

"substantively the same" as Federal tank car unloading requirements.

Based on a lack of information in the record, 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).

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

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

Applicant: Swimming Pool Chemical Manufacturers' Association (SPCMA)

Local Laws Affected:

Los Angeles County Code (LACoC)

Title 32 :

§ 4.108(c)(8)

§ 9.105

§ 75.101

§ 75.103(a)

Table 75.103-A

§ 75.104

§ 75.105 (a) and (b)

§ 75.108

§ 75.205

§ 75.602 (a), (b), and (c)

Summary: Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101-5127, does not preempt the following provisions of LACoC Title 32: § 4.108(c)(8), § 9.105, § 75.101, § 75.103(a), Table 75.103-A, § 75.104, §§ 75.105 (a) and (b), § 75.108, § 75.205, and §§ 75.602 (a), (b), and (c).

1. Application For Preemption Determination

SPCMA filed its application with the Research and Special Programs Administration (RSPA) on January 20, 1993, asking that certain provisions of Title 32 of the 1990 LACoC be preempted. SPCMA states that preemption is warranted because the LACoC applies to the transportation of cryogenic liquids, including unloading and storage. Furthermore, SPCMA asserts that the LACoC applies to the construction of containers used for the transportation of cryogenic liquids, a covered subject area.

On February 12, 1993, RSPA published a Public Notice and Invitation to Comment on SPCMA's application. 58 FR 8480. That Notice set forth the text of SPCMA's application. Following

publication of the Public Notice, comments were submitted by the American Trucking Associations (ATA), the County of Los Angeles Fire Department, and the Compressed Gas Association, Inc. Rebuttal comments were submitted by SPCMA.

In response to RSPA's October 14, 1993 Public Notice re-opening the comment period in Docket PDA-10(R), comments were submitted by SPCMA, HASA and the County of Los Angeles Fire Department. SPCMA also updated its application to reflect amendments to Title 32 that were adopted by Los Angeles County in May 1993.

2. Discussion

a. *Permits.* (1) LACoC Requirements. SPCMA challenges the following provisions of LACoC Title 32:

§ 75.101 requires that storage, handling, and transportation of cryogenic fluids be in accordance with LACoC Article 75. (Article 75 sets forth all requirements pertaining specifically to cryogenic fluids.)

§ 4.108(c)(8) states that a permit must be obtained from the Bureau of Fire Prevention prior to producing, storing or handling "cryogenics" in excess of amounts specified in Table No. 4.108-B, except where Federal or State regulations apply.

§ 75.104 indicates that a permit must be obtained to store, handle or transport "cryogenics," and references § 4.108.

(2) SPCMA's Arguments and Summary of Comments. SPCMA asserts that the permit requirements in Title 32 apply to any person, firm or corporation that stores, handles or transports cryogenic liquids in excess of the permit amounts set forth in Table No. 4.108-B. Based on its review of § 4.108.c.8, § 75.101, and § 75.104, SPCMA concludes that, in the LACoC, the terms "handling" and "transportation" are synonymous. SPCMA points out that "handling" is defined in LACoC § 9.110 as "the deliberate transport of material by any means to a point of storage or use."

SPCMA further contends that "there is no assurance that a permit can be obtained from the Bureau of Fire Prevention and/or obtained without prior compliance with the LACoC, and in particular, Article 75. Many of the requirements contained in Article 75 are themselves preempted by [Federal hazmat law] and regulation[s] thereunder." SPCMA concludes that the requirement to obtain a permit prior to the storage, handling or transportation of cryogenic liquids is an obstacle to accomplishing and carrying out Federal hazmat law and the HMR and is, therefore, preempted.

ATA supports SPCMA's position. ATA states that the LACoC applies to the transportation of cryogenic liquids, including loading, unloading, and storage incidental thereto, in interstate and intrastate commerce. ATA believes that the requirements directly conflict with Federal hazmat law and the HMR.

The County of Los Angeles Fire Department disagrees with SPCMA's assertion that certain provisions within Title 32 apply to transportation in commerce, and asserts that Title 32 applies to fixed facilities that "handle" hazardous materials. It states that, under the LACoC, "transport" is defined as "handle." It explains that cryogenic liquids arrive at a manufacturing facility via railroad tank car, and the contents are unloaded to a stationary storage tank at the facility. As the need arises, the cryogenic liquids are "transported" via either piping or containers to the site of use. The County of Los Angeles Fire Department explains that, in the above-described situation, "transport" can mean the transport of cryogenic liquids to processing equipment and pressure vessels from a distant stationary pressure storage tank via piping or from a portable pressure tank that is transported to the processing area." It submits that the meaning of transport in the above example is quite different from that set forth under 49 CFR 107.3, which defines "transportation" as "any movement of property by any mode, and any loading, unloading, or storage incidental thereto."

(3) Analysis. SPCMA, like HASA (in PDA-7(R), discussed above in PD-9(R)), seeks preemption of the permit requirements under the LACoC. In this instance, a permit is required to produce, store, transport on site or handle cryogenic fluids in excess of specified amounts. SPCMA, like HASA, asserts that the permit requirements are preempted because they apply to a facility's on-site transportation of hazardous materials and, therefore, are an obstacle to accomplishing and carrying out Federal hazmat law. For the reasons enumerated above in PD-8(R), Federal hazmat law does not preempt the LACoC permit requirements, which implement the handling requirements under Chapter 6.95 of the California Health and Safety Code.

b. *Definition/Classification of Cryogenic Fluids.* (1) LACoC Requirements. SPCMA challenges the following provisions of LACoC Title 32:

§ 9.105 defines cryogenic fluids as those fluids that have a normal boiling point below 150 degrees Fahrenheit.

§ 75.103(a) specifies that cryogenic fluids shall be classified according to Table No. 75.103-A.