

§ 2.20.150 requires every handler of acutely hazardous materials (AHM) to pay an additional annual fee to the county for the administration and enforcement of AHM registration, risk assessment, and risk mitigation. The fee is calculated according to a formula set forth in § 2.20.150.

§ 2.20.160 imposes a late submission fee on: (1) handlers of hazardous materials for failure to file the required hazardous materials business plan or inventory documents on a timely basis; and (2) handlers of AHM for failure to submit the required AHM registration documents on a timely basis.

§ 2.20.170 sets out the formula for calculating annual adjustments to the schedule of fees contained in § 2.20.140 through § 2.20.160.

(2) HASA's Arguments and Summary of Comments

HASA states that §§ 2.20.140, 2.20.150, 2.20.160, and 2.20.170 establish fees applicable to "handlers" of hazardous materials. HASA notes that § 2.20.100(E) defines "handler" to mean "any business which handles a hazardous material or acutely hazardous material." HASA asserts that "handling" is a transportation-related activity that is regulated under Federal hazmat law and the HMR.

HASA indicates that fees paid by handlers of hazardous materials to the County of Los Angeles are used for the administration and enforcement of CHSC Chapter 6.95. HASA further states that the requirements under Chapter 6.95 (e.g., the preparation of hazardous materials business plans, inventories and risk management and prevention programs (RMPPs)) are not related to the transportation of hazardous materials. HASA concludes that Federal hazmat law preempts the collection of fees by Los Angeles County because the fees are not used for purposes relating to the transportation of hazardous material.

The California Fire Chiefs' Association, the Los Angeles County District Attorney's Office and the County of Los Angeles Fire Department all acknowledge that the fees collected under LACoC Title 2 are used to cover the cost of administering CHSC Chapter 6.95. The County of Los Angeles Fire Department states that § 25513 and § 25535.2 of Chapter 6.95 give the local agencies that administer Chapter 6.95 the authority to assess and collect fees in order to recover "the cost to administer both the Risk Management and Prevention Program and the Hazardous Materials Release Response Plans and Inventory Program."

(3) Analysis

Federal hazmat law provides that:

A State, political subdivision of a State, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

49 U.S.C. 5125(g) (emphasis added). Consequently, fees levied in connection with the transportation of hazardous materials must be equitable and used for a purpose related to the transportation of hazardous materials.

LACoC §§ 2.20.140, 2.20.150, 2.20.160, and 2.20.170 establish fees applicable to "handlers" of hazardous materials. Section 2.20.100(E) defines "handler" to mean "any business which handles a hazardous material or acutely hazardous material." "Handle," as defined at § 2.20.100(D), means—

To use, generate, process, produce, package, treat, store, emit, discharge, or dispose of a hazardous or acutely hazardous material in any fashion and includes the use or potential use of a quantity of hazardous or acutely hazardous material by the connection of any marine vessel, tank vehicle, tank car or container to a system or process for any of the above purposes or activities.

The County definition of "handle" under 2.20.100(D) includes a number of activities that are not regulated by Federal hazmat law and the HMR because they are outside the scope of transportation in commerce, i.e., the use, generation, processing, production, treatment, emission, discharge, and disposal of hazardous materials. The definition of "handle" also includes activities, i.e., packaging and storage, that are regulated by Federal hazmat law and the HMR only in certain instances. Specifically, the HMR apply to hazardous materials storage that is incidental to transportation in commerce, and the packaging of hazardous materials for transportation in commerce. The HMR do not apply to storage that is not incidental to transportation in commerce, or packaging of hazardous materials for purposes other than transportation in commerce. HASA does not assert, and the record does not reflect, that the term "store," as used in § 2.20.100(D), includes storage that is incidental to transportation in commerce, or that the term "package" as used in § 2.20.100(D) includes the packaging of hazardous materials for transportation in commerce. Consequently, for purposes of this decision, RSPA assumes that the terms refer to activities that are not subject to the requirements of Federal hazmat law and the HMR.

The definition of "handle" also includes the use or potential use of hazardous materials by the connection of a railroad tank car to a system or process. Tank car unloading is regulated under the HMR as incidental to transportation in commerce. 49 CFR 174.67. Consequently, any fee levied for unloading activities must be fair and used for a purpose related to transporting hazardous material.

There is no assertion in the record that the fees are unfair. Furthermore, the participants in this proceeding agree that the fees are used to administer Chapter 6.95, which primarily concerns emergency response planning for hazardous materials no longer in transportation in commerce. Accordingly, the fees collected from facilities that engage in tank car unloading are not being used for "a purpose related to transporting hazardous material." Therefore, 49 U.S.C. 5125(g) preempts §§ 2.20.140, 2.20.150, 2.20.160 and 2.20.170 to the extent that those provisions levy a fee on facilities for tank car unloading activities. To the extent that they levy a fee for non-transportation activities, they are not preempted.

b. Permits. (1) LACoC Requirements. HASA challenges the following provisions of LACoC Title 32:

§ 4.108.c.7 and Table 4.108-A require a permit from the Bureau of Fire Prevention prior to engaging in the storage, on-site transportation, dispensing, use, or handling, at normal temperatures and pressures, of a compressed gas in excess of amounts specified in Table 4.108-A.

§ 80.103(a) states that the permit requirement in § 4.108.c.7 applies to any person, firm or corporation that stores, dispenses, uses or handles hazardous material in excess of quantities specified in § 4.108.

§ 80.103(b)(1) requires that each permit application include a Hazardous Materials Business Plan (HMBP) that meets the requirements contained in LACoC Title 2, Chapter 2.20, Part 2. Title 2, § 2.20.130 requires the applicant to follow the requirements of CHSC Chapter 6.95 when preparing an HMBP.

§ 80.103(b)(2) states that, with respect to HMBPs, every business shall comply with the reporting requirements in LACoC Title 2, Chapter 2.20, Part 2.

§ 80.103(c) states that each application for a permit shall include a hazardous materials inventory statement (HMIS) in accordance with LACoC Title 2, Chapter 2.20, Part 2. Section 2.20.130 of Title 2, Chapter 2.20, Part 2 requires the applicant to follow the requirements of CHSC Chapter 6.95 when preparing an HMIS.