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Comments: No Man's Landfill: An Analysis of the Roles of Federal, State, and Local Governments in Nonhazardous Solid and Hazardous Waste Management in Maryland

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COMMENTS

NO MAN'S LANDFILL: AN ANALYSIS OF THE ROLES OF FEDERAL, STATE, AND LOCAL GOVERNMENTS IN NONHAZARDOUS SOLID AND HAZARDOUS WASTE MANAGEMENT IN MARYLAND.

In recent years, regulation concerning the generation, transportation, and disposal of hazardous and nonhazardous solid waste has proliferated. Local, state and federal governments all have exerted varying degrees of control over this activity. This comment examines the framework of governmental interaction with regard to certain aspects of nonhazardous solid and hazardous waste management. Some major legislative schemes are also examined to determine their impact on persons or businesses that may come within the ambit of statutory civil liability and/or criminal sanctions.

I. INTRODUCTION

The extent to which federal, state, and local governments have engaged in environmental regulation is a product of the relationship between federal and state legislative powers on one level and between state and local legislative powers on another. Specifically, regulation of non-hazardous solid wastes and hazardous wastes interacts on three levels: (1) comprehensive federal controls and programs, (2) state programs designed to implement the federal schemes and independent state requirements and prohibitions, and (3) local zoning regulations.

To facilitate an understanding of environmental regulation in Maryland, this comment first examines the system of state and local legislative powers that exists in Maryland. Second, the comment explores the framework of local, state, and federal regulatory schemes created to control the fields of nonhazardous solid waste management and hazardous waste management in Maryland. Finally, the comment addresses certain litigious aspects of a focal piece of federal legislation, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").

II. STATE AND LOCAL LEGISLATIVE POWERS IN MARYLAND

The relationship among state legislation applicable statewide, state legislation applicable locally, and local governmental legislation in Maryland is centered on the concept of home rule.¹ In Maryland, various

1. See generally Moser, *County Home Rule — Sharing the State's Legislative Power with Maryland Counties*, 28 MD. L. REV. 327 (1968); Comment, *State and Local Legislative Powers: An Analysis of the Conflict and Preemption Doctrines in Mary-*

forms of home rule exist in counties and municipalities.² Three types of self-governing counties exist in Maryland: (1) charter counties, established pursuant to article XI-A of the Maryland Constitution; (2) code counties, established pursuant to article XI-F of the Maryland Constitution; and (3) counties without constitutional home rule, but which derive their powers of local self-government from the state legislature, having adopted neither charter nor code home rule.³

A. Powers Granted to Political Subdivisions

The Maryland Constitution grants to Baltimore City and charter counties "full power to enact local laws . . . including the power to repeal or amend local laws . . . enacted by the General Assembly, upon all matters covered by the express powers granted as above provided. . . ."⁴ The phrase "express powers granted as above provided" refers to a provision of the Maryland Constitution that directs the General Assembly to provide a grant of such express powers, which shall not be enlarged or extended by any charter but which may be extended, modified, amended, or repealed by the General Assembly.⁵ The powers expressly conferred upon charter counties pursuant to these provisions, known collectively as the Express Powers Act,⁶ include the power to zone and plan⁷ and the

land, 8 U. BALT. L. REV. 300 (1979). "Home rule" is defined as a "[c]onstitutional provision or type of legislative action which results in providing local cities and towns with a measure of self government if such local government accepts terms of the state legislation." BLACK'S LAW DICTIONARY 660 (5th ed. 1983). Home rule was developed to extricate local governmental functions from restrictions imposed by the application of "Dillon's Rule," which required strict construction of constitutional or legislative grants of specific powers to local units of government. Moser, at 330; see also 1 J. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS § 237 (5th ed. 1911). "[A] municipal corporation possesses and can exercise the following powers, and no others: First, those granted in *express words*; second, those *necessarily or fairly implied* in or *incident* to the powers expressly granted; third, those *essential* to the accomplishment of the declared objects and purposes of the corporation. . . ." *Id.* (emphasis added). The term "municipal corporation" as used in this rule has been construed to encompass county governing bodies. See *Montgomery County v. Maryland-Washington Metro. Dist.*, 202 Md. 293, 304, 96 A.2d 353, 358 (1953) (discussing applicability of Dillon's Rule to counties).

2. Counties and municipalities are local governmental units created by the state. Moser, *supra* note 1, at 330. The Maryland Constitution generally treats Baltimore City, which possesses attributes of both a county and a municipality, as an independent county for home rule purposes. *Id.* at 332.
3. Municipal home rule is provided for in article XI-E of the Maryland Constitution. MD. CONST. art. XI-E (1981). The following counties presently have charter home rule: Anne Arundel County, Baltimore City, Baltimore County, Harford County, Howard County, Montgomery County, Prince George's County, Talbot County, and Wicomico County. The following counties have code home rule: Allegany County, Caroline County, Kent County, and Worcester County.
4. MD. CONST. art. XI-A, § 3 (1981). Section 3 calls for a legislative grant of express powers, indicating that article XI-A is not self-executing. See Moser, *supra* note 1, at 333. See generally 4 C. ANTIEAU, LOCAL GOVERNMENT LAW § 31A.02 (1986).
5. MD. CONST. art. XI-A, § 2 (1981).
6. *Hampton Assocs. v. Baltimore County*, 66 Md. App. 551, 566, 505 A.2d 537, 545,

power to prevent the introduction of contagious diseases into the county.⁸ Further, a catch-all provision authorizes a charter county to pass "such ordinances as may be deemed expedient in maintaining the peace, good government, health and welfare of the county."⁹ The state legislature has granted exclusively to Baltimore City "all the power commonly known as the police power [within the limits of the City of Baltimore] to the same extent as the State has or could exercise such power within said limits. . . ."¹⁰

The Maryland Constitution confers upon code counties the general power to enact local laws applicable to their "incorporation, organization, or government."¹¹ Unlike charter counties, code counties are not limited to certain enumerated powers.¹² Legislation supplementing the constitutional grant of code home rule powers, however, incorporates by reference the provisions of the Express Powers Act.¹³ Generally speaking, code counties possess broader governmental powers than do charter counties.¹⁴

Counties of the third type, operating with neither charter nor code home rule, derive their legislative powers from article 25 of the Maryland Annotated Code. Among these powers is an express authorization to construct landfills and to prescribe and enforce regulations concerning the use and operation of disposal areas or facilities.¹⁵

These general sources of local legislative power operate in conjunction with other state provisions that impose limitations on such power. Principally, the powers of Baltimore City and the charter counties to enact local laws¹⁶ are subject to the Maryland Constitution and to public

cert. denied, 307 Md. 406, 514 A.2d 24 (1986). See generally MD. ANN. CODE art. 25A, § 5 (1987) (granting express powers to all charter counties).

