Connecticut notes that EPA requires secondary containment for TSD facilities, and claims that ''wastes are more likely to be repacked at transfer facilities rather than virgin materials.'' It also comments that transfers actually take place ''both on and off impervious surfaces and with or without secondary containment,'' and that remedial measures are not sufficient when ''the damage has already been done.'' PUCO states that the existing industry practice to load, unload and store hazardous wastes on impervious surfaces:

> Demonstrates the need for a national uniform standard to ensure that all hazardous waste transporters are engaging in these activities in a safe, efficient manner. The need for, and the type of, secondary containment mechanism can be established through the rulemaking process.

As already discussed in connection with NYDEC's arguments on ''standing,'' subpart III.A. above, the definition of ''transportation'' in 49 U.S.C. 5102(12) brings transportation-related loading, unloading and storage of hazardous materials within the scope of Federal hazardous materials transportation law, including the preemption provisions in 49 U.S.C. 5125. There is no difference in this regard where these transportation-related activities take place, and non-Federal requirements are not somehow immunized from preemption simply because they purport to apply to what the transporter does at a ''facility.'' As noted in *Consolidated Rail Corp.* v. *Bayonne,* 724 F. Supp. 320, 330 (D.N.J. 1989), the ''extent of federal regulation in the area of the transportation, loading, unloading and storage of hazardous materials is comprehensive'' (holding that the HMTA preempted a city limitation on the number of loaded or unloaded butane rail cars permitted on a storage and blending facility).

Two prior inconsistency rulings confirm that non-Federal requirements that purport to regulate ''facilities'' are subject to preemption when those requirements affect the transportation-related loading, unloading and storage of hazardous materials. In the first, RSPA found that a prohibition against holding hazardous materials for more than 48 hours at a railroad yard without a permit was found to be inconsistent with the HMR which allow retention for up to 120 hours, if there are intervening weekends and holidays. IR–19, Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials, 52 FR 24404, 24406, 24409 (June 30, 1987), decision on appeal, 53 FR 11600 (Apr. 7, 1988). In subsequent litigation, the Ninth Circuit considered the same requirement and reversed a lower court holding that the HMR did not address the ''storage of hazardous materials.'' *Southern Pac. Trans. Co.* v. *Public Serv. Comm'n,* above, 909 F.2d at 356.

In the other ruling, RSPA considered San Jose, California's requirements for secondary containment and segregation of hazardous materials at a motor carrier's transfer facility. IR–28, above. In arguments similar to those presented by NYDEC and other States, the city argued that its ordinance ''regulates storage only and that it does not regulate transportation nor purport to do so.'' 55 FR at 8887. However, RSPA found that San Jose's ''requirements *per se* present consistency problems when they are applied to storage of hazardous materials incidental to their transportation.'' 55 FR at 8893.

> State or local imposition of containment or segregation requirements for the storage of hazardous materials incidental to the transportation thereof different from, or additional to those in [49 CFR] § 177.848(f) of the HMR create confusion concerning such requirements and the likelihood of noncompliance with § 177.848(f). Since such state or local requirements, therefore, are obstacles to the execution of an HMR provision, they are inconsistent with the HMR * * *

Id.

In the same fashion, NYDEC fails to achieve its asserted goal of promoting