

safety in the transportation of hazardous materials because its secondary containment requirement creates confusion as to requirements in the HMR and increases the likelihood of noncompliance with the HMR. To the extent that States perceive the need for a uniform national standard requiring secondary containment at transfer facilities, the appropriate course is to petition RSPA to add this requirement to the HMR in accordance with 49 CFR 106.31. The secondary containment requirement in 6 NYCRR 372.3(a)(7)(iii) is preempted by 49 U.S.C. 5125(a)(2).

#### IV. Ruling

For the reasons set forth above, Federal hazardous material transportation law preempts NYDEC's transfer and storage requirements at 6 NYCRR 372.3(a)(7). Subsection (i), prohibiting the repackaging of hazardous wastes, concerns the packing, repacking and handling of hazardous materials, and it is not substantively the

same as the HMR. 49 CFR 5125(b)(1)(B). Subsection (ii), requiring an indication on the manifest of a transfer of hazardous wastes between vehicles, concerns the preparation, use and contents of shipping documents related to hazardous material, and it is not substantively the same as the HMR. 49 U.S.C. 5125(b)(1)(C). Subsection (iii) of 6 NYCRR 372.3(a)(7), requiring secondary containment for the transfer or storage of hazardous wastes at transfer facilities, is preempted because it is an obstacle to the accomplishment and carrying out of the HMR's provisions on packaging and segregation. 49 U.S.C. 5125(a)(2).

#### V. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 107.211(a), "[a]ny person aggrieved" by this decision may file a petition for reconsideration within 20 days of service of this decision. Any party to this proceeding may seek review of

RSPA's decision "in an appropriate district court of the United States \* \* \* not later than 60 days after the decision becomes final." 49 U.S.C. 5125(f).

This decision will become RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of this decision is filed within 20 days of service, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 49 CFR 107.211(d).

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Alan I. Roberts,  
*Associate Administrator for Hazardous Materials Safety.*

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