7. MD. ANN. CODE art. 25A, § 5(X) (1987).

8. *Id.* § 5(J) (1987).

9. *Id.* § 5(S) (1987); see *Montgomery Citizens League v. Greenhalgh*, 253 Md. 151, 161, 252 A.2d 242, 247 (1969) (construing section 5(S) as a general welfare clause); *Prince George's County v. Chillum-Adelphi Fire Dep't, Inc.*, 275 Md. 374, 382, 340 A.2d 265, 270 (1965) (characterizing section 5(S) as a grant of police powers).

10. BALTIMORE CITY CHARTER art. 2, § 27 (1964). This provision is the principal distinction between Baltimore City and all other charter counties, the powers of which are limited to those expressly granted in article 25A of the Maryland Annotated Code. Broad judicial construction of article 25A, section 5(S) of the Maryland Annotated Code, however, has reduced the significance of this distinction. See *supra* note 9, and accompanying text.

11. MD. CONST. art. XI-F, § 1(2) (1981) (defining "public local law," which under section 3 of article XI-F, a code county is empowered to enact).

12. Moser, *supra* note 1, at 336, 340.

13. See MD. ANN. CODE art. 25B, § 13 (1987).

14. Moser, *supra* note 1, at 340. Municipalities with home rule also possess general rather than limited powers. *Id.* at 335. Legislation related to municipal home rule is found in articles 23A and 23B of the Maryland Annotated Code.

15. MD. ANN. CODE art. 25, § 14A (1987).

16. As used in this article, the term "local law" means an enactment by the governmental body of a county (including Baltimore City).

general laws¹⁷ of Maryland.¹⁸ Thus, the General Assembly, by enacting public general laws, possesses certain preemptive powers.¹⁹ On the other hand, the General Assembly is prohibited from enacting any public local law²⁰ regarding any area covered by the express powers granted to charter counties.²¹ This reservation of exclusive powers to the political subdivisions is critical to the viability of home rule.

B. Preemption and Conflict

When local legislation and public general legislation both pertain to the same subject matter, courts apply a two-prong analysis to determine which law controls. If either prong is satisfied, then the public general law controls. The courts examine whether state legislation has preempted the particular field by occupation²² and whether the particular public general and local laws conflict.²³

17. The term "public general law" means an enactment by the state legislature that is applicable to more than one county.

18. MD. CONST. art. XI-A, §§ 1, 3 (1981). Similarly, article XI-F, section 10 of the Maryland Constitution subjugates the local legislative powers of code counties to laws enacted by the General Assembly that are applicable to such counties. Perhaps because there are fewer code counties than there are charter counties, case law addressing the issues of preemption and conflict has developed primarily in the context of charter home rule.

19. See *infra* notes 22-32 and accompanying text.

20. The term "public local law" as used in this article refers solely to such law enacted by the state legislature, defined in article XI-A, section 4 of the Maryland Constitution as:

Any law so drawn as to apply to two or more of the geographical subdivisions of this State shall not be deemed a Local Law, within the meaning of this Act. The term "geographical sub-division" herein used shall be taken to mean the City of Baltimore or any of the Counties of this State.

MD. CONST. art. XI-A, § 4 (1981). By negative implication, this means that a state enactment applicable to only one geographical subdivision is a public local law. The following test determines whether an enactment by the General Assembly is a public local law or a public general law (defined *supra* note 17): If the enactment, in subject matter and substance, is confined in its operation to prescribed territorial limits and is equally applicable to all persons within such limits, then it constitutes a public local law. *Steimel v. Board of Election Supervisors*, 278 Md. 1, 5, 357 A.2d 386, 388 (1976); *Cole v. Secretary of State*, 249 Md. 425, 435, 240 A.2d 272, 278 (1968); see also *State v. Stewart*, 152 Md. 419, 425-26, 137 A. 39, 42 (1927) (assessing character of state enactment as public local law by fact that subject matter of enactment was exclusively local). The enactment is a public general law if it concerns the general public welfare, *Steimel*, 278 Md. at 5, 357 A.2d at 388, or if it forms an integral part of an entire bi-county or multi-county scheme. *State's Attorney v. Mayor of Baltimore*, 274 Md. 597, 607, 337 A.2d 92, 98 (1975).

21. MD. CONST. art. XI-A, § 4 (1981).

22. *E.g.*, *County Council v. Montgomery Ass'n*, 274 Md. 52, 325 A.2d 112 (1974); *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969); *Heubeck v. Mayor of Baltimore*, 205 Md. 203, 107 A.2d 99 (1954).

23. *E.g.*, *Rockville Grosvenor, Inc. v. Montgomery County*, 289 Md. 74, 422 A.2d 353 (1980); *Heubeck v. Mayor of Baltimore*, 205 Md. 203, 107 A.2d 99 (1954); *Herman v. Mayor of Baltimore*, 189 Md. 191, 55 A.2d 491 (1947); *Rosberg v. State*, 111 Md. 394, 74 A. 581 (1909); *Montgomery County v. Eli*, 20 Md. App. 269, 315 A.2d 136 (1974), *cert. denied*, 271 Md. 735 (1974).

With regard to the first prong, when the General Assembly enacts a public general law pertaining to a certain field and expresses its intent to preempt all or part²⁴ of that field, parallel local legislation is preempted.²⁵ Such preemptive intent has been found either when the legislature has included a standard clause expressly repealing all inconsistent laws²⁶ or when the legislature has so forcibly expressed its intent to occupy a specific field of regulation that preemption is necessarily implied.²⁷ The court of appeals has recommended cautious application of this latter doctrine.²⁸ Absent preemption, a public general law and a local ordinance may co-exist even though they address the same subject matter, as long as there is no conflict between the two.²⁹

The second prong is derived from language in the Maryland Constitution, which provides that in case of any conflict between a local law and a public general law, the latter shall control.³⁰ The landmark decision examining conflict between a local law and a public general law in Maryland is *Rossberg v. State*.³¹ In *Rossberg*, the court of appeals recognized that an ordinance which permits acts or occupations prohibited by state statute, or which prohibit acts permitted by state statute or constitution, is void, but an ordinance which merely adds to the statutory scheme is not void.³² Maryland courts follow the *Rossberg* rule in resolving questions of conflict between local legislation and public general legislation.³³

