

and are not preempted by Federal hazmat law. The holdings in *Southern Pacific Transp. Co. v. Public Service Comm'n of Nevada* and IR-28, which HASA relies on to support its argument in favor of preemption, are inapposite to the facts in this case. The holdings are based on local regulation of common carriers engaged in the transportation of hazardous materials in commerce.

Finally, HASA asserts that permit applicants must comply with the reporting requirements of LACoC Title 2, Chapter 2.20, Part 2 and, by reference therein, CHSC Chapter 6.95, Articles 1 and 2. HASA asserts that Chapter 6.95 requirements include written notification, recording, and reporting of the unintentional release of hazardous materials. HASA argues that the written notification, recording and reporting requirements are preempted as covered subjects. HASA believes that the permit requirements are preempted to the extent they mandate compliance with Chapter 6.95 requirements regarding the reporting of unintentional releases of hazardous materials.

HASA is correct that Federal hazmat law preempts any State or local requirement dealing with the "written notification, recording, and reporting of the unintentional release *in transportation* of hazardous material," unless the requirement is substantively the same as the Federal requirement or otherwise authorized by Federal law. 49 U.S.C. 5125(b)(1)(D) (emphasis added). However, HASA fails to identify in its application the sections of Chapter 6.95 that it believes are preempted, or even to set forth the text of those sections for RSPA's review and consideration. Consequently, RSPA cannot determine whether the permit requirements under the LACoC are preempted to the extent that they require compliance with unidentified provisions of LACoC Title 2, Chapter 2.20, Part 2 and, by reference therein, CHSC Chapter 6.95.

Nowhere does the record reflect that a permit actually is required in order for a facility to engage in storage, dispensing, use or handling of hazardous materials in excess of threshold quantities. In fact, HASA admits that it is not in compliance with LACoC requirements it believes are preempted, and information in the record seems to indicate that HASA has operated without a § 4.108.c.7 permit for extended periods of time. To the extent that Los Angeles County has taken enforcement action against HASA, it appears that it has done so in an effort to persuade HASA to comply with the substantive permit application requirements (e.g., the hazardous materials inventory requirement).

Consequently, to the extent that the Bureau of Fire Prevention has the authority to issue permits, that authority does not appear to have been enforced and applied to prevent facilities from storing and handling hazardous materials incidental to transportation. Therefore, the permit requirement does not violate the "obstacle" standard.

For the reasons stated above, Federal hazmat law does not preempt the following sections of LACoC Title 32: § 4.108.c.7, Table 4.108-A, § 80.103(a), § 80.103(b)(1), § 80.103(b)(2), and §§ 80.103 (c) and (d). There is insufficient information in the record to determine whether Federal hazmat law preempts LACoC § 80.103(e).

*c. Hazard Classification.* (1) LACoC Requirements. HASA challenges the following provisions of LACoC Title 32: § 80.101(a) *exception 1* exempts the off-site transportation of hazardous materials from the classification system set forth in LACoC Article 80, if the transportation is in conformance with the HMR.

§ 80.101(b) states that the classification system referenced at §§ 80.202 and 80.203 applies to all hazardous materials, including those materials regulated elsewhere in the LACoC.

§ 80.201 requires that hazardous materials be divided into hazard categories. The categories include materials regulated under LACoC Article 80 and materials regulated elsewhere in the LACoC.

§ 80.202(a) classifies certain materials as physical hazards, including compressed gases, flammable liquids and combustible liquids. A material with a primary classification of "physical hazard" also can present a health hazard (as set forth below at § 80.202(b)). Chlorine is listed, in Appendix VI-A to Title 32, as a toxic compressed gas that constitutes a physical hazard.

§ 80.202(b) classifies certain materials as health hazards, including highly toxic or toxic materials. A material with a primary classification of "health hazard" also can present a physical hazard. Chlorine is listed, in Appendix VI-A to Title 32, as an example of a toxic compressed gas that constitutes a health hazard.

§ 80.203 states that descriptions and examples of materials included in hazard categories are contained in Appendix VI-A to Title 32.

Appendix VI-A contains information, explanations and examples to illustrate and clarify the hazard categories contained in Division II of Article 80. The hazard categories are based on Occupational Safety and Health

Administration (OSHA) standards set forth in the Code of Federal Regulations, Title 29. Where numerical classifications are included, they are in accordance with nationally recognized standards.

(2) HASA's Arguments and Summary of Comments. HASA states that the classification system in the LACoC is different from and in addition to the hazardous materials classification system under Federal hazmat law and the HMR and, therefore, should be preempted as relating to a covered subject under 49 U.S.C. 5125(b)(1). HASA indicates that the classification system under the LACoC only applies to a facility's on-site transportation of hazardous materials, and not to off-site transportation of hazardous materials conducted pursuant to the HMR. HASA provides several examples of how the LACoC classification system differs from that under the HMR.

The Chlorine Institute, Inc. urges preemption of the LACoC classification system. It states that the classification requirements "define categories of hazardous materials that are not consistent with the DOT regulations shown in 49 CFR 173.2 \* \* \*". Compliance with [both the LACoC and the HMR] would necessitate dual compliance for personnel handling and unloading a chlorine tank car on private property. The situation creates confusion and leads to errors in judgment."

CWTI believes that the classification system used under the LACoC is not preempted because it is otherwise authorized by Federal law, specifically the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. 651 *et seq.* CWTI states:

In order to protect employees from the effects of hazardous chemicals in the workplace, OSHA implemented the hazardous communication standard (HCS) which requires employers to develop and implement a written hazard communication program, including lists of hazardous chemicals present, labeling of containers of chemicals in the workplace as well as of containers of chemicals being shipped to other workplaces that does not conflict with the HMTA, preparation and distribution of [Material Safety Data Sheets], and development and implementation of employee training programs regarding the hazards of chemicals and protective measures. (See 29 CFR 1910.1200.) The hazardous materials classifications, 'physical hazards' and 'health hazards' referenced by HASA as required by the County are terms of classification used under the HCS. (See LA County Code 80.202 and 29 CFR 1910.1200(c)). Section 18 of the OSH Act provides that no state or political subdivision of a state may adopt or enforce \* \* \* any requirements relating to the issue addressed