

they engage in storage of hazardous materials, as defined by that section.

Furthermore, SPCMA's reliance on HMR Parts 174 and 177 is incorrect. Part 177 of the HMR, which applies to transportation by public highway, is inapplicable to the regulation of rail transportation. Section 174.204(a)(2), which SPCMA relies on to support the proposition that the HMR authorize a consignee to store hazardous materials in tank cars, is equally inapplicable to the situation at issue. Section 174.204 sets forth duties and responsibilities with respect to the *delivery and unloading* of gases that are in transportation in commerce.

3. *Ruling.* Based on the above, Federal hazmat law does not preempt § 25501.3 to the extent that it makes handlers of hazardous materials subject to emergency response planning and accident prevention requirements that are within the scope of SARA Title III and § 112(r) of the CAA Amendments. There is insufficient information in the record to determine whether Federal hazmat law preempts § 25503.7.

Although SPCMA requests that RSPA review the remaining 63 provisions of the CHSC in the event that RSPA does not preempt § 25501.3 and § 25503.7, this ruling does not address those provisions. There is no information in the record regarding how these provisions are actually applied and enforced or how SPCMA members are affected by these provisions.

B. PD-9(R) (Docket PDA-7(R))

Los Angeles County, California Requirements Applicable to the Transportation and Handling of Hazardous Materials on Private Property

Applicant: HASA, Inc.

Local Laws Affected:

Los Angeles County Code (LACoC), Title 2:
 § 2.20.140
 § 2.20.150
 § 2.20.160
 § 2.20.170
 Title 32 LACoC:
 § 4.108.c.7
 Table 4.108-A
 § 79.809(b), (c) and (f)
 § 80.101(a) exception 1
 § 80.101(b)
 § 80.103(a)
 § 80.103(b)(1)
 § 80.103(b)(2)
 § 80.103(c), (d) and (e)
 § 80.201
 § 80.202(a) and (b)
 § 80.203
 Appendix VI-A
 § 80.301(a)(2)
 § 80.301(b)(1)
 § 80.402(b)(3)(G)(i)
 § 80.402(c)(8)(A)

Summary: Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101-5127, preempts the following provisions of LACoC Titles 2 and 32:

(1) Title 2 LACoC §§ 2.20.140, 2.20.150, 2.20.160, and 2.20.170, to the extent that those provisions levy a fee on tank car unloading activities. The fees collected under those provisions are not used for purposes related to hazardous materials transportation;

(2) Title 32 LACoC § 79.809(f) as applied and enforced by Los Angeles County. Los Angeles County fails to recognize a Department of Transportation (DOT) exemption that authorizes HASA, Inc. to employ alternative methods of compliance with certain Federal tank car unloading requirements; and

(3) Title 32 LACoC § 79.809(c), which prohibits a tank car from remaining on a siding at point of delivery for more than 24 hours while connected for transfer operations, unless otherwise approved by the fire chief. The unloading restriction is not substantively the same as Federal tank car unloading requirements applicable to a tank car connected for transfer operations.

Based on a lack of information in the record, the Research and Special Programs Administration (RSPA) is unable to determine whether Federal hazmat law preempts LACoC Title 32, §§ 80.103(e), 80.301(b)(1), 80.402(b)(3)(G)(i) and 80.402(c)(8)(A).

Federal hazmat law does not preempt the following provisions of LACoC Title 32: § 4.108.c.7, Table 4.108-A, § 79.809(b), § 80.101(a) exception 1, § 80.101(b), § 80.103(a), § 80.103(b)(1), § 80.103(b)(2), § 80.103(c), § 80.103(d), § 80.201, §§ 80.202(a) and (b), § 80.203, Appendix VI-A, and § 80.301(a)(2).

1. Application for Preemption Determination

HASA states that transportation of liquefied chlorine at its facility, including loading, unloading, and storage incidental thereto, is in accordance with: (1) Federal hazmat law; (2) HMR Part 174 (49 CFR Part 174); (3) the Chlorine Manual and related pamphlets published by the Chlorine Institute, Inc.; and (4) DOT Exemption E-10552, issued by RSPA. Nevertheless, HASA states that "[o]ver the past year, HASA has been inspected numerous times by the county fire department and, as a result of these inspections, subsequently ordered to comply with the regulation[s] contained in the county fire code with respect to 'on-site transportation' of hazardous materials." HASA states that it is the

"clear intent" of Title 32 to regulate the on-site transportation of compressed gases.

HASA explains that its application for an administrative determination is "specific to the transportation, including loading, unloading, and storage incidental thereto, of liquefied chlorine in railroad tank cars at the Santa Clarita, California manufacturing facility of HASA, Inc." HASA requests a determination that:

(1) Regulation of the transportation of chlorine in railroad tank cars, including loading, unloading, and storage incidental thereto at [its] facility in Santa Clarita, California, is exclusive to the Federal government pursuant to the [Federal hazmat law] and regulation[s] thereunder;

(2) The term "transportation," as defined [by Federal hazmat law], includes both "on-site" and "off-site" transportation of hazardous materials in commerce, including loading, unloading, and storage incidental thereto; and

(3) [The Los Angeles County regulations at issue] are preempted by [Federal hazmat law] and regulations promulgated thereunder with respect to both "off-site" and "on-site" transportation of chlorine in railroad tank cars, including loading, unloading, and storage incidental thereto.

In response to RSPA's January 26, 1993, Public Notice and Invitation to Comment, 58 FR 6176, which set forth the text of HASA's application, comments were submitted by the Chemical Waste Transportation Institute (CWTI), the Orange County Fire Department, the California Fire Chiefs' Association, the Chlorine Institute, Inc., the Los Angeles County District Attorney's Office, the County of Los Angeles Fire Department, and the County of Santa Barbara Environmental Health Services Department. Rebuttal comments were submitted by HASA and the Chlorine Institute, Inc.

In response to RSPA's October 14, 1993, Public Notice re-opening the comment period in Docket PDA-7(R), comments were submitted by HASA and the County of Los Angeles Fire Department.

2. Discussion

a. *Fees.* (1) LACoC Requirements. HASA challenges the following provisions of LACoC Title 2:

§ 2.20.140 requires that every handler of hazardous materials pay an annual fee for the administration and enforcement of the provisions of California Health and Safety Code (CHSC) Chapter 6.95 (commencing with § 25500). Fees range from \$110 annually for a minor handler of hazardous materials to \$2,650 annually for a major handler of large volumes of hazardous materials.