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24. See, e.g., *Mayor of Baltimore v. Stuyvesant Ins. Co.*, 226 Md. 379, 390, 174 A.2d 153, 158 (1961) (public general law expressly preempted field with regard to corporate sureties by denying local governments power to require additional licenses from such businesses; absence of statutory language regulating non-corporate sureties implied an intent not to preempt field with regard to non-corporate sureties.).
 25. See, e.g., *American Nat'l Bldg. & Loan Ass'n v. Mayor of Baltimore*, 245 Md. 23, 224 A.2d 883 (1966); *Mayor of Baltimore v. Stuyvesant Ins. Co.*, 226 Md. 379, 174 A.2d 153 (1961); *Eastern Tar Prod. Corp. v. State Tax Comm'n*, 176 Md. 290, 4 A.2d 462 (1939).
 26. *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 322, 255 A.2d 376, 385 (1969).
 27. *Id.* at 323, 255 A.2d at 385. In *County Council for Montgomery County v. Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596 (1975), the court of appeals found that the state law regulating election finances fit squarely within the "forcible expression" doctrine; the county election ordinances were thereby invalidated. *Id.* at 59-60, 333 A.2d at 600.
 28. See *Sitnick*, 254 Md. at 323, 255 A.2d at 385 (citing *Moser*, *supra* note 1, at 351 n.80).
 29. *Id.* at 316-17, 255 A.2d at 382.
 30. MD. CONST. art. XI-A, § 3 (1981).
 31. 111 Md. 394, 74 A. 581 (1909).
 32. *Rossberg v. State*, 111 Md. at 416-17, 74 A. at 584.
 33. E.g., *Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 396 A.2d 1080 (1979); *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969); *Reed v. President of North East*, 226 Md. 229, 172 A.2d 536 (1961); *Murray v. Director of Planning*, 217 Md. 381, 143 A.2d 85 (1958); *Heubeck v. Mayor of Baltimore*, 205 Md. 203, 107 A.2d 99 (1954). The court in *Sitnick* expressed the rule as follows: "[A] political subdivision may not prohibit what the State by general public law has permitted, but it may prohibit what the State has not expressly permitted." 254 Md. at 317, 255 A.2d at 382 (emphasis added).

When a public local law and a local law both pertain to the same subject matter, as a general rule, conflicts between the two are resolved in favor of the local law.³⁴ The Maryland Constitution provides that a public local law that is inconsistent with the provisions of the charter of a political subdivision is repealed thereby.³⁵ This means that when a county's charter, which is the local equivalent of a state's constitution, contains a provision that conflicts with a prior public local law, the public local law is void. With respect to conflicts between local laws, which are enacted pursuant to such a charter, and public local laws, the Maryland Constitution provides that a charter county shall have the power to repeal a public local law concerning a matter covered by the express powers granted to charter counties.³⁶ Although there is no mention of "conflict" or "inconsistency" in this constitutional provision, courts have interpreted the provision to mean that a public local law that conflicts with a local law is void.³⁷

The language of article XI-A, section 4 proscribes public local laws concerning a subject matter over which the General Assembly expressly has granted local control to counties.³⁸ This constitutional provision essentially grants charter counties "preemptive" power in the sense that the state legislature may not enact a law that is applicable only to a particular charter county on a matter covered by the Express Powers Act, regardless of whether that county has enacted a local law on that matter. The purpose of this provision is to prevent the state legislature from governing local affairs in a county that has adopted charter home rule. One opinion has noted that the General Assembly cannot "share one of the granted fields of local law" with a county that has adopted a charter, but can "only change the right to those fields or parts of them" by amending provisions of the Express Powers Act.³⁹

C. Summary

The foregoing material explains the general principles governing conflict and preemption between state and local legislation. The general principles governing conflict and preemption between federal and state (or local) legislation — as well as principles governing an additional often-present component of the federal-state tier: Commerce Clause

34. See 4 C. ANTIEAU, LOCAL GOVERNMENT LAW §§ 31.05, 31.09 (1986).

35. MD. CONST. art. XI-A, § 1 (1981). The term "repealed" as used in this section does not signify a local legislative body's nullification of one of its own enactments, but rather signifies that legislative body's nullification of a public local law enacted by the state legislature.

36. MD. CONST. art. XI-A, § 3 (1981).

37. See *James v. Anderson*, 281 Md. 137, 148-49, 377 A.2d 865, 871 (1977) (citing article XI-A, section 3 of the Maryland Constitution and construing it to mean that the county's subsequent enactment of local legislation "clearly repeal[ed] by implication any inconsistent provisions" of prior public local law relating to same subject matter. *Id.* (emphasis added)).

38. MD. CONST. art. XI-A, § 4 (1981).

39. *Ness v. Supervisors of Elections*, 162 Md. 529, 535, 160 A. 8, 10 (1932).

analysis — are not discussed in this article. The following material analyzes the principles governing state-local and federal-state preemption and conflict in the contexts of solid nonhazardous waste regulation and hazardous waste regulation, respectively.

III. REGULATION OF NONHAZARDOUS SOLID WASTE IN MARYLAND

A. Local Authority

Solid waste regulation, in the absence of state preemption, traditionally is regarded as the responsibility of local government and typically is accomplished through zoning ordinances.⁴⁰ Various county codes also regulate solid waste management through the authority vested in the county government to regulate environmental health.⁴¹ Courts have limited the local control of solid waste by refusing to allow local governments to prevent absolutely the disposal of solid waste within the county or municipality, absent a clear showing that a landfill would present a public nuisance or has failed to comply with established regulations.⁴² Another limitation is the judicial invalidation of local ordinances that prohibit the transportation of refuse from outside of the state into the county.⁴³

40. Comment, *An Assessment of the Role of Local Government in Environmental Regulation*, 5 UCLA J. ENVTL. L. & POL'Y 145, 158 (1986) [hereinafter "*Environmental Regulation*"]. For example, under Anne Arundel County zoning regulations, sanitary landfills are permitted, subject to certain provisions, in RA-Agricultural Residential Districts, DD-Deferred Development Districts and W3-Industrial Districts, ANNE ARUNDEL COUNTY, MD., ZONING ORDINANCE § 13-343.29 (1982); Caroline County zoning regulations only set forth setback and screening restrictions for, and prohibit refuse burning at, sanitary landfills, CAROLINE COUNTY, MD., ZONING ORDINANCE §§ 6-9 (1982); Cecil County permits sanitary landfills as special exceptions to agricultural and open space zones, subject to certain restrictions, CECIL COUNTY, MD., ZONING ORDINANCE § 6.03 (1984), and provides special restrictions applicable to sites used for sludge disposal and handling, *see id.* § 6.10; Talbot County zoning ordinances require application for a permit and conformance with certain provisions before development of any site as a solid waste disposal site, TALBOT COUNTY, MD., ZONING ORDINANCE § 8.06 (1981); and Worcester County subjects solid waste disposal site development to certain zoning provisions, WORCESTER COUNTY, MD., ZONING ORDINANCE § 1-316 (1978).

