**Letter for Ag Aviation Operators to Tower Entities Explaining Potential Legal Liability They Might Incur For Not Properly Marking Towers**

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_:

My name is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and I am the owner/operator of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, an agricultural flying service located in ­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. We believe it is important to bring to your attention the significant dangers associated with unmarked towers between 50 and 200 feet tall with an above ground base of less than 10 feet in diameter, and low-altitude aircraft operations, including, but not limited to agricultural aircraft. We also believe it is essential that you are aware, if not so already, to the potential liability your company carries as a result of unmarked towers.

We are aware that you have installed a tower on property located in \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and more specifically located at latitude and longitude: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. To date, we understand that this tower remains unmarked. We believe that the failure to have marked this tower is because you have not yet been fully apprised of the risk associated with such structures. In addition to the numerous state laws requiring the marking of METs, federal law requires the marking of METs between 50 and 200 feet tall with an above ground base of less than 10 feet in diameter located in rural areas. METs must also be logged into a database the FAA is currently developing. Communication towers between 50 and 200 feet tall with an above ground base of less than 10 feet in diameter located in rural areas have the option to either be marked or logged into this database.

 The danger that unmarked towers represent to pilots operating in low-altitude environments is beyond question. As was made very clear by both the Federal Aviation Administration (FAA) and the National Transportation Safety Board (NTSB), pilots have a high probability of being killed due to collisions with these towers. According to the NTSB some towers “pose a continuing threat to low-altitude aviation operations, such as those involving helicopter emergency medical services, law enforcement, animal damage control, fish and wildlife surveys, agricultural applications, and aerial fire suppression.”[[1]](#footnote-1) Given their height, color, location, and speed with which they can be erected, they are virtually invisible and undetectable, particularly to aircraft operating at high speeds. History has shown that, by the time they are seen, evasive action is of no use, and the results frequently involve a fatality.

The FAA has amended **Advisory Circular No. 70/7460–1 Obstruction Marking and Lighting** to include marking meteorological evaluation towers (METs) under 200 feet in height and recommends that the entire structure should be painted with alternate bands of aviation orange and white paint. In addition, the document states that all markings should be replaced when faded or otherwise deteriorated. The FAA further advises that all METs should have high-visibility sleeves installed on the outer guy wires of METs as described in that same Advisory Circular[[2]](#footnote-2) and should have high-visibility spherical marker (or cable) balls of aviation orange color attached to the guy wires. The FAA has stated that the revisions to this Advisory Circular in regard to METs were effective upon its Federal Register policy statement back in 2011.

This information has created an adequate level of foreseeability so as to place a legal duty on the part of those installing these towers to mark all METs in accordance with the recommendations of both the NTSB and the FAA. Courts which have examined this issue find that Advisory Circulars represent persuasive authority for exemplifying safety practices prevailing within an industry (see *Muncie Aviation Corp. v. Party Doll Fleet, Inc. (5th Cir. 1975) 519 F.2d 117, Sierra Pacific Holdings Inc. v. County of Ventura 204 Cal.App.4th 509)*. These cases have shown that Advisory Circulars can be presented as evidence of the standard of care; and, given their status as a recommendation drafted by the FAA itself, they carry significant weight in determining liability and resultant damages.

Additionally, a milestone settlement was reached in September 2014, on the wrongful death action filed by the family of California agricultural aviator Steve Allen in the amount $6.7 million against a group of defendants representing tower manufacturing, wind energy, land-owning and farming interests for not marking or making aware the location of an unmarked MET to protect the pilot. Allen was killed in 2011 after colliding with an unmarked MET less than 200 feet in height.[[3]](#footnote-3)

Furthermore, in September 2018, the NTSB has re-issued Safety Alert SA-016 titled “The Hazards of Unmarked Towers” urging pilots to be vigilant for unmarked meteorological evaluation towers (METs) and other unmarked towers, such as GPS functionality and telecommunications towers.[[4]](#footnote-4) The original safety alert issued 7 years ago warned of only unmarked METs but the NTSB and low-altitude aviation industry has since realized other unmarked towers create hazards as well.

Given the actions by both the FAA and the NTSB, particularly when coupled with the results of this settlement, it is quite likely that liability will be extended to anyone involved in the tower erection industry, be they manufacturers, suppliers or erectors, who does not undertake immediate and diligent efforts to mark any existing tower for which they bear responsibility, regardless of when it was installed. The dangers towers invisible to low-level aviators represent is far too significant and foreseeable for a court of law to reach any other conclusion.

We ask that you consider marking this tower to protect the lives of low-level pilots. It is, quite literally, a matter of life and death and we are confident that legal liability will be imposed against anyone involved in erecting an unmarked tower that causes death or injury to another pilot.

Sincerely,

1. Safety Recommendation to FAA Administrator Michael Huerta, National Transportation Safety Board: [www.ntsb.gov/safety/safety-recs/recletters/A-13-016-017.pdf](http://www.ntsb.gov/safety/safety-recs/recletters/A-13-016-017.pdf) [↑](#footnote-ref-1)
2. Advisory Circular 70/7460-1L, “Obstruction Marking and Lighting”: [www.faa.gov/documentLibrary/media/Advisory\_Circular/AC\_70\_7460-1L\_.pdf](http://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_70_7460-1L_.pdf) [↑](#footnote-ref-2)
3. [www.dbbwc.com/component/content/article/190](http://www.dbbwc.com/component/content/article/190) [↑](#footnote-ref-3)
4. NTSB Safety Alert 016 / March 2011 / Rev. September 2018 “The Hazards of Unmarked Towers”: https://www.agaviation.org/Files/SafetyPublications/NTSB\_SA\_016\_Rev\_Unmarked\_Towers.pdf [↑](#footnote-ref-4)