remain connected throughout the unloading process. Vapors shall not be discharged at grade level during delivery.

**F-2807.2.2 Hose protection:** Upon arrival at a point of delivery and prior to discharging any flammable or combustible liquids into underground tanks, the driver, operator or attendant of the tank vehicle shall ensure that all liquid delivery and vapor recovery (if required) hoses will be protected from physical damage by motor vehicles. Such protection shall be provided by positioning the tank vehicle so as to prevent motor vehicles from passing through the area(s) occupied by hoses or shall consist of portable traffic warning devices, such as traffic cones.

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## SECTION F-3209.0 FIRE CONTROL

**F-3209.1 Interior storage rooms:** At least one portable fire extinguisher with a minimum 20-B:C rating shall be located outside of but not more than 10 feet (3048 mm) from the door opening into any interior storage room where *flammable* or *combustible liquids* are stored.

**F-3209.2 Inside buildings:** At least one portable fire extinguisher with a minimum 20-B:C rating shall be located not less than 10 feet (3048 mm) nor more than 25 feet (7620 mm), from any *flammable* or *combustible liquid* storage area located outside of an interior storage room but inside the building.

**F-3209.3 Ignition sources:** Open flames and smoking shall not be permitted in *flammable* or *combustible liquid* storage areas.

**F-3209.4 Water-reactive materials:** Materials that react with water shall not be stored in the same room with *flammable* or *combustible liquids*.

**F-3209.5 Electrical grounding:** Containers and portable tanks utilized for *flammable liquids* shall be electrically bonded or grounded during the transfer of liquids so as to eliminate or mitigate the fire hazard of static electricity by dissipating the charge.

## SECTION F-3210.0 TANK VEHICLES

**F-3210.1 Scope:** This section shall apply to tank vehicles utilized for the transportation of asphalt or *flammable* or *combustible liquids*. The design, construction and operation of cargo tanks and their appurtenances shall comply with this section.

**F-3210.1.1 Design:** All tank vehicles shall be designed and constructed in accordance with NFPA 385 listed in Chapter 44.

**F-3210.1.2 Operation of tank vehicles:** Tank vehicles shall be utilized and operated in accordance with NFPA 385 listed in Chapter 44, and as follows:

1. Tank vehicles shall not be parked or left unattended on any street, highway, avenue or alley. This restriction shall not prevent a driver from the necessary absence from the vehicle in connection with the delivery of the load, except that during actual discharge of the liquid, a responsible person shall be present at the vehicle. This restriction shall also not prevent stops for meals during the day or night when the street is well-lighted at the point of parking. Tank vehicles shall not be parked out-of-doors at any one point for longer than 1 hour, except at *flammable liquid* bulk terminals, bulk plants and other approved locations.
2. Tank vehicles shall not be parked or garaged in any structure, except structures specifically approved for such purpose.
3. Each tank vehicle shall be provided with at least one portable fire extinguisher with a minimum 2-A:20-B:C rating.

**F-3210.2 Filling and discharging:** The driver, operator or attendant of any tank vehicle shall not remain in the vehicle cab and shall not leave the vehicle while the vehicle is being filled or discharged. The delivery hose, when attached to a tank vehicle, shall be considered a part of the tank vehicle. When making or

breaking hose connections, the motors of tank trucks or tractors shall be shut down. If loading or unloading is performed without a power pump, the tank truck or tractor motor shall be shut down throughout such operations.

**F-3210.2.1 Hose connections:** Delivery of *flammable liquids* to underground tanks of more than 1,000 gallons (3785 L) in capacity shall be made by means of vapor-tight connections between the hose and fill pipe. Where underground tanks are equipped with any type of vapor recovery system, all connections required to be made for the safe and proper functioning of the particular vapor recovery process shall be made. Such connections shall be made liquid and vapor tight and remain connected throughout the unloading process. Vapors shall not be discharged at grade level during delivery.

**F-3210.2.2 Hose protection:** Upon arrival at a point of delivery and prior to discharging any *flammable* or *combustible liquids* into underground tanks, the driver, operator or attendant of the tank vehicle shall ensure that all hoses utilized for liquid delivery and vapor recovery, where required, will be protected from physical damage by motor vehicles. Such protection shall be provided by positioning the tank vehicle to prevent motor vehicles from passing through the area or areas occupied by hoses, or consist of portable traffic-warning devices, such as traffic cones.

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vehicles to motor vehicles for private use on farms and rural areas and at construction sites, earth-moving projects, gravel pits and borrow pits is allowed in accordance with Section 3406.2.8.

