further asserts that both DOT and EPA have determined that there is no need for secondary containment requirements at hazardous waste transfer facilities, alluding to the absence of any such requirements in both agency's regulations. CWTI places special significance on EPA's failure to impose additional requirements after it specifically requested comments in the preamble to its December 31, 1980 rulemaking. With respect to a change to 40 CFR 263.12, EPA stated:

The amendments provide that the hazardous wastes being held at transfer facilities must be in containers (including tank cars and cargo tanks) which meet DOT specifications for packaging under 49 CFR 173, 178 and 179. This provision should ensure that the hazardous waste remains properly packaged during this phase of transportation. Although the Agency believes that this requirement should provide adequate protection of human health and the environment during the short period that hazardous wastes are held at a transfer facility, we solicit comments on whether additional requirements should be imposed, such as contingency plans, personnel training, and inspections. Comments are specifically requested on which, if any, of the [TSD facility] Part 265 requirements should be placed on transporters who hold shipments of hazardous waste for ten days or less

Interim final amendments and request for comments, Hazardous Waste Management System, etc., 45 FR 86966, 86967 (Dec. 31, 1980).

NYDEC argues that the focus of Federal hazardous materials transportation law is "explicitly limited to 'transportation' issues," while its requirements for secondary containment are "facility requirements which establish minimum safety standards for transfer facilities, and, contrary to CWTI's assertion, are not intended to be a challenge to the integrity of DOT packaging standards." NYDEC also contends that these "facility standards, rather than impairing the transportation of hazardous materials, serve to advance what DOT has described as the 'manifest purpose of the HMTA' by promoting 'safety in the transportation of hazardous materials." (Quoting from IR-2, Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas and Liquefied Propane Gas, 44 FR 75566, 75571 (Dec. 20, 1979), decision on appeal, 45 FR 71881 (Oct. 30, 1980).)

According to NYDEC, the secondary containment requirement "advances HMTA's goal of safety in the transportation of hazardous materials by ensuring that hazardous materials which may inadvertently escape from

leaking or ruptured containers do not enter the environment, where they are likely to present a risk to human health or the environment." Maine similarly asserts that:

Absorbent pads and drip pans do not provide the same measure of security that is present at a permitted facility. Facility standards such as impervious surfaces combined with slopes and spill containment provide an extra measure of environmental protection that cannot be achieved by allowing this activity to be regulated under HMTA as a transportation activity.

The Connecticut Department of **Environmental Protection also believes** that DOT packaging standards alone will not "guarantee that hazardous materials will not leak or otherwise be released from their package." It cites two incidents "involving containers that failed while in the course of transportation," but acknowledges that "both shippers utilized containers that did not meet DOT specification/ standards and/or met DOT standards/ specification but were still improperly packed * * * " It further states that shippers often put hazardous wastes into "used containers since the material has negative value," and that human errors cause releases from containers that meet DOT's specifications or standards.