41. *See supra* notes 6-11, 15 and accompanying text. *See, e.g.,* ANNE ARUNDEL COUNTY, MD., CODE art. 14, § 2-103 (1987) (requiring approval of refuse disposal sites by County Health Officer); *id.* §§ 4-101 to 4-116 (governing landfills); *id.* §§ 5-101 to 5-102 (prohibiting storage and limiting transportation of polychlorinated biphenyl); BALTIMORE COUNTY, MD., CODE §§ 13-49 to 13-53 (1978 & Supp. 1984) (governing incinerator disposal and sanitary landfill sites); FREDERICK COUNTY, MD., CODE art. 3, §§ 1-11-27 to 1-11-36 (1979) (governing facilities for, and transportation of, refuse disposal); HARFORD COUNTY, MD., CODE §§ 9-1 to 9-19 (1978) (imposing environmental controls on solid waste disposal); HOWARD COUNTY, MD., CODE §§ 18.600-18.606 (1977) (regulating sanitary landfills); MONTGOMERY COUNTY, MD., CODE §§ 48-1 to 48-44 (Supp. 1982) (governing solid waste collection, transportation, and disposal).

42. *Environmental Regulation*, *supra* note 40, at 158-59 (cited cases omitted).

43. *See, e.g.,* Shayne Bros., Inc. v. Prince George's County, 556 F. Supp. 182 (D. Md.

B. Federal and State Regulation

Apart from these limitations, the existence of federal and state laws which either preempt or conflict with local legislation also limits local governmental regulation of solid waste. On the federal level, the Resource Conservation and Recovery Act ("RCRA") regulates solid waste disposal.⁴⁴ One of the express objectives of the RCRA is "provi[sion] for the promulgation of guidelines for solid waste collection, transport, separation, recovery, and disposal practices and systems."⁴⁵ The RCRA expresses an intent that "the collection and disposal of solid wastes should continue to be primarily the function of State, regional, and local agencies."⁴⁶ Further, the RCRA provides for federal technical and financial assistance to such agencies to facilitate their development of comprehensive plans.⁴⁷ Such assistance is conditioned, however, upon the compliance of these state, regional, and local agencies with federal guidelines.⁴⁸

On the state level, Maryland's regulation of solid waste is codified in

1983) (provision of county code prohibiting transportation of refuse from outside state to a landfill within county absent authorization declared unconstitutional as violative of Commerce Clause); *cf.* ANNE ARUNDEL COUNTY, MD., CODE art. 28, § 12-242(a)(6) (1987) ("Only waste generated within the boundaries of the County is accepted as fill material"); HARFORD COUNTY, MD., CODE § 9-15 (1986) (dumping or deposit of waste generated outside of county prohibited within county); MONTGOMERY COUNTY, MD., CODE § 48-22 (Supp. 1982) (requiring permit to haul refuse from outside of state into county). *But cf.* County Comm'rs v. Stevens, 299 Md. 203, 473 A.2d 12 (1984) (county regulation prohibiting disposal of refuse collected from without county limits in *publicly owned* landfills upheld as not violative of Commerce Clause).

44. 42 U.S.C. §§ 6901-87 (1982 & West Supp. 1988).

45. 42 U.S.C.A. § 6902(a)(8) (West Supp. 1988). The term "solid waste" is defined as: [A]ny garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or . . . in irrigation return flows. . . .

42 U.S.C. § 6903(27) (1982).

46. *Id.* § 6901(a)(4). Furthermore, the Environmental Protection Agency has announced a policy of increasing the delegation of responsibility to the states for administering federal environmental laws through issuance of permits, conducting of inspections, and enforcement of the federal provisions. *See* Freilich, Acconcia, Martin, *Judicial Federalism and State Sovereignty: Trends and Developments in Urban, State and Local Government Law*, 16 URB. LAW. 539, 607 (1984).

47. 42 U.S.C. §§ 6902(a)(1), 6941, 6947-49 (1982 & West Supp. 1988).

48. 42 U.S.C.A. § 6941 (West Supp. 1988) (federal assistance is intended only for comprehensive planning conducted "pursuant to Federal guidelines"); *see* 42 U.S.C. § 6942 (1982 & West Supp. 1988) (directing Administrator of the Environmental Protection Agency to promulgate solid waste management guidelines to the states); *id.* § 6943 (providing minimum requirements to be met by state plans for approval by such Administrator); *id.* § 6944 (directing such Administrator to promulgate criteria for distinguishing sanitary landfills from open dumps, and requiring state plans to prohibit establishment of the latter); *id.* § 6945 (requiring state plans to mandate that existing disposal facilities that are open dumps be upgraded to status of sanitary landfills).

both the Natural Resources and the Environment⁴⁹ articles of the Maryland Annotated Code. The Maryland Environmental Service ("MES") was established under the Natural Resources article in part to provide waste purification and disposal services in compliance with state legislation⁵⁰ and in consultation with, or under the direction of, the Secretary of the Environment.⁵¹ The MES operates in cooperation with another state instrumentality, the Northeast Maryland Waste Disposal Authority (the "Authority").⁵² The Authority serves as a regional coordinating agency charged with assisting participating political subdivisions and other public as well as private entities to provide adequate waste disposal facilities.⁵³ Subject to certain restrictions,⁵⁴ any charter county not a participant in the Authority may, by resolution or ordinance, enter into contracts with any industrial concern for the management of solid waste.⁵⁵

Similar to the federal RCRA, the Environment article of the Maryland Annotated Code expressly provides for the adoption of a plan by each county for developing and maintaining solid waste disposal systems, acceptance facilities, and collection and disposal programs.⁵⁶ The article