**3406.6 Tank vehicles and vehicle operation.** Tank vehicles shall be designed, constructed, equipped and maintained in accordance with NFPA 385 and Sections 3406.6.1 through 3406.6.5.

**3406.6.1 Operation of tank vehicles.** Tank vehicles shall be utilized and operated in accordance with NFPA 385 and Sections 3406.6.1.1 through 3406.6.1.11.

**3406.6.1.1 Vehicle maintenance.** Tank vehicles shall not be operated unless they are in proper state of repair and free from accumulation of grease, oil or other flammable substance, and leaks.

**3406.6.1.2 Leaving vehicle unattended.** The driver, operator or attendant of a tank vehicle shall not remain in the vehicle cab and shall not leave the vehicle while it is being filled or discharged. The delivery hose, when attached to a tank vehicle, shall be considered to be a part of the tank vehicle.

**3406.6.1.3 Vehicle motor shutdown.** Motors of tank vehicles or tractors shall be shut down during the making or breaking of hose connections. If loading or unloading is performed without the use of a power pump, the tank vehicle or tractor motor shall be shut down throughout such operations.

**3406.6.1.4 Outage.** A cargo tank or compartment thereof used for the transportation of flammable or combustible liquids shall not be loaded to absolute capacity. The vacant space in a cargo tank or compartment thereof used in the transportation of flammable or combustible liquids shall not be less than 1 percent. Sufficient space shall be left vacant to prevent leakage from or distortion of such tank or compartment by expansion of the contents caused by rise in temperature in transit.

**3406.6.1.5 Overfill protection.** The driver, operator or attendant of a tank vehicle shall, before making delivery to a tank, determine the unfilled capacity of such tank by a suitable gauging device. To prevent overfilling, the driver, operator or attendant shall not deliver in excess of that amount.

**3406.6.1.6 Securing hatches.** During loading, hatch covers shall be secured on all but the receiving compartment.

**3406.6.1.7 Liquid temperature.** Materials shall not be loaded into or transported in a tank vehicle at a temperature above the material's ignition temperature unless safeguarded in an approved manner.

**3406.6.1.8 Bonding to underground tanks.** An external bond-wire connection or bond-wire integral with a hose shall be provided for the transferring of flammable liquids through open connections into underground tanks.

**3406.6.1.9 Smoking.** Smoking by tank vehicle drivers, helpers or other personnel is prohibited while they are

driving, making deliveries, filling or making repairs to tank vehicles.

**3406.6.1.10 Hose connections.** Delivery of flammable liquids to underground tanks with a capacity of more than 1,000 gallons (3785 L) shall be made by means of approved liquefied and vapor-tight connections between the delivery hose and fill tank pipe. Where underground tanks are equipped with any type of vapor recovery system, all connections required to be made for the safe and proper functioning of the particular vapor recovery process shall be made. Such connections shall be made liquid and vapor tight and remain connected throughout the unloading process. Vapors shall not be discharged at grade level during delivery.

**3406.6.1.10.1 Simultaneous delivery.** Simultaneous delivery to underground tanks of any capacity from two or more discharge hoses shall be made by means of mechanically tight connections between the hose and fill pipe.

**3406.6.1.11 Hose protection.** Upon arrival at a point of delivery and prior to discharging any flammable or combustible liquids into underground tanks, the driver, operator or attendant of the tank vehicle shall ensure that all hoses utilized for liquid delivery and vapor recovery, where required, will be protected from physical damage by motor vehicles. Such protection shall be provided by positioning the tank vehicle to prevent motor vehicles from passing through the area or areas occupied by hoses, or by other approved equivalent means.

**3406.6.2 Parking.** Parking of tank vehicles shall be in accordance with Sections 3406.6.2.1 through 3406.6.2.3.

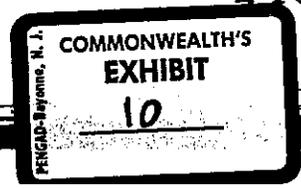
**Exception:** In cases of accident, breakdown or other emergencies, tank vehicles are allowed to be parked and left unattended at any location while the operator is obtaining assistance.

**3406.6.2.1 Parking near residential, educational and institutional occupancies and other high-risk areas.** Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152 m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the fire chief, present an extreme life hazard.

**3406.6.2.2 Parking on thoroughfares.** Tank vehicles shall not be left unattended on a street, highway, avenue or alley.

