interpretation that provisions of an authorized State program which are more stringent than the Federal counterparts become a part of the requirements of RCRA, and fully enforceable by the EPA.''

The California Department of Toxic Substances Control similarly asserts that ''RCRA stands as the minimum standards which States must follow, and Congress did not intend to preempt states from promulgating their own requirements pursuant to RCRA.'' It argues that NYDEC's ''loading and unloading requirements'' are authorized by both RCRA § 3009 and ''EPA's statutory obligation [in RCRA § 3003, 42 U.S.C. § 6923] to promulgate regulations which are necessary to protect human health and the environment in the transportation of hazardous waste.'' ASTSWMO also indicates that RCRA empowers States ''to create regulatory systems which are more stringent than federal rules,'' and that ''these State rules have been closely analyzed by the USEPA for consistency with federal statute and regulations, * * *''

In contrast to the States' arguments, CWTI points to EPA's own statements that it does not examine State hazardous waste transportation requirements for consistency with Federal hazardous material transportation law. CWTI cites EPA's final determination on California's hazardous waste program, 57 FR 32726, 32728 (July 23, 1992), where EPA found that ''preemption issues under other Federal laws * * * do not affect the State's RCRA authorization,'' and an August 17, 1994 letter signed by the Director of EPA's Office of Solid Waste stating that:

> A possible issue of preemption under HMTA would not affect the programs's eligibility for RCRA authorization where the preemption concern is unrelated to RCRA authorities. * * * Thus, EPA still believes that the RCRA authorization decisions provide no basis for shielding state regulations touching upon hazardous materials transport from possible preemption challenges raised under the HMTA.

CWTI also argues that the ''more stringent than'' language in 42 U.S.C. 6929 simply prevents RCRA itself from prohibiting additional State requirements, so that the ''more stringent than language'' is not sufficient to specifically authorize the NYDEC transfer and storage requirements. According to CWTI, the ''more stringent than'' language does not prevent *other* Federal statutes from preempting State hazardous waste requirements.

Moreover, CWTI finds that this language applies only to sites of TSD facilities. It quotes a statement by Senator Bumpers, the sponsor of the 1980 amendment that added the ''more stringent than'' language to RCRA, that the purpose of that language was to ''permit States to establish standards more stringent than Federal standards with regard to the selection of sites for the disposal of hazardous waste material.'' 125 Cong. Rec. 13,247 (1979).

CWTI contends that State requirements on hazardous waste transporters must not be in conflict with the Federal hazardous material transportation law and the HMR, because RCRA requires that (1) EPA's regulations on transporters must be ''consistent with'' DOT's requirements, 42 U.S.C. 6923(b), and (2) State hazardous waste programs must be ''equivalent to'' and ''consistent with'' EPA's program. 42 U.S.C. 6926(b). CWTI refers to 40 CFR 263.12, under which a transporter ''who stores manifested shipments of hazardous waste in containers meeting [DOT packaging] requirements'' for no more than 10 days at a transfer facility need not meet other storage facility requirements. For the position that there is no restriction on transporters mixing wastes having the same DOT shipping description, CWTI cites the provision in 40 CFR 263.10 that a transporter who ''[m]ixes hazardous wastes of different DOT shipping descriptions by placing them in to a single container'' must comply with the standards applicable to generators. CWTI quotes the preamble to later amendments to 40 CFR Part 263, where EPA stated that the ''amendments do not place any new requirements on transporters repackaging waste from one container to another (e.g., consolidation of wastes from smaller to larger containers) or on transporters who mix hazardous wastes at transfer facilities.'' 45 FR 86967 (Dec. 31, 1980). Included with CWTI's application is a March 1, 1990 letter signed by the Director of EPA's Office of Solid Waste stating:

> The bulking of characteristic hazardous waste shipments to achieve efficient transportation may result in incidental reduction of the hazards associated with that waste mixture. However, this incidental reduction may not meet the definition of treatment (as defined under 40 CFR Section 260.10) because it is not designed to render the waste nonhazardous or less hazardous. Accordingly, such activity may not require a RCRA permit.

The opposing arguments by the States and CWTI clearly focus the issue of the relationship between Federal preemption under 49 U.S.C. 5125 and State requirements on hazardous waste transporters, under EPA-authorized programs. This same issue was addressed in two of RSPA's prior determinations concerning transporters of hazardous waste: PD–1(R), above, 57 FR 58848, 58854–55, and PD–2(R), Illinois Environmental Protection Agency's Uniform Hazardous Waste Manifest, 58 FR 11176, 11183 (Feb. 23, 1993). Further comments were specifically invited on this issue in the August 5, 1994 Federal Register notice, which reopened the comment period in response to ASTSWMO's request for an opportunity to discuss ''the effect of RSPA [preemption] activities upon States' ability to appropriately regulate transporters of hazardous waste under RCRA.'' 59 FR 40081.

NYDEC's assertion that ''the regulation of intrastate transportation of hazardous materials is a matter of peculiarly local concern'' is not consistent with: (1) Congress's direction that hazardous wastes must be ''listed and regulated as hazardous material[s]'' under the former HMTA, 42 U.S.C. 9656(a); (2) its finding that uniform requirements ''are necessary and desirable'' for the safe transportation of hazardous materials, Pub. L. 101–615 § 2, 104 Stat. 3244; (3) the mandate that DOT ''prescribe regulations for the safe transportation of hazardous material in interstate, intrastate, and foreign commerce,'' 49 U.S.C. 5103(b)(1); and (4) New York's own adoption of the HMR as State law.

As already noted, the HMR presently apply to all intrastate and interstate transportation of hazardous wastes, 49 C.F.R. 171.1(a), and RSPA has proposed to expand the HMR's coverage to intrastate motor carriers of all hazardous material. *See* Notice of Proposed Rulemaking in Docket No. HM–200, Hazardous Materials in Intrastate Commerce, 58 FR 36920 (July 9, 1993), correction, 58 FR 38111 (July 15, 1993). (At present, the HMR do not apply to intrastate motor carriers of hazardous material other than hazardous wastes, hazardous substances, marine pollutants, and flammable cryogenics in cargo and portable tanks, 49 CFR 171.1(a).)

Moreover, since the early 1900's, the HMR have applied to wastes that were hazardous in transportation. In 1976, Congress recognized this fact when it enacted RCRA and specifically directed that regulations on hazardous waste transporters must be consistent with the HMR; that requirement, in 42 U.S.C. 6923(b), remains unchanged. Under these circumstances, RSPA cannot agree that there is a ''special'' status for State regulations on hazardous waste transporters, removing them from preemption under 49 U.S.C. 5125, nor that a declaration that the NYDEC transfer and storage requirements are