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49. The Environment article supersedes the former Health-Environmental article. See 1987 Md. Laws 306 (creating a new executive department known as the Department of the Environment to be responsible, *inter alia*, for certain programs involving solid waste management).
 50. MD. NAT. RES. CODE ANN. § 3-102(a) (1983). Among the responsibilities with which the MES is charged are research and development in the area of solid waste disposal and management, *id.* § 3-105(c), and preparation of a five-year plan for each service region for effective provision of solid waste disposal projects. *Id.* § 3-106(d). A "service region" is defined as a geographic area designated by the MES and within which the MES director, "after consultation with the municipalities affected, causes surveys, plans, studies, and estimates to be made for the purpose of determining the most dependable, effective, and efficient means of providing services through . . . solid waste disposal projects. . . ." MD. NAT. RES. CODE ANN. § 3-101(l) (Supp. 1987). The MES is authorized to "adopt lawful regulations it deems necessary for the public's health and safety, comfort, and convenience" in the management of its solid waste disposal projects. *Id.* § 3-129(a).
 51. See, e.g., MD. NAT. RES. CODE ANN. §§ 3-105(d), (e), 3-106(a), 3-110, 3-111 (1983) (as amended by 1987 Md. Laws 306). Formerly, these sections provided for consultation with, and direction by, the Secretary of Health and Mental Hygiene.
 52. MD. NAT. RES. CODE ANN. § 3-902 (1983).
 53. *Id.* Among the powers granted to the Authority is the power to make rules and regulations that may "exclude or require preconditioning of any waste that might otherwise . . . endanger the health or safety of workers or others." *Id.* § 3-905(r).
 54. MD. NAT. RES. CODE ANN. § 3-9A-01 (Supp. 1987). For example, subsection (b)(1) requires such contracts to be in connection only with solid waste disposal facilities that are financed under the Natural Resources article and that are located either within the charter county or in another participating county. *Id.* § 3-9A-01(b)(1). See *id.* §§ 3-113 to -128, 3-906 to -917 (1983 & Supp. 1987) (provisions governing financing of solid waste management). Subsection (b)(2) proscribes contracts in connection with a landfill. MD. NAT. RES. CODE ANN. § 3-9A-01(b)(2) (Supp. 1987).
 55. *Id.* § 3-9A-01 (Supp. 1987).
 56. See MD. ENV'T CODE ANN. § 9-503(a) (1987). "Solid waste" is defined as "any garbage, refuse, sludge, or liquid from industrial, commercial, mining, or agricul-

also empowers groups of two or more counties to create sanitary districts,⁵⁷ to be governed by a sanitary commission.⁵⁸ One court has observed that the Maryland provisions appear to allow counties maximum flexibility to implement solid waste management plans,⁵⁹ a characteristic similar to the RCRA's expression of intent not to preempt state solid waste plans.

Despite this apparent flexibility on the local level, the Environment article is analogous to the RCRA in yet another sense. Certain provisions of the Environment article call for state assistance to counties and municipalities in the development and regional coordination of comprehensive master plans for the construction of industrial waste disposal facilities.⁶⁰ Furthermore, just as state plans are subject under the RCRA to federal regulations, county plans are subject to state rules and regulations promulgated by the Department of the Environment.⁶¹ Finally, before any entity, including the state, counties, and municipalities, can install, alter, or extend a refuse disposal system, the Secretary of the Environment⁶² must issue a permit authorizing the same.⁶³ These provisions indicate that although the fundamental implementation of solid waste management plans remains a local concern, the broad policy guidelines adopted by state environmental legislation dictate the substance of those plans.

A recent Maryland decision, however, has rejected the proposition that the state regulatory scheme preempts the field of nonhazardous solid waste regulation either expressly or by occupation. In *Ad + Soil, Inc. v. County Commissioners of Queen Anne's County*,⁶⁴ the operator of a sewage sludge storage and distribution facility obtained the necessary permit from the Department of Health and Mental Hygiene to operate such a facility in Queen Anne's County, as required by section 9-210(b) of the

tural operations or from community activities" and excludes "solid or dissolved material in domestic sewage or in irrigation return flows." *Id.* § 9-101(j). A "county plan" is defined as "a comprehensive plan adequately providing throughout the county, including all towns, municipal corporations, and sanitary districts in the county, the following facilities and services by public or private ownership: . . . (iii) solid waste disposal systems; (iv) solid waste acceptance facilities; and (v) systematic collection and disposal of solid waste, including litter." *Id.* § 9-501(d)(1). No solid waste disposal system or solid waste acceptance facility may be installed or extended unless it conforms to such a county plan. *Id.* § 9-511(3), (4).

57. MD. ENV'T CODE ANN. § 9-611 (1987).

58. *Id.* § 9-621 (1987).

59. See *King v. Gleason*, 32 Md. App. 145, 154, 359 A.2d 242, 246 (1976).

60. MD. ENV'T CODE ANN. § 9-207(b) (1987). This state assistance consists partly of a Sanitary Facilities Fund, created to finance planning and construction of facilities. *Id.* § 9-218.

61. *Id.* § 9-510(b)(4), (5), (7) (1987); see 1987 Md. Laws 306 (redefining "Department" in section 1-101(c) from Department of Health and Mental Hygiene to Department of Environment).

62. See 1987 Md. Laws 306 (redefining Secretary of Health and Mental Hygiene to Secretary of the Environment in section 1-101(h)).

63. MD. ENV'T CODE ANN. § 9-204 (1987).

64. 307 Md. 307, 513 A.2d 893 (1986).

former Health-Environmental article of the Maryland Annotated Code.⁶⁵ The operator failed, however, to secure zoning approval from county authorities as required by a county zoning ordinance.⁶⁶ When ordered by county authorities to cease operations, the operator challenged the ordinance on preemption grounds.⁶⁷

The Court of Appeals of Maryland held that the state permit requirement did not preempt the county permit requirement.⁶⁸ The court reasoned that although the General Assembly had enacted extensive statewide legislation in the field of sewage management, several statutory provisions of the Health-Environmental article granting local governmental authority manifested collectively an intent "not to prohibit local legislation, but rather to coordinate and supplement such legislation through the enactment of a statewide regulatory panoply."⁶⁹ The court noted further that the state's regulation of sewage sludge utilization was not "so comprehensive that 'the acceptance of the doctrine of pre-emption by occupation [was] compelled.'"⁷⁰

Certain procedural and substantive exceptions to the general provisions regarding county plans exist for Baltimore, Carroll, Harford, Montgomery, and Prince George's Counties.⁷¹ The exceptions relating to Baltimore, Carroll, Montgomery, and Prince George's Counties come dangerously close to constituting public local laws,⁷² and the exception relating to Harford County is clearly a public local law.⁷³ Because Harford County has power pursuant to section 5(X) of the Express Powers Act⁷⁴ to adopt a county plan, conceivably the General Assembly enacted the exceptions applicable uniquely to Harford County in violation of article XI-A, section 4 of the Maryland Constitution.⁷⁵

One provision that appears to reserve significant power to local governments is section 9-210 of the Environment article, which addresses one of the procedural prerequisites for the issuance of a permit by the Secretary of the Environment to install, maintain, alter, or extend a re-

65. *Ad + Soil, Inc. v. County Commissioners*, 307 Md. at 310-11, 513 A.2d at 895.