**Exceptions:**

1. The necessary absence in connection with loading or unloading the vehicle. During actual fuel transfer, Section 3406.6.1.2 shall apply. The vehicle location shall be in accordance with Section 3406.6.2.1.
2. Stops for meals during the day or night, if the street is well lighted at the point of parking. The vehicle location shall be in accordance with Section 3406.6.2.1.



**3406.6.2.3 Durations exceeding 1 hour.** Tank vehicles parked at any one point for longer than 1 hour shall be located off of streets, highways, avenues or alleys, and:

1. Inside of a bulk plant and either 25 feet (7620 mm) or more from the nearest lot line or within a building approved for such use; or
2. At other approved locations not less than 50 feet (15 240 mm) from buildings other than those approved for the storage or servicing of such vehicles.

**3406.6.3 Garaging.** Tank vehicles shall not be parked or garaged in buildings other than those specifically approved for such use by the code official.

**3406.6.4 Fire protection.** Tank vehicles shall be equipped with a fire extinguisher complying with Section 906 and having a minimum rating of 2-A:20-B:C.

During unloading of the tank vehicle, the fire extinguisher shall be out of the carrying device on the vehicle and shall be 15 feet (4572 mm) or more from the unloading valves.

**3406.7 Refineries.** Plants and portions of plants in which flammable liquids are produced on a scale from crude petroleum, natural gasoline or other hydrocarbon sources shall be in accordance with Sections 3406.7.1 through 3406.7.3. Petroleum-processing plants and facilities or portions of plants or facilities in which flammable or combustible liquids are handled, treated or produced on a commercial scale from crude petroleum, natural gasoline, or other hydrocarbon sources shall also be in accordance with API 651, API 653, API 752, API 1615, API 2001, API 2003, API 2009, API 2015, API 2023, API 2201, and API 2350.

**3406.7.1 Corrosion protection.** Above-ground tanks and piping systems shall be protected against corrosion in accordance with API 651.

**3406.7.2 Cleaning of tanks.** The safe entry and cleaning of petroleum storage tanks shall be conducted in accordance with API 2015.

**3406.7.3 Storage of heated petroleum products.** Where petroleum-derived asphalts and residues are stored in heated tanks at refineries and bulk storage facilities or in tank vehicles, such products shall be in accordance with API 2023.

**3406.8 Vapor recovery and vapor-processing systems.** Vapor-processing systems in which the vapor source operates at pressures from vacuum, up to and including 1 psig (6.9 kPa) or in which a potential exists for vapor mixtures in the flammable range, shall comply with Sections 3406.8.1 through 3406.8.5.

**Exceptions:**

1. Marine systems complying with federal transportation waterway regulations such as DOTn 33 CFR, Parts 154-156 and CGR 46 CFR, Parts 30, 32, 35 and 39.
2. Service station systems complying with Chapter 22.

**3406.8.1 Over-pressure/vacuum protection.** Tanks and equipment shall have independent venting for over-pressure

or vacuum conditions that might occur from malfunction of the vapor recovery or processing system.

**Exception:** For tanks, venting shall comply with Section 3404.2.7.3.

**3406.8.2 Vent location.** Vents on vapor-processing equipment shall be not less than 12 feet (3658 mm) from adjacent ground level, with outlets located and directed so that flammable vapors will disperse to below the lower flammable limit (LFL) before reaching locations containing potential ignition sources.

**3406.8.3 Vapor collection systems and overflow protection.** The design and operation of the vapor collection system and overflow protection shall be in accordance with this section and NFPA 30: 5-10.

**3406.8.4 Liquid-level monitoring.** A liquid knock-out vessel used in the vapor collection system shall have means to verify the liquid level and a high-liquid-level sensor that activates an alarm. For unpopulated facilities, the high-liquid-level sensor shall initiate the shutdown of liquid transfer into the vessel and shutdown of vapor recovery or vapor-processing systems.

**3406.8.5 Overflow protection.** Storage tanks served by vapor recovery or processing systems shall be equipped with overflow protection in accordance with Section 3404.2.7.5.8.

