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October 17, 2008

Mr. John Hill, Administrator  
U.S. Department of Transportation  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, SE,  
West Building, Ground Floor, Room W12-140  
Washington, DC 20590-001

**RE: Docket No. FMCSA-2008-0204**

Dear Administrator Hill:

The Massachusetts Oilheat Council (MOC) is a non-profit trade association established in 1955. We represent over 300 companies statewide, including retail and wholesale/supplier heating oil operations. Over 1 million Massachusetts homes heat with oil, and together our members deliver almost 70 percent of that product. On behalf of our members, MOC submits this letter in support of the American Trucking Association's (ATA's) petition for a preemption determination on the City of Boston's routing and transportation restrictions applicable to certain hazardous materials. Many of our members and their customers are affected by this issue, and we wish to stress the importance of the local jurisdiction's compliance with federal hazmat routing procedural requirements in a way that does not impede the safe and efficient transportation of hazardous materials.

Under 49 CFR 397.71, the federal government has established a fair and reasonable process by which local governments may determine the safest and most efficient routes for transporting hazardous materials. According to this rule, state agencies and municipalities have the right to establish or modify a highway routing designation so long as they remain compliant with the federal regulations, which require them to include affected parties in the decision making process. In this case, the City of Boston implemented a new hazmat route in 2006. The city did not notify or consult with neighboring jurisdictions, the Massachusetts Highway Department or impacted carriers and shippers. Being that the relevant parties were not involved in the new route designation, there is no way of gauging whether or not the new routes now enforced by the City of Boston address the ultimate purpose of the federal regulation. It is our belief that important issues concerning public safety and the direct and indirect impacts on businesses, consumers and the environment have been overlooked.

Additionally, MOC echoes the ATA's concern over the City of Boston's recent freeze on the issuance of permits allowing the through transportation of certain hazardous materials. Previously the city issued permits to a certain number of carriers, allowing them to travel routes normally off limits to transporters of hazardous materials. The permits were crucial to insuring that essential

commodities made it to their destination in the most prudent manner possible, minimizing risk and cutting down on traffic volume. The city has since ceased issuing such permits, justifying the action with vague references to Big Dig construction and post-9/11 security issues. While MOC recognizes the importance of preserving security and safety within city limits, we feel that the denial of these permits poses significant threats to Boston as well as its neighboring municipalities. Furthermore, this change amounts to a hazmat routing change, which in turn subjects it to the federal hazmat routing procedures outlined in 49 CFR 397.71. Here again, Boston may ultimately eliminate all through transportation permits, however they may not do so until a safety analysis is performed and affected parties have had the opportunity to provide feedback.

Since our inception over 50 years ago, MOC's mission has been to promote and protect the business interests of our members and at the same time assist them in complying with all reasonable and well developed laws and regulations. By not following the proper hazmat routing procedures and by drastically altering their through transport permitting procedure, the City of Boston has negatively affected the safety and well-being of our members, the public and the environment. Many of MOC's members are now required to travel several miles out of the way- one member reporting 50 miles one way- in observance of the city's new hazmat routing procedures. Additional miles and time on the road make it difficult for drivers to comply with the Department of Transportation's Hours of Service Regulations, and significantly increases the operating costs of businesses that will then be forced to pass those costs on to the consumer. Additionally, more time spent on the roads increases highway congestion, the risk for accidents, roadway wear and tear and pollution. Further, the larger implications of the city's actions reach well beyond city limits. A finding in favor of the City of Boston would establish a precedent which other municipalities across the country would then be free to exploit.

49 CFR 397.71 provides a fair and non-bias approach to determining the safest and most efficient routes for the transportation of hazardous materials. Universal adherence to the established federal rule ensures that the safest and most efficient routing procedures are implemented. Boston's reestablishment of its hazmat routes and the decision to cease the issuance of through transportation hazmat permits was done without regard to the federal code. Accordingly, MOC respectfully requests that the FMCSA act favorably upon the ATA's petition for a determination in support of federal preemption.

We appreciate your consideration of these important matters. Please do not hesitate to contact us with any questions or concerns you may have.

Sincerely,

Michael J. Ferrante  
President

Alisha M. Frazee  
Association Specialist