66. *Id.* at 314, 513 A.2d at 896.

67. *Id.* at 314, 513 A.2d at 896-97.

68. *Id.* at 334, 513 A.2d at 907.

69. *Id.* at 328, 513 A.2d at 904.

70. *Id.* at 333, 513 A.2d at 906.

71. *See* MD. ENV'T CODE ANN. §§ 9-513 to -515 (1987).

72. Because section 9-513 of the Environment article pertains to both Baltimore County and Carroll County, and because section 9-515 of that article pertains to both Montgomery County and Prince George's County, neither of these two sections falls within the strict definition of "public local law," i.e., a state law applicable to only one county. *See supra* note 20.

73. MD. ENV'T CODE ANN. § 9-514 (1987).

74. MD. ANN. CODE art. 25A, § 5(X) (1987). Section 9-505 of the Environment article cites article 25A, section 5(X) as the source of a charter county's power to adopt a county plan for the provision of solid waste disposal systems and acceptance facilities. *See* MD. ENV'T CODE ANN. § 9-505(a)(1)(iii) (1987).

75. *See supra* notes 21, 38-39, and accompanying text.

fuse disposal system.⁷⁶ Section 9-210 conditions issuance of such a permit upon compliance with county zoning and land use regulations and upon approval by county governing bodies. Whether a proposed state facility is subject to these conditions has never been judicially determined.⁷⁷ Nevertheless, the inclusion of the state among those entities subject to the permit requirement itself⁷⁸ means that the state is likewise subject to the procedural prerequisites set forth in section 9-210.

Finally, with regard to conflicts between state and county legislation, section 9-502(c) of the Environment article provides that any rule or regulation adopted under the "County Water and Sewerage Plans" subtitle,⁷⁹ "does not limit or supersede any other county, municipal, or State law, rule or regulation that provides greater protection to the public health, safety, or welfare."⁸⁰ By negative implication, the statutory provisions of this subtitle themselves limit or supersede more protective state or local legislation.

The field of nonhazardous solid waste management in Maryland remains decidedly statewide and local in character with minimal federal oversight. This is evidenced by the relative pervasiveness of state programs. The field of hazardous waste management, by contrast, is primarily within the federal domain, which fairly dictates the tenor of equally

76. Section 9-210 (1987) provides:

The Secretary may not issue a permit to install, materially alter, or materially extend a landfill until:

(1) The landfill meets all zoning and land use requirements of the county where the landfill is or is to be located; and

(2) The Department has a written statement that the board of county commissioners of the county council of the county where the landfill is to be located does not oppose the issuance of the permit.

MD. ENV'T CODE ANN. § 9-210 (1987). The term "landfill" refers to a "landfill refuse disposal system." See *id.* § 9-210(d)(3)-(4). For discussion of the definition of this latter term within the meaning of the permit requirement, see *Hart & Miller Islands Area Envtl. Group v. Corps of Engineers*, 505 F. Supp. 732, 738-40 (D. Md. 1980).

77. In *Hart & Miller Islands Area Envtl. Group*, section 9-210 (formerly HEALTH-ENVTL. CODE ANN. § 9-212(a)(4), which was derived from former MD. ANN. CODE art. 43, § 394A) was held inapplicable because the proposed state facility did not constitute a "landfill refuse disposal system." 505 F. Supp. at 738-40 (not addressing the fact that the proposed facility would be state-operated).

78. MD. ENV'T CODE ANN. § 9-204(d) (1987) (permit requirement). Section 9-204(d) provides, "A person shall have a permit issued by the Secretary under this section before the person installs, materially alters, or materially extends a . . . refuse disposal system" (emphasis added). The term "person" includes the federal government, a state, county, municipal corporation, or other political subdivision. *Id.* § 9-201(c).

79. MD. ENV'T CODE ANN. §§ 9-501 to -521 (1987).

80. MD. ENV'T CODE ANN. § 9-502(c) (1987). Section 9-502(c) differs substantively from section 9-515 of the superseded Health-Environmental article, which provided that local or state legislation would not be limited or superseded only "to the extent of its or their greater protection. . . ." MD. HEALTH-ENVTL. CODE ANN. § 9-515 (1982). Conceivably, difficulties with practical application of the former language explain its absence from section 9-502(c) of the Environment article.

comprehensive state regulation and which leaves little room for local control.

IV. REGULATION OF HAZARDOUS WASTE IN MARYLAND

Traditionally, most hazardous waste has been disposed of "on-site," that is, on land owned or leased by the generator.⁸¹ The advent of pervasive regulation, however, has prompted a demand for environmentally safe off-site treatment and disposal facilities, which, in turn, has prompted local opposition to the siting of facilities.⁸² In Maryland, attempts to prohibit by county ordinance the disposal in and transportation through a county of various hazardous wastes not originating in that county have been declared violative of the Commerce Clause.⁸³

A. Local Authority

Local legislation in Maryland virtually has been eclipsed by comprehensive federal and state regulatory schemes. County regulation typically consists of either general requirements of consultation and approval⁸⁴ or limited zoning restrictions concerning the location and area of hazardous waste disposal facilities, such as required distances from residences and from areas prone to moisture or seepage.⁸⁵

