



MIKE CAUSEY, INSURANCE COMMISSIONER & STATE FIRE MARSHAL
BRIAN TAYLOR, CHIEF STATE FIRE MARSHAL

December 9, 2021

Maria Blue Minsker
Sunbelt Rentals
2341 Deerfield Drive
Fort Mill, SC 29715

**RE: Permit Required by Equipment Rental Company
2018 NCFC, Section 105.1.1**

Ms. Minsker:

This letter is in response to your request for formal interpretation dated November 29, 2021 that was received in NCDOI by email on that same date. Your request for formal interpretation states:

We are contacting you regarding Sunbelt Rentals' request for formal interpretation by Orange County Fire Marshal that the rental of a generator and diesel fuel tank running the generator by Sunbelt Rentals (to a customer pursuant to a lease agreement) requires the issuance of a permit to Sunbelt Rentals and not to the customer. We disagree with this interpretation."

Remarks:

Code sections noted in this letter are referring to the 2018 edition of the NC Fire Code unless otherwise noted.

Attachment A is comprised of the request for formal interpretation as well as all supporting information submitted with the request.

Code Analysis:

Section 105.1.1 states the following:

105.1.1 Permits required. A property owner or owner's authorized agent who intends to conduct an operation or business, or install or modify systems and equipment that are regulated by this code, or to cause any such work to be performed, shall first make application to the fire code official and obtain the required permit.

Comment: Chapter 57 addresses flammable and combustible liquids. Storage of diesel fuel for a generator would be addressed by Chapter 57 which means that a generator fuel storage tank is "regulated by this code".

2018 NC Administrative Code and Policies (NCAC), Section 106.1 states:

106.1 Permit required. A current permit is required for all work described in the technical codes unless specifically exempted by the North Carolina General Statutes or the technical codes.

Comments: The NC General Statutes nor the technical codes exempt the installation of a power generator from conformance with the codes. The technical codes are described in NCAC, Section 101.2.

NC General Statute 160D-1110, subsection (a) states in part:

§ 160D-1110. Building permits. (a) Except as provided in subsection (c) of this section, no person shall commence or proceed with any of the following without first securing all permits required by the State Building Code and any other State or local laws applicable to any of the following activities:

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment, except that in any one- or two-family dwelling unit a permit is not required for repair or replacement of electrical lighting fixtures or devices, such as receptacles and lighting switches, or for the connection of an existing branch circuit to an electric water heater that is being replaced if all of the following requirements are met:

- a. With respect to electric water heaters, the replacement water heater is placed in the same location and is of the same or less capacity and electrical rating as the original.
- b. With respect to electrical lighting fixtures and devices, the replacement is with a fixture or device having the same voltage and the same or less amperage.
- c. The work is performed by a person licensed under G.S. 87-43.
- d. The repair or replacement installation meets the current edition of the State Building Code, including the State Electrical Code.

Comments: The statute requires a permit for the installation of a generator.

Conclusions:

Section 105.1.1 requires the property owner or his authorized agent to obtain required permits. The determination of whether you, as a rental company, are responsible to obtain the required permits is then determined by the contract between you and your client. You would need to consult with an attorney to determine whether your contract requires you to apply for a permit.

NC General Statute 160D-1110 requires a permit for the installation of a generator and fuel storage tank. Installation of a generator or fuel storage tank without a permit is in violation of that statute which, per the Statute, is a Class 1 misdemeanor. That violation could apply to the installer of the generator and the fuel storage tank.

Please call if you have comments or questions.

Sincerely,



Carl Martin, RA
Deputy Commissioner

Division Chief of Engineering

cc: File

Bridget Herring, Chair – BCC

Danny Priest, Vice-Chair – BCC

Jason Shepherd, Chairman – BCC Fire Code Standing Committee

Elizabeth Farnan – Fire Marshal, Orange County, NC

ATTACHMENT A



November 29, 2021

Via UPS Overnight and E-mail carl.martin@ncdoi.gov

Carl Martin
Deputy Commissioner of Engineering
North Carolina Department of Insurance
Office of State Fire Marshal
1202 Mail Service Center
Raleigh, NC 27699-1202

Re: Sunbelt Rentals Request for Official Interpretation

Dear Deputy Commissioner Martin:

We are contacting you regarding Sunbelt Rentals' request for a formal review of the interpretation by the Orange County Fire Marshal that the rental of a generator and the diesel fuel tank running the generator by Sunbelt Rentals (to a customer pursuant to a lease agreement) requires the issuance of a permit to Sunbelt Rentals and not to the customer. We disagree with this interpretation.

This letter includes supporting information for this request. We have also attached the email string regarding the requested interpretation for your benefit.

