

C. PD-10(R) (Docket PDA-10(R))

1. Application for Preemption Determination
2. Discussion
 - a. Permits
 - (1) LACoC Requirements
 - (2) HASA's Arguments and Summary of Comments
 - (3) Analysis
 - b. Definition/Classification of Cryogenic Fluids
 - (1) LACoC Requirements
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 - e. Packaging Design and Construction
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 - (3) Analysis
3. Ruling

D. PD-11(R) Docket PDA-11(R)

1. Application for Preemption Determination
2. Discussion Regarding Permits
 - a. LACoC Requirements
 - b. HASA's Arguments and Summary of Comments
 - c. Analysis
3. Ruling

III. Appeal Rights

I. General Preamble**A. Procedural Summary**

Each of the four Preemption Determination Applications (PDAs) at issue in this matter relates to a California State statute or Los Angeles County regulation applicable to the "on-site" transportation and handling of hazardous materials. For this reason, RSPA has reviewed these PDAs collectively, and is issuing its Preemption Determinations (PDs) with respect to each of the PDAs simultaneously.

The information, discussion and citations provided in this General Preamble constitute a part of each of the four PDs identified above. Where information or statements in this General Preamble address a specific PD, that information is relevant only to that PD. This General Preamble includes a discussion of the factual background applicable to each of the applications, a brief discussion of the California statutory and Los Angeles County regulatory requirements at issue in the four PDAs addressed in this document, and discussions regarding general authority and preemption under Federal

hazmat law. It is followed by four PDs, each representing a separate administrative proceeding. These PDs do not address the issue of preemption under the Federal Railroad Safety Act of 1970, as amended, 45 U.S.C. 421 *et seq.* Appendix A to this document contains the text of each CHSC and LACoC provision that is at issue.

B. Background

On December 22, 1992, HASA, Inc. applied for a determination that Federal hazmat law preempts certain provisions of LACoC Titles 2 and 32 applicable to the transportation and handling of hazardous materials in railroad tank cars on private property (Docket PDA-7(R)). HASA, a California corporation, manufactures, packages, warehouses, and transports chemical compounds for use in, among other things, potable and waste water treatment, and swimming pool and spa disinfection. HASA receives railroad tank cars containing liquefied chlorine, a liquefied compressed gas, from manufacturers engaged in interstate commerce. HASA unloads liquefied chlorine from railroad tank cars on a private siding adjacent to its facility in Santa Clarita, California. It has manufacturing and distribution facilities located in Santa Clarita, California, and Arizona. It distributes products throughout the western United States, Alaska and Hawaii.

Santa Clarita is an incorporated city in Los Angeles County. HASA explains that Santa Clarita does not maintain a city fire department. Instead, Santa Clarita is one of many cities that contracts with the Consolidated Fire Protection District of Los Angeles County (CFPD/LACo) for fire protection. Fire protection services for the CFPD/LACo are provided by the Los Angeles County Fire Department. HASA states that the CFPD/LACo adopted LACoC Title 32 as the fire code for the CFPD/LACo. Consequently, the fire codes for the County of Los Angeles and the CFPD/LACo are identical.

Between December 30, 1992, and January 20, 1993, SPCMA, a non-profit organization with members involved in the transportation of hazardous materials, submitted three separate applications (Dockets PDA-9(R), PDA-10(R) and PDA-11(R)) seeking determinations that Federal hazmat law preempts certain provisions of:

(a) CHSC Chapter 6.95 as they apply to the on-site handling and storage of hazardous materials in railroad tank cars (Docket PDA-9(R));

(b) LACoC Title 32 as they apply to the on-site transportation and handling of cryogenic liquids in railroad tank cars, including unloading, storage, and

the construction of containers used for transporting cryogenic liquids (Docket PDA-10(R)); and

(c) LACoC Title 32 as they apply to the on-site transportation and handling of compressed gases in railroad tank cars (Docket PDA-11(R)).

SPCMA is a non-profit organization composed of individual member companies with manufacturing and distribution facilities located across the United States, including California. SPCMA members manufacture, package, warehouse, and transport chemical compounds for use in potable and waste water treatment, and swimming pool and spa disinfection. SPCMA states that many of these chemicals are classified as hazardous material by the HMR. For example, SPCMA's members transport, load, and off-load chlorine in railroad tank cars, cargo tanks, cylinders, and multi-unit tank car tanks, at facilities owned or leased by a member, or at facilities under a member's direct control.

SPCMA says that while some SPCMA members are subject to LACoC Title 32 because of the location of their facilities, others are subject to Title 32 because they ship into or transport hazardous materials through the CFPD/LACo or unincorporated areas of Los Angeles County.

On January 26, 1993, RSPA published a Public Notice and Invitation to Comment on HASA's application (58 FR 6176). That Notice set forth the text of HASA's application and asked that comments be filed with RSPA on or before March 31, 1993, and that rebuttal comments be filed on or before June 4, 1993.

On February 12, 1993, RSPA published a Public Notice and Invitation to Comment on each of SPCMA's applications (58 FR 8480, 8488, 8494). Those Notices set forth the text of SPCMA's applications and asked that comments be filed with RSPA on or before April 9, 1993, and that rebuttal comments be filed on or before June 4, 1993.

In a September 10, 1993 letter to Secretary of Transportation Federico Peña, Congressman George Miller (D-CA), Chairman of the House Committee on Natural Resources, stated his opposition to SPCMA's request for a preemption determination in Docket PDA-9(R). This letter was received outside the rebuttal comment period in PDA-9(R).

In a September 13, 1993 letter to Secretary Peña, California State Assemblyman Robert J. Campbell and 23 other State legislators requested that the Department deny SPCMA's request for a preemption determination in