

## **Opinion No. 62-11**

January 19, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Oliver E. Payne, Assistant Attorney General

**TO:** Mr. R. F. Apodaca, State Fire Marshal, State Capitol Building, Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

Is there a conflict between Rule 5330 promulgated by the Office of the State Fire Marshal and Regulation S.10.10 promulgated by the Gasoline Tax Division of the Bureau of Revenue, and if so, which Rule takes priority?

#### CONCLUSION

There is no conflict between the two rules.

### **OPINION**

#### ANALYSIS

A question has arisen concerning a possible conflict between the Regulations of the State Fire Marshal and the Regulations of the Gasoline Tax Division of the Bureau of Revenue in regard to delivery of flammable liquids.

Involved is Rule 5330 of the State Fire Marshal's Office and Regulation S.10.10 of the Gasoline Tax Division of the Bureau of Revenue. Rule 5330 provides as follows:

"Tank vehicles transporting Class I or II flammable liquid in one or more compartments and Class III flammable liquid in other compartment or compartments shall be equipped with separate piping, pumps, meters and hoses for such classes of product. Separate hoses are not required where such hose has no valve on the discharge end and where it must be disconnected to change compartments or products. Exception: Tank vehicles manufactured prior to the effective date of this standard may be continued in use without being so equipped if (a) Lines to the common outlet or manifold are provided with interlocking selective valves which will permit only one compartment at a time to be emptied: (b) The common outlet is provided with drainage facilities and shall be drained of any Class I or II flammable liquid before being used for a Class III flammable liquid: and (c) The aggregate volume of the common outlet or manifold shall not exceed one gallon."

An explanation of what this rule requires and the reasons therefor would appear to be useful to interested parties. A most important fact to be noted at the outset is that Rule 5330 applies only when tank vehicles are transporting Class I or II flammable liquids in one or more compartments **and** Class III flammable liquids in one or more compartments.

When transporting this combination of flammable liquids in a vehicle manufactured after the effective date of Rule 5330, each compartment must be equipped with a separate drainage outlet, each compartment must have a separate pump and each compartment must have a separate meter. Each compartment must also have a separate drain hose unless the hose has no valve on the discharge end and must be disconnected in order to change compartments. This requirement of a separate hose for each compartment if the hose is of a type which has a valve on the discharge end is to prevent connection of a hose which still contains Class I or II flammable liquids to a compartment carrying Class III flammable liquid. Should this happen, Class I or II liquids would be commingled with Class III liquids.

Class I flammable liquids are those such as gasoline which have a flash point at or below 20 degrees fahrenheit. Class II flammable liquids are those such as toluene which have a flash point above 20 degrees fahrenheit and below 70 degrees fahrenheit. Class III flammable liquids are those such as kerosene which have a flash point of 70 degrees fahrenheit or higher. Now when a person purchases Class III flammable liquids he feels safe in assuming that the product will not flash at a temperature of less than 70 degrees fahrenheit. But if Class I or II flammable liquids have been commingled with Class III flammable liquids, the flash point has been lowered and the danger of explosion increased.

In regard to tank vehicles manufactured prior to adoption of Rule 5330 it was recognized that a change-over would be unduly expensive. Consequently the Rule contains an exception for such vehicles under certain conditions. The exception provision while not as foolproof as a requirement not permitting common manifolds, is designed to hold accidental commingling of Class I or II flammable liquids with Class III flammable liquids to a very minimum. It permits the use of a common drainage manifold if (1) the mechanical set-up is such that selective (automatic) valves will allow only one compartment at a time to be drained, (2) if there is a spigot device that will allow all Class I and II flammable liquids to be drained from the common manifold prior to drainage of Class III flammable liquids through this manifold, and (3) the amount of liquid volume that the common manifold will hold does not exceed one gallon. This latter provision insures that should someone forget to drain the Class I and II liquids through the spigot prior to draining the Class III liquids through the common manifold, the maximum amount of Class I or II liquids that could be commingled with Class III liquids would be one gallon.

Regulation S.10.10 of the Gasoline Tax Division of the Bureau also permits the use of a common manifold under certain conditions, and this regulation is not contingent upon either the age of the trucks or the classes of flammable liquids being carried. It simply

provides that when a common manifold or other single outlet is used, effective means shall be provided to insure that liquid can flow through the delivery line leading from only one compartment at one time and cannot flow from one compartment into another. In the alternative, the mechanical arrangement may be such that all compartments will discharge simultaneously, but if the discharge valves are automatically so controlled that they can only be operated together the vehicle is considered to be a single compartment type.

When the tank vehicle is carrying the type of liquids specified in rule 5330 of the State Fire Marshal **and** the vehicles were manufactured after the effective date of the Rule, a common manifold may not be used. There is no conflict here with the Gasoline Tax Division's Rule S.10.10, The State Fire Marshal's Rule is simply more stringent and being a Rule designed to protect the public it must be followed when applicable. Nor is there any conflict between the two Rules when a common manifold is permissible under the State Fire Marshal's Rule (this is when the vehicles were manufactured prior to the effective date of Rule 5330). The State Fire Marshal's Rule requires a single automatic drainage feature. The Gasoline Tax Division Rule permits the use of a single drainage feature provided effective means are used to insure single drainage. The Gasoline Tax Division's Rule does permit simultaneous drainage of compartments, but if this procedure is used the vehicle is treated as non-compartmentalized. This latter alternative is not permitted under the State Fire Marshal's Rule since the purpose of this Rule is to prevent commingling. Again where the Fire Marshal's Rule is applicable it will usually be the more stringent. Where not applicable, the Gasoline Tax Division's Rule must be complied with.

We wish to point out that for purposes of this opinion we have assumed that the Gasoline Tax Division enacted Rule S.10.10 pursuant to Statutory authority.

One further question has been presented to this office in connection with Rule S.10.10 of the Gasoline Tax Division, namely does the provision requiring "effective means to insure that liquid can flow through the delivery line leading from only one compartment at one time" require the use of automatic valves? We think not. Rule S.10.10 used to specifically require that "effective and automatic means shall be provided to insure" single compartment drainage. The words "and automatic" were removed from the Rule after the National Bureau of Standards deleted them in 1957. Apparently the Bureau of Standards feels that no substantive change was intended or made by this deletion. We, however, cannot agree. Rule S.10.10 formerly having required automatic valves and this requirement having been removed, it seems wrong to us to say that notwithstanding the Rule change automatic valves are still required.