Sunbelt Rentals rents an array of equipment to individuals and small to very large contractors across North America. Customers pick up the equipment from our location or we deliver equipment to their requested jobsite.

Per the standard Sunbelt rental agreement, the customer is responsible for all operations of the equipment, including gaining necessary permits and licenses where required. At no point does Sunbelt Rental operate the equipment once the rental occurs. Further, upon the effectuation of the rental, custody, care and control of the equipment transfers to the renter and removes Sunbelt Rentals from any operation or liability relating to the use.

As the attached email chain indicates, one such incident arose as a result of a rental of a generator to an individual and operation by the individual on the property to which Sunbelt Rentals delivered the generator. The generator was used at an outdoor event that attracted a significant number of guests. While the generator was rented from Sunbelt, Sunbelt was not involved in any way with the event and was not aware of the intended use of the generator. Sunbelt Rentals does not require intricate or detailed disclosure on the proposed use of its equipment. In this situation, the property owner failed to obtain permits for the operation of the generator on their property.

This event occurred in Hillsborough, North Carolina. The Fire Marshal for Orange County informed Sunbelt of the unpermitted generator use. In reliance upon Section 105.1 of the North Carolina Fire Code ed.2018, the Fire Marshal interprets the obligation to obtain the necessary permit as an obligation of Sunbelt Rentals and not the actual property owner, operator and host of the event. Sunbelt requests an official determination as to application of North Carolina State

Building Code ("NCSBC"): Fire Prevention Code Section 105.1.1 to these facts. NCSBC Fire Prevention Code Section 105.1.1 reads as follows:

A property owner or owner's authorized agent who intends to conduct an operation or business, or install or modify systems and equipment that are regulated by this code, or to cause any such work to be performed, shall first make application to the *fire code official* and obtain the required permit.

Sunbelt Rentals believes that the reference to "property" in this section is clear. It refers to and is limited to the owner of the real property. As the section reads, a property owner who intends to conduct an operation or business clearly is intended to mean the owner of the real property on which the business is operated or installed.

To suggest that this section refers to the owner of the personal property (i.e., the equipment), as the Fire Marshal would contend, is absurd and inconsistent with the express language of the Code. NCSBC: Fire Prevention Code Section 202 instructs on who is an "owner." The language of this section reads as follows:

(A) Owner. Any person, agent, operator, entity, firm or corporation having any legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding an interest or title to the property; or otherwise having possession or control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of *real property* by a court.

In the situation mentioned above, the property owner is the person with legal or equitable interest, title or possession or control over the property and the location. Sunbelt Rentals merely rented the equipment to its customer and according to our interpretation of the Code, had no responsibility for securing any necessary permits. Therefore, even assuming the Fire Marshal's strained interpretation that the permitting requirement applies to the owner of the personal property, it is undisputable that the real property owner or its agent is the customer and that possession and control of the equipment as personal property is transferred to the customer via the Sunbelt rental agreement which under NCSBC: Fire Prevention Code Section 202, makes the customer the owner of the equipment with the responsibility to gain the necessary permits. Under a personal property analysis, the customer gains exclusive care, custody and control over the equipment via the rental agreement and, assumes all responsibility for its operation and for obtaining the required permits.

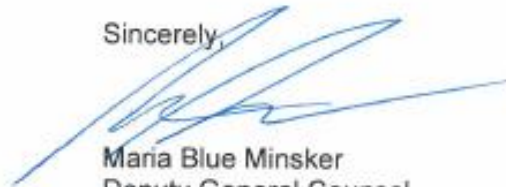
To require an equipment rental company to be responsible for the activities of its renters or lessees of equipment would lead to absurd consequences. Sunbelt is in the business of renting equipment and often rents multiple units of the same equipment to a customer. the customer is not restricted from using the equipment at multiple property locations or from allowing other companies or individuals to use the equipment. To require Sunbelt to obtain permits would require Sunbelt to inquire, inspect and understand the operation and proposed use of its equipment for every customer and location. It would also impute upon Sunbelt an obligation to third parties for which it had no privity or contract relations. Sunbelt Rentals could then be held liable for the acts or omissions of the customer or operator of the equipment because the permit for their operation would be in Sunbelt's name.

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Further, the skewed interpretation of the Orange County Fire Marshal would alienate commerce and impact trade. Such an interpretation would require equipment rental companies to be responsible for permitting within the hundred counties and multiple jurisdictions throughout this state and the United States – a feat that is clearly unduly burdensome.

Given the above, we ask for your reasoned interpretation of the above-referenced regulation and hope that your interpretation is aligned with the clear reading of the regulation and the practical considerations of an equipment rental concern. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Maria Blue Minsker
Deputy General Counsel
phone: 803-578-5509
email: maria.minsker@sunbeltrentals.com

Enclosure