REPLY TO BRIEF IN OPPOSITION  
FROM FIREWATER TRANSPORT

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**WOODS ROGERS** <sup>P</sup><sub>L</sub><sub>C</sub>  
ATTORNEYS AT LAW

DANIEL C. SUMMERLIN  
(540) 983-7546  
summerlin@woodsrogers.com

July 3, 2012

**VIA EMAIL AND REGULAR MAIL**

Vernon Hodge, Technical Services Manager  
Division of Building and fire Regulations  
Virginia Department of Housing and Community  
Development  
600 Main Street, Suite 300  
Richmond, VA 23219

**Re: Appeal of Lee Roy Trent / Appeal No. 12-2**

Dear Mr. Hodge:

Please find enclosed Mr. Lee Roy Trent's Reply to Brief in Opposition to Memorandum in Support of Appeal in accordance with the agreement of the parties and your office. By copy of this correspondence I am sending Ms. Hutchins the enclosed as well.

Please let me know if you have any questions.

Sincerely,

WOODS ROGERS PLC



Daniel C. Summerlin

DCS/mnf  
Enclosure

cc: Cathie F. Hutchins, Asst. AG (w/encl., via Email and Regular Mail)

VIRGINIA:

BEFORE THE STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Lee Roy Trent (Firewater Transport LLC)  
Appeal No. 12-2

**REPLY TO BRIEF IN OPPOSITION TO  
MEMORANDUM IN SUPPORT OF APPEAL**

Lee Roy Trent and Firewater Transport, LLC (“Trent”), by counsel, hereby file this Reply to the State Fire Marshal’s Office’s (“SFMO”) Brief in Opposition to Memorandum in Support of Appeal pursuant to the schedule agreed upon by the parties and the staff of the Technical Review Board.

**INTRODUCTION**

SFMO’s Brief in Opposition fails to rebut or adequately address the fact that SFMO is pursuing Trent under an inapplicable regulation, that Trent operates his business in a rural area of Patrick County, Virginia that does not remotely resemble a “residential area” as contemplated by the regulations, and that the arbitrary enforcement against Trent of the selected provisions of the Fire Code violates his due process rights.

**ARGUMENT and AUTHORITIES**

This appeal arises out of an alleged violation by Trent of Statewide Fire Prevention Code (“SFPC”) section 3406.6.2.1 and the subsequent citation issued to him. Overturning the citation in this matter is appropriate because section 3406.6.2.1 is inapplicable to Trent’s use of tank vehicles on his rural Patrick County property. Further, the SFPC parking regulations and the

SFMO's enforcement of the regulations violates Trent's due process rights. These issues are discussed more completely below.

**I. SECTION 3406.6.2.1 OF THE SFPC DOES NOT APPLY TO TRENT'S PROPERTY**

The SFMO claims that Trent's use of the tank vehicles on his property violates section 3406.6.2.1 of the SFPC. As argued more fully in Trent's Memorandum in Support of Appeal, section 3406.6.2.1 does not apply to Trent because at all relevant times, Trent parks his tank vehicles for durations exceeding one hour and thus, if any regulation applies it would be 3406.6.2.3. However, assuming *arguendo* that section 3406.6.2.1 applied to parking in durations exceeding one hour (which it does not), the area in which Trent resides does not qualify as a "residential area," therefore making the section inapplicable nonetheless.

Section 3406.6.2.1, titled "Parking near residential, educational and institutional occupancies and other high-risk areas" provides that

Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the fire chief, pose an extreme life hazard.

The SFMO argues that a handful of single-family homes in a relatively large, rural area necessarily constitute a "residential area." The SFMO cites *Brown v. Lukhard*, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985) for the proposition that where language is clear and unambiguous, there is no need for construction by the court and the plain meaning shall be given. Here, section 3406.6.2.1 relates to the parking of tank vehicles near residential, education and institutional occupancies and **other high-risk areas**. A plain reading of the title alone indicates that this section is concerned only with areas of dense human population. "Residential area" intends a

grouping of homes within a certain area creating a sufficient density of homes, thus creating an increased risk from the parking of tank vehicles in the near vicinity. The SFMO's belief that a few widely scattered -family residences constitute a "residential area" so as to qualify as a "high-risk area" like that of a hospital or hotel is simply mistaken.

The SFMO further argues that section 3406.6.2.1 applies to "people living in a variety of residential settings, including a rural residential setting such as [Trent's property] and the surrounding area." (Brief in Opposition, p. 10). Importantly, the drafters of the SFPC chose not to include the term "single-family home" anywhere in Section 3406.6.2.1, despite the fact that the term is used throughout SFPC section 202 "General Definitions" under "Occupancy Classification." If the drafters contemplated including one or two single family residence in the definition of "residential area," such language was readily available to them to include in section 3406.6.2.1. Not surprisingly, no such language can be found in the section.

