

liquefied gases, including chlorine." HASA offers, as examples, the requirements to transfer flammable and combustible materials only to an approved atmospheric tank or approved portable tank (§ 79.809(b)), the prohibition against remaining on a siding for more than 24 hours while connected for unloading operations (§ 70.809(c)), and the tank car unloading attendance requirement (§ 79.809(f)).

HASA states that liquefied and nonliquefied compressed gases cannot be unloaded into a tank "open to the atmosphere" because they will no longer be contained or compressed. HASA, therefore, believes that this LACoC requirement conflicts with Federal hazmat law and the HMR and should be preempted.

HASA further explains that liquefied gases, including chlorine, are unloaded "under their own vapor pressure, at a finite rate," to prevent the liquefied gas remaining in the tank car from freezing as heat is withdrawn by gas vaporization. HASA maintains that liquefied chlorine gas has a normal unloading rate of 3,600 to 7,200 pounds per hour. HASA concludes that it takes between 25 and 50 hours to unload each tank car containing 90 tons of liquefied chlorine. As a result, HASA believes that the 24-hour time limit on unloading conflicts with Federal hazmat law and the HMR and should be preempted.

HASA notes that 49 CFR 174.67 (i) and (j) pertain to tank car unloading. HASA applied for, and obtained from RSPA, an exemption (E-10552) from the requirements in 174.67 (i) and (j), including the requirement that a person physically attend a tank car while cargo is discharged. HASA states that the local attendance requirement at § 79.809(f) is similar to the Federal attendance requirement set out at 49 CFR 174.67(i). Nevertheless, HASA asserts that Los Angeles County refuses to recognize that HASA's exemption from Federal attendance requirements prevents the County from enforcing the local attendance requirement. Consequently, HASA asserts that § 79.809(f) conflicts with E-10552 and should be preempted.

HASA further requests a preemption determination regarding § 80.402(b)(3)(G)(i) and § 80.402(c)(8)(A), which it states require secondary containment for the "use" of railroad tank cars which contain highly toxic or toxic compressed gases. HASA states that "use" is defined at LACoC § 9.123 as "the placing in action or making available for service by opening or connecting anything utilized for confinement of material whether a solid, liquid or gas." HASA contends that this definition of the term "use"

encompasses the unloading of tank cars. HASA, therefore, alleges that tank car unloading must take place in accordance with § 80.402(b)(3)(G)(i) and § 80.402(c)(8)(A). HASA believes these requirements conflict with unloading requirements under Federal hazmat law and the HMR, and should be preempted.

In summary, HASA asks RSPA to compare several aspects of the LACoC unloading requirements with (1) the general unloading requirements for tank cars set out at 49 CFR 174.67; (2) the specific unloading requirements for compressed gases in Title 49, Subpart F of the CFR (49 CFR 174.200-174.204, 174.208, 174.280, and 174.290); and (3) the requirements in E-10522 with respect to chlorine.

The Chlorine Institute supports preemption of LACoC §§ 79.809, 80.402(b)(3)(G)(i) and 80.402(c)(8)(A). It agrees with HASA's assertion that several requirements under these provisions are obstacles to accomplishing and carrying out HMR provisions regarding handling and unloading of chlorine tank cars on private property. Specifically, the Chlorine Institute supports preemption of: (1) the requirement that unloading be to an approved atmospheric tank only; (2) the prohibition against remaining on a siding for more than 24 hours while connected; (3) the requirement that someone physically attend the unloading process; and (4) the requirement for special unloading equipment. The Chlorine Institute believes that these LACoC requirements conflict with E-10552 and with 49 CFR 174.600, which it believes enable a tank car of chlorine to be received at a private siding with no maximum holding time.

The County of Orange Fire Department, the County of Los Angeles Fire Department, and the California Fire Chiefs' Association do not agree with HASA that §§ 79.809, 80.402(b)(3)(G)(i) and 80.402(c)(8)(A) conflict with Federal hazmat law and the HMR. Consequently, they oppose preemption of those provisions.

(3) Analysis. (a) *Unloading to Storage Tanks*. Section 80.301(a)(2) makes the unloading requirements for flammable and combustible liquids at § 79.809(b) applicable to the unloading of tank cars containing hazardous materials. Section 79.809(b), which pertains to unloading to storage tanks, requires that flammable and combustible liquids be transferred from a tank car only into an approved atmospheric tank or approved portable tank. HASA states that it cannot comply with this requirement when unloading liquefied and nonliquefied compressed gases because those materials cannot be

stored in a tank "open to the atmosphere." HASA, therefore, asks that RSPA preempt this LACoC requirement. HASA does not indicate why storage in approved portable tanks is not possible. Furthermore, there is no evidence in the record that Los Angeles County has cited HASA for failure to comply with § 79.809(b) while unloading compressed gases.

Tank car unloading is not regulated under Section 79.809(b). Section 79.809(b) dictates the type of storage tanks that may be used when unloading a tank car. RSPA does not regulate consignee storage, including the types of containers used to store hazardous materials that are no longer in transportation in commerce. HASA's storage of hazardous materials at its facility, for use in its manufacturing process, is beyond the scope of Federal hazmat law and the HMR. Consequently, Federal hazmat law does not preempt LACoC § 79.809(b), which applies to consignee storage.

(b) *24-Hour Time Limit*. Section 79.809(c) states that "unless otherwise approved by the chief, a tank car shall not be allowed to remain on a siding at point of delivery for more than 24 hours while connected for transfer operations." HASA states that this restriction on the amount of time a tank car may remain connected for transfer operations should be preempted because there is no similar restriction under Federal hazmat law or the HMR.

Certain consignee tank car unloading activities fall under the term "handling," a covered subject. Unless substantively the same as Federal regulation, or otherwise authorized by Federal law, non-Federal regulation of a covered subject area is preempted. Section 174.67 of the HMR applies to the mechanics of the tank car unloading process by dictating unloading procedures to be followed prior to, during and after unloading, e.g., brake requirements; posting of caution signs; procedures for breaking seals and removing manhole covers; prohibition against unloading connections remaining attached after unloading is completed or discontinued; attendance requirements. Nowhere do the HMR limit the amount of time a tank car may remain on a siding at point of delivery while connected for transfer operations. The 24-hour time restriction is not substantively the same as the Federal requirements and, therefore, is preempted by § 5125(b)(1)(B) of Federal hazmat law, 49 U.S.C. 5125(b)(1)(B).

Local time restrictions, if properly crafted, may serve a legitimate purpose. Under certain circumstances, however, time restrictions may not promote