

N.D.A.G. Letter to Herr (July 7, 1989)

July 7, 1989

Mr. Richard E. Herr
City Attorney
P.O. Box 67
Wishek, ND 58495-0067

Dear Mr. Herr:

Thank you for your June 6, 1989, letter regarding aboveground storage tanks.

In my opinion, the city of Wishek has the authority to pass a local zoning ordinance which would require that aboveground storage tanks be smaller than the maximum capacity size referenced in Senate Bill No. 2492, which was recently passed by the 1989 Legislature.

As you may be aware, the federal government has established standards regarding underground storage tanks and those federal requirements do not allow state or local statutes or ordinances to be more stringent than e federal requirements. In response to those federal requirements, N.D.C.C. § 23-20.3-04.2 states:

23-20.3-04.2. Municipal underground storage tank ordinances. A county, city, or township may not enact and enforce an underground storage tank ordinance if the ordinance is more stringent then this chapter and the rules authorized to be adopted pursuant to this chapter.

However, the federal government currently does not regulate the size of aboveground storage tanks. Senate Bill No. 2492 recognizes local zoning authority and anticipates that a local zoning authority may impose requirements more stringent than those referenced in Senate Bill No. 2492. The bill itself states that its limitations are "[s]ubject to local zoning ordinances." Further, a review of the bill's legislative history indicates that the Legislature preferred local rather than state control of aboveground storage tanks. See Hearings on S. 2492 Before the Senate Comm. on Transportation, 51st Leg. (Feb. 2, 1989) (statement of Senator Nething); Hearings on S. 2492 Before the House Comm. on Transportation, 51st Leg. (March 3, 1989) (statement of Senator Mutch).

Thank you for writing me. I hope this clarifies your concern regarding control of aboveground storage tanks.

Sincerely,

Nicholas J. Spaeth

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