Aside from residential areas, the section lists apartment buildings, hotel complexes, educational facilities, hospitals and care facilities. All of these structures house large groups of individuals in a relatively concentrated area. Under well established precedent, a word is "known by the company it keeps" under the doctrine of *noscitur a sociis*. *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 575 (1995). This rule avoids ascribing to one word a meaning "so broad that it is inconsistent with its accompanying words." *Id.* Apartment buildings, hotels, and hospitals house hundreds if not thousands of individuals in relatively small areas. Comparing these structures to SFMO's reading of "residential area" demonstrates the inapplicability of Trent's area to the term "residential area." It simply strains credibility that the drafters of the section envisioned four or five well-distanced single-residence homes in a rural and remote area when it included the term "residential area" in the above language.

## II. THE SFPC PARKING REGULATIONS AND THE SFMO'S ENFORCEMENT OF THE REGULATIONS VIOLATE TRENT'S DUE PROCESS RIGHTS

A citizen of the Commonwealth is entitled to fair notice of the law prior to being cited for a violation. *See Volkswagen of America, Inc. v. Smit*, 279 Va. 327, 337, 689 S.E.2d 679, 685 (2010). In *Volkswagen*, the Court held that “[a] vague statute violates the ‘important values’ of fair notice to its citizens and the prevention of arbitrary enforcement...” *Id.* The language of Section 3406.6.2 related to the parking of tank vehicles clearly violates *Volkswagen's* due process analysis as it is overly confusing and ambiguous. Further, the vagueness of the statute fails to put individuals like Trent on notice as to what actions constitute a violation of the statute.

The SFMO summarily states that Trent has failed to carry his burden in establishing that the regulations related to the parking of tank vehicles are ambiguous or confusing. (Brief in Opposition, p. 15). The SFMO further argues that section 3406.6.2.1 puts individuals on notice that tankers containing flammable and combustible liquids are not to be parked within 500 feet of residential areas. (Brief in Opposition, p. 15-16). However, this contention is overly simplistic. As discussed in Trent's Memorandum in Support of Appeal, the provisions of the SFPC regarding parking are, at best, ambiguous and confusing. The language of the statute is clumsily worded and its subsections seemingly contradictory, making interpretation by a layperson virtually impossible. The present dispute is evidence of the ambiguity in language contained in the SFPC.

In some instances, the SFPC appears to be contradictory. The SFMO argues that section 3406.6.2.1 prohibits the presence of tankers containing flammable and combustible liquids within 500 feet of residential areas. However, as previously discussed, “residential area” is not a defined term in the SFMO. Further, section 3406.2.4.3, titled “Permanent and temporary tanks” provides that:

**3406.2.4.3 Location.** Tanks containing Class I or II liquids shall be kept outside and at least 50 feet (15 240 mm) from buildings and combustible storage. Additional distances shall be provided when necessary to ensure that vehicles, equipment and containers being filled directly from such tanks will not be less than 50 feet (15 240 mm) from structures, haystacks or other combustible storage.

Firewater is in the business of primarily transporting gasoline. According to the SFMO's reading of the regulations, section 3406.6.2.1 would require that Firewater's materials (gasoline) be stored at a distance 10 times greater than that required under 3406.2.4.3. Section 3406.2.4.3 therefore begs the question; must tanks be kept 50 feet or 500 feet from buildings? This seeming contradiction is one of the many examples of poorly crafted language which fails to put individuals on notice of the applicability of the regulations.

In addition to being ambiguous in terms of which regulation might actually apply, if any, the regulations themselves are simply not available to the public and are completely unfamiliar to the local officials who are interacting with Trent and others similarly situated. Furthermore, as conceded by the SFMO, section 3406.6.2.1 is enforced only at such times when someone complains. (Brief in Opposition, p. 17-18). The arbitrariness of the SFMO's enforcement is plainly evidenced by a drive around Southwest Virginia, which reveals numerous tanker trucks parked alongside homes well within 500 feet of such residences. Trent has operated his business on his property for nearly 20 years without complaint, until now. Such a random and unsupported policy clearly shows the arbitrary nature of the enforcement, thereby violating Trent's due process rights.

As discussed more fully in Trent's Memorandum in Support of Appeal, the ambiguity of the provisions, coupled with the arbitrary nature of its enforcement, requires a determination that

Trent has not been afforded the due process that he is owed prior to being found in violation of the regulations by the Commonwealth.

### CONCLUSION

For the foregoing reasons, Trent respectfully requests that the citation be overturned.

