

CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION # 07-03

TO: Robert Ruano, Director, Grants Administration

FROM: Jorge L. Fernandez, City Attorney

DATE: May 11, 2007

RE: Legal Opinion - Possible taxation of marine vessels not burning bio-fuels

You have requested a legal opinion on the following questions:

- 1) Does the City of Miami ("City") have the authority to levy a user fee upon marine vessels navigating on the Miami River not burning bio-fuels?
- 2) Also, can the City require gas stations located in the City of Miami to sell bio-fuels?

For the reasons set forth below, your first question is answered in the negative and your second question in the affirmative.

ANALYSIS

The majority of vessels traveling on the Miami River are tank vessels used to carry goods sold in interstate commerce. Pursuant to the Tank Vessel Act of 1936, 49 Stat. 1889, and the Ports and Waterways Safety Act of 1972 (PWSA), the City may not levy a user fee upon those type of marine vessels navigating on the Miami River.

Congress enacted the Tank Vessel Act of 1936 with the purpose of establishing "a uniform and reasonable set of rules and regulations concerning...vessels carrying the type of cargo deemed dangerous." *U.S. v. Locke*, 120 S.Ct. 1135, 1144 (1999). The Tank Vessel Act was the primary regulation regarding tank vessels until the *Torrey Canyon* spill prompted Congress to take new action. In response, Congress enacted the PWSA. Title II of the PWSA, requires the United States Coast Guard to issue regulations regarding the "design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels...that may be necessary for increased protection against hazards to life and property, for navigation and vessel safety, and for enhanced protection of the marine environment." 46 U.S.C. §3703(a).

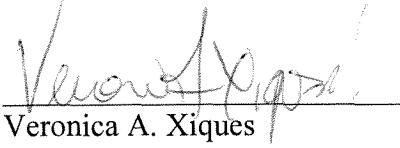
There is a longstanding rule that enactment of a uniform federal scheme displaces state law. *U.S. v. Locke*, 120 S.Ct. 1135, 1149 (1999). Congress has obviously spoken out regarding the regulation of a vessel's operation. The type of fuel a vessel uses falls into the "operation" category. Only the federal government may regulate the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of tanker vessels. *Id.* Because the federal government has enacted preemptive legislation in this particular area, the City does not have the authority to implement a fee against vessels navigating on the Miami River not burning bio-fuels. Doing so would not only violate federal laws, but would also fly in the face of the stated purpose of uniformity of regulation for maritime commerce.

On the other hand, the City may require gas stations located within the City to sell bio-fuels if it can demonstrate a valid municipal purpose. Pursuant to Section 166.021, *Florida Statutes*, "municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law." The City's municipal purpose, in the instant case, can be based on valid environmental protection goals.

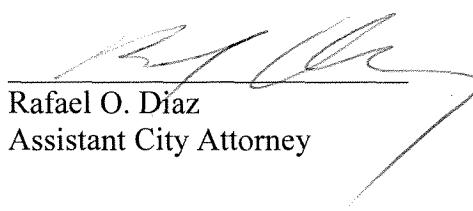
CONCLUSION

The City cannot levy a user fee upon vessels not burning bio-fuels, since such action is regulated by federal government. However, based on the home rule powers granted to municipalities, the City has the authority to require gas stations within the City to sell bio-fuels.

PREPARED BY:


Veronica A. Xiques
Assistant City Attorney

REVIEWED BY:


Rafael O. Diaz
Assistant City Attorney