

excepted from the signature requirements, "including shipments which ultimately are transferred between the rail and truck modes," citing 40 CFR 263.20(f) and 49 CFR 172.205(f).

NYDEC did not specifically address the requirement in 6 NYCRR 372.3(a)(7)(ii) that the manifest show any transfer of hazardous waste from one vehicle to another owned by the same transporter. Its written comments indicate this requirement was among those being eliminated, but this requirement was retained in the amendments filed November 15, 1994.

In coordinated, but separate, rulemakings in March 1984, EPA and DOT summarized the development of a uniform hazardous waste manifest form. EPA, Hazardous Waste Management System, 49 FR 10490; RSPA Docket No. 145D, Hazardous Waste Manifest; Shipping Papers, 49 FR 10507 (Mar. 20, 1984). As EPA indicated, when it established the manifest system in 1980, it decided to allow "the regulated community to adapt its present practices, notably DOT's requirements for shipping papers, to accommodate the new EPA requirements." 49 FR 10490 (footnote omitted). Accordingly, EPA specified only "the required

information that must accompany the waste," and did not require a particular format. *Id.*

The lack of a standard form soon resulted in a "proliferation of manifests as various States decided to develop and print their own forms," burdening both generators and transporters. *Id.* Based on recommendations by ASTSWMO and HMAAC, and the consideration of approximately 300 comments to the two agencies, EPA and DOT amended their separate regulations to require use of a uniform manifest, effective in September 1984. At the time, they indicated that, "[u]nder limited circumstances, States may impose [additional] information or management requirements,"—but only on the waste generator. 49 FR at 10492. As stated by EPA:

States are prohibited from applying enforcement sanctions on the transporter during the transportation of hazardous waste for any failure of the form to show optional State information entries. States may hold transporters responsible only for ensuring that the information included in the federally-required portions of the Uniform Manifest form accompanies the shipment.

*Id.* DOT's preamble similarly stated that, "no State may require a carrier to provide information with or on the

manifest which is in addition to that authorized by the uniform manifest system." 49 FR 10508. Both agencies noted that States could require generators to send other information "under separate cover," 49 FR at 10492," or "directly to the appropriate agency of [the] State \* \* \* [c]onsidering that the conventional means of transmitting data by mail, wire, telephone and other means are very reliable and readily available." 49 FR at 10506.

Neither RCRA nor EPA's regulations authorize a State to require on the manifest an indication that hazardous wastes have been transferred between vehicles owned or operated by the same transporter. The manifest must contain only the transporter's "company name" and EPA identification number. 40 CFR Part 262, Appendix. The HMR also contain no requirement to identify a shipment with a particular vehicle. For this reason, the requirement in 6 NYCRR 372(a)(7)(ii) that the transporter indicate, on the manifest, any "transfer of hazardous waste from one vehicle to another," is preempted because it is not "substantively the same as" the HMR's requirements for "the preparation, execution, and use of shipping