LEE ROY TRENT



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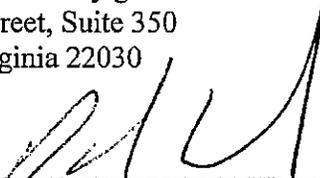
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Facsimile – 540.983.7711  
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Email – [summerlin@woodsrogers.com](mailto:summerlin@woodsrogers.com)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of this Reply to Brief in Opposition to Memorandum in Support of Appeal was sent by e-mail and first class mail on July 3, 2012 to the following:

Cathie F. Hutchins  
Senior Assistant Attorney general  
10555 Main Street, Suite 350  
Fairfax, Virginia 22030



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Daniel C. Summerlin, Esquire

VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF BUILDING AND FIRE REGULATION

Code Change Form for the 2012 Code Change Cycle

Code Change Number: \_\_\_\_\_

Proponent Information

(Check one):  Individual  Government Entity  Company

Name: State Building Code Technical Review Board

Representing: \_\_\_\_\_

Proposal Information

Code(s) and Section(s): Virginia Construction Code, Section 903.2.8

Proposed Change (including all relevant section numbers, if multiple sections):

Change Section 903.2.8 as shown below:

903.2.8 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area, except in the following Group R-2 occupancies when the necessary water pressure or volume, or both, for the system is not available:

Exceptions:

1. Buildings which do not exceed two stories, including basements which are not considered as a story above grade, and with a maximum of 16 dwelling units per fire area. Each dwelling unit shall have at least one door opening to an exterior exit access that leads directly to the exits required to serve that dwelling unit.
2. Buildings where all dwelling units are not more than two stories above the lowest level of exit discharge and not more than one story below the highest level of exit discharge of exits serving the dwelling unit and a two-hour fire barrier is provided between each pair of dwelling units. Each bedroom of a dormitory or boarding house shall be considered a dwelling unit under this exception.

For the purposes of [ this code applying Exception 1 of Section 1015.1 ], buildings constructed under the above exceptions shall be entitled to the same allowances as buildings provided with sprinklers in accordance with Section 903.3.1.1 or 903.3.1.2.

Supporting Statement (including intent, need, and impact of the proposal):

The Review Board issued Interpretation No. 26/90 clarifying that buildings constructed under the exceptions to Section 903.2.8 were considered to be equivalent to buildings protected by a sprinkler system [ for the purposes of applying the single exit building provisions ]. Under the Review Board's statutory authority, interpretations issued by the Review Board, when deemed appropriate by the Review Board members, are forwarded to the Board of Housing and Community Development as recommendations for future amendments to the code.

Submittal Information

Date Submitted: March 16, 2012



VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF BUILDING AND FIRE REGULATION

Code Change Form for the 2012 Code Change Cycle

Code Change Number: \_\_\_\_\_

Proponent Information

(Check one):  Individual  Government Entity  Company

Name: State Building Code Technical Review Board

Representing: \_\_\_\_\_

Email Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Proposal Information

Code(s) and Section(s): Virginia Construction Code, Section 112.1

Proposed Change (including all relevant section numbers, if multiple sections):

Change Section 112.1 as shown below:

112.1 General. It shall be the duty of any person performing work covered by this code to comply with all applicable provisions of this code and to perform and complete such work so as to secure the results intended by the USBC. Damage to [ other regulated ] building components caused by violations of this code or by the use of faulty materials or installations shall be considered as separate violations of this code and shall be subject to the applicable provisions of Section 115.

Supporting Statement (including intent, need, and impact of the proposal):

Arising as an issue in a appeal, the Review Board recommends that the above language be added to the code to clarify that damage to [ other regulated ] components of a building caused by violations of the code or by faulty construction or installations are considered in and of themselves to be violations of the code. The reference to Section 115 is to reflect that, as with other violations of the code, the violations must be discovered within the statute of limitations period in order to compel correction, or would only be documented as violations if discovered after the statute of limitations period.

Submittal Information

Date Submitted: March 16, 2012

The proposal may be submitted by email as an attachment, by fax, by mail, or by hand delivery.

Please submit the proposal to:

DHCD DBFR TASO (Technical Assistance and Services Office)  
The Jackson Center  
501 N. 2nd Street  
Richmond, VA 23219-1321

Email Address: [taso@dhcd.virginia.gov](mailto:taso@dhcd.virginia.gov)  
Fax Number: (804) 371-7092  
Phone Numbers: (804) 371-7140 or (804) 371-7150