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81. Special Report, *Siting of Hazardous Waste Management Facilities: A Major Problem Facing Industry and States*, 12 Env't Rep. (BNA) No. 29, at 872 (November 13, 1981) (estimating that approximately 75% to 90% of hazardous waste is disposed of on-site).
 82. *Id.* at 871. This resistance has been dubbed the "not in my backyard" syndrome. *Id.* See generally Tarlock, *Anywhere But Here: An Introduction to State Control of Hazardous-Waste Facility Location*, 2 UCLA J. ENVTL. L. & POL'Y 1 (1981).
 83. See *Browning-Ferris, Inc. v. Anne Arundel County*, 292 Md. 136, 138-39, 142-43, 438 A.2d 269, 270, 271-72 (1981). Ordinances that prohibit any and all hazardous waste disposal in sanitary landfills are more likely to withstand Commerce Clause scrutiny, because they do not discriminatorily exclude only out-of-state hazardous waste disposal. See ANNE ARUNDEL COUNTY, MD., CODE art. 28, § 12-242(a)(9) (1982) ("The [sanitary landfill] operation shall not accept hazardous waste . . . as fill."); see also CECIL COUNTY, MD., ZONING ORDINANCE § 6.11(C) (1984) ("It is the policy of Cecil County that there shall be no hazardous waste placed in landfills under any circumstances.").
 84. See, e.g., BALTIMORE COUNTY, MD., CODE § 13-48 (1978) ("The disposal of hazardous and special wastes shall be resolved by consultation with, and subject to approval [by], the county health officer."); HARFORD COUNTY, MD., CODE § 109-8(F) ("The collection and disposal of hazardous and special waste shall be the responsibility of the [County] Director of Public Works, except that disposal sites and procedures shall be subject to the approval of the County Health Officer or his designated representative.") (1986); *id.* §§ 146-1 to 146-5 (requiring transporters of hazardous waste, specifically high-level nuclear waste, to notify county officials of transportation of such waste into county).
 85. See, e.g., CECIL COUNTY, MD., ZONING ORDINANCE § 6.11(A)-(B) (1984) (prohibiting hazardous waste re-cycling and incineration facilities within prescribed distances from adjoining property lines and 100-year flood plains). *But see id.* § 6.11(C) (prohibiting deposit of hazardous waste in landfills); FREDERICK COUNTY, MD., CODE § 1-11-32 (1979) (prohibiting deposit of hazardous wastes in

B. State Regulation

On the state level, hazardous waste⁸⁶ is managed in part under the Hazardous Waste Facility Siting Program (the "Program"), which is administered by a Hazardous Waste Facilities Siting Board (the "Board").⁸⁷ The purpose of the Program is to "protect the public health and the environment by ensuring the availability of sites and properly designed facilities to dispose of, reuse, recycle, incinerate, or otherwise render nonhazardous, hazardous waste materials and to eliminate illegal dumping or improper disposal."⁸⁸ The Board is empowered to adopt rules and regulations to implement the Program⁸⁹ and to issue "certificates of public necessity" for the siting of hazardous and low level nuclear waste facilities.⁹⁰

Two provisions of the section governing certificates of public necessity indicate that the section is intended to preempt parallel or conflicting local requirements. First, section 3-705(d)(1) provides that the issuance of such a certificate exempts the site, the facility on the site, and the transportation of hazardous waste to and from the facility from local zoning and other ordinances and local regulations, laws, and policies, as well as from state laws requiring that approval be obtained from political subdivisions.⁹¹ Second, under section 3-705(e), the issuance of such a certificate is not itself subject to municipal or county approval.⁹²

refuse disposal facilities); *id.* § 1-11-38 (imposing civil penalty and mandatory injunction to remove hazardous material from refuse disposal facility site).

86. "Hazardous waste" is defined as "any waste substance or material designated as a hazardous substance pursuant to § 7-208 [sic] of the Environment article." MD. NAT. RES. CODE ANN. § 3-701(e) (Supp. 1987). "Hazardous substance" is defined as "any substance that: (i) [c]onveys toxic, lethal, or other injurious effects or which causes sub-lethal alterations to plant, animal, or aquatic life; (ii) [m]ay be injurious to human beings; or (iii) [p]ersists in the environment." The term includes "any matter identified as a 'hazardous waste' by the Environmental Protection Agency." MD. ENV'T CODE ANN. § 7-201(m) (1987). The Environmental Protection Agency ("EPA") establishes criteria for characterizing a substance as hazardous waste. *See* 40 C.F.R. § 261.3(a)(2) (1987) (general); *id.* § 261.21 (ignitability); *id.* § 261.22 (corrosivity); *id.* § 261.23 (reactivity); *id.* § 261.24 (toxicity). The EPA also provides lists of hazardous waste substances. *See* 40 C.F.R. §§ 261.31-261.33 (1987).

87. MD. NAT. RES. CODE ANN. §§ 3-701 to -713 (1983 & Supp. 1987).

88. MD. NAT. RES. CODE ANN. § 3-702(a)(1) (1983). The same goals are intended to be achieved with respect to low-level nuclear waste. *Id.* Low-level nuclear waste is treated separately by the Board. *See id.* § 3-702(a)(2).

89. *Id.* § 3-704 (1983).

90. *Id.* § 3-705(a)(1) (1983 & Supp. 1987). Facilities used for receipt, transfer, recovery, or disposal of nonhazardous or nonradioactive residential, commercial, or industrial waste are exempted from the requirement of obtaining a certificate. *Id.* § 3-705(a)(2)-(3).

91. *Id.* § 3-705(d)(1) (1983 & Supp. 1987).

92. With respect to both of these subsections, the Court of Appeals of Maryland has construed section 3-705, implicitly referring to subsections (d)(1) and (e), as having "expressly preempt[ed] local legislation on the subject of hazardous waste transportation and disposal if the operator of a disposal site obtains a State-issued Certificate of Public Necessity." *Browning-Ferris, Inc. v. Anne Arundel County*, 292 Md. 136, 153, 438 A.2d 269, 277 (1981).

Section 3-705(e) also requires that any local plan for management of liquid, solid, hazardous, or low-level nuclear waste be consistent with the terms of such certificate. The inclusion of nonhazardous solid waste management in this requirement seems incongruous with the essential purpose of the Program, because the Program is designed to ensure through proper facility siting that hazardous wastes will not endanger the public health.⁹³ Solid waste management is subject to an independent regulatory scheme, the goals of which are not necessarily parallel in all respects to the goals of a hazardous waste program. To require a local solid waste management plan to be consistent with the terms of a certificate of public necessity for a hazardous waste facility is to engraft unreasonable additional requirements onto such a plan.

In contrast to the preemptive language of section 3-705, section 3-710 calls for the preparation of initial and updated inventories of, and programs for using, hazardous waste facility sites throughout the state by the MES "[i]n consultation with the appropriate agencies of . . . local government"⁹⁴ and "[i]n consultation with appropriate . . . local officials and governing bodies."⁹⁵ These requirements suggest that local government may have a hand in state control of hazardous waste facility siting.

Siting of hazardous waste facilities is subject to the permit requirement set forth in section 9-204 of the Environment article of the Maryland Annotated Code.⁹⁶ Section 9-226 of the Environment article provides that the Secretary of the Environment may not issue a permit for any landfill system of refuse disposal for hazardous wastes if the landfill system does not qualify for a certificate of public necessity under section 3-705(d)(2) of the Natural Resources article.⁹⁷ Section 3-705(d)(2) precludes the Board from issuing a certificate of public necessity for the purpose of "extending or expanding" any hazardous waste landfill "in operation" before July 1, 1980 that was permitted under title 7, subtitle 2 of the Environment article⁹⁸ and under section 9-204 of that article.⁹⁹ The terms "extending" and "expanding" as used in section 3-705(d)(2) are defined in section 3-705(d)(3) to include lateral development and material alteration, respectively, of an existing landfill for the purpose of establishing a proposed disposal capacity.¹⁰⁰ Evidently, section 9-226 of

93. See *supra* note 88 and accompanying text.

94. MD. NAT. RES. CODE ANN. § 3-710(a)(1)(i) (Supp. 1987); see also *id.* § 3-710(a)(2)(i) (inventory and program to be updated "in consultation with the appropriate . . . local agencies and local governing bodies").

95. *Id.* § 3-710(a)(1)(i) 3. The MES must also solicit and consider recommendations from the governing body of each subdivision in preparing the inventory and inventory updates. *Id.* § 3-710(a)(1)(ii), (a)(2)(ii). The term "subdivision" includes "the 23 counties or Baltimore City and incorporated municipalities." *Id.* § 3-701(i) (1983).

96. See *supra* notes 63, 78 and accompanying text.

97. MD. ENV'T CODE ANN. § 9-226 (1987).

98. See *infra* notes 102-15 and accompanying text.

99. MD. NAT. RES. CODE ANN. § 3-705(d)(2) (1983 & Supp. 1987).

100. *Id.* § 3-705(d)(3) (1983).

the Environment article applies only to the expansion or extension of existing landfill systems.¹⁰¹ Implicitly, no permit may be issued for installation of a new landfill system of refuse disposal for hazardous wastes.

Hazardous waste management on the state level is also exercised in part pursuant to title 7, subtitle 2 of the Environment article.¹⁰² The Department of the Environment is empowered under this subtitle to issue permits to install, modify, or operate disposal systems¹⁰³ and permits that require construction, modification, extension, or alteration of new or existing disposal systems or treatment works.¹⁰⁴ A facility permit is required for the ownership, establishment, operation, or maintenance of a controlled hazardous substance facility in the state.¹⁰⁵

The Attorney General of Maryland may assess both civil¹⁰⁶ and criminal¹⁰⁷ penalties for violations of the provisions of, and any regulations adopted under, title 7, subtitle 2.¹⁰⁸ Further, the Department of the Environment may obtain injunctive relief against continued violations without the usual prerequisite showing of an inadequate remedy at law.¹⁰⁹ In addition to any other remedies available at law or in equity, the Department may impose, by administrative action, a monetary penalty for any violation of a provision or regulation.¹¹⁰ A showing of actual harm to the environment is not required for assessment of any of the

101. Section 9-226 of the Environment article is derived from former section 9-210(f) of the superseded Health-Environmental article. These two sections are substantively identical, except that former section 9-210(f) of the Health-Environmental article expressly applied to "proposed" landfill systems. Because section 3-705(d)(2) of the Natural Resources article provides for certificates of public necessity only for extension or expansion of *existing* facilities, a "proposed" landfill system could not possibly qualify for such a certificate. For this reason, the term "proposed" was deleted when section 9-226 of the Environment article was adopted. See MD. ENV'T CODE ANN. § 9-226 (1987) (Revisor's Note) (emphasis added).

102. MD. ENV'T CODE ANN. §§ 7-201 to 7-268 (1987) (entitled "Controlled Hazardous Substances"). The purpose of this subtitle is to provide additional remedies to prevent, abate, and control pollution of the waters of the state. *Id.* § 7-203.

103. *Id.* § 7-207(a)(5) (1987).

104. *Id.* § 7-207(a)(2) (1987). The Department is further authorized to adopt rules and regulations to execute the provisions of this subtitle. *Id.* § 7-208(a). The Department is responsible for inspecting controlled hazardous substance facilities. *Id.* § 7-245(a). The Department is also required to publish and update a master list of existing sites at which hazardous substances may be present, as well as proposed sites at which the Department intends to conduct preliminary site assessments. *Id.* § 7-223(a)-(c).

105. *Id.* § 7-232(a) (1987). A "controlled hazardous substance facility" is defined as "a disposal structure, system, or geographic area, designated by the Department for treatment, storage related to treatment or disposal, or disposal of controlled hazardous substances." *Id.* § 7-201(c). Disposal of hazardous substances in any manner other than according to the provisions of this subtitle and in a facility possessing a permit is prohibited. *Id.* § 7-224(a).

106. *Id.* § 7-266(a) (1987).

107. *Id.* §§ 7-265, 7-267.

108. *Id.* § 7-268.

109. *Id.* § 7-263(a),(c).

110. *Id.* § 7-266(b).

foregoing penalties.¹¹¹

Perhaps the most significant aspect of title 7, subtitle 2, is its establishment of a State Hazardous Substance Control Fund or "Superfund."¹¹² The Superfund is used partly to finance removal, restoration, or remedial action by state agents in response to a release or a threatened release of controlled hazardous substances into the environment.¹¹³ All expenditures from the Superfund for environmental cleanup and for other responses or remedial action resulting from this release or threatened release are to be reimbursed by the "responsible person."¹¹⁴ If necessary, the Attorney General will bring suit to recover costs against any responsible person who fails to make reimbursement.¹¹⁵

A noteworthy aspect of this subtitle is its regulation of hazardous substance transportation. Hazardous and low-level nuclear wastes may be transported either from any source in the state or to any facility in the state only if the person so transporting holds a "hauler certificate," the transporting vehicle has been issued a "vehicle certificate," and the driver of such vehicle has been issued a "driver certificate."¹¹⁶ Persons who generate and desire to transport hazardous substances to a facility must comply with a host of additional requirements.¹¹⁷ These requirements do not serve to prevent hazardous substances generated elsewhere from entering the state; such barriers against out-of-state hazardous substances are prohibited under the Commerce Clause.¹¹⁸ Nevertheless, these re-

111. See *American Recovery Co. v. Department of Health & Mental Hygiene*, 306 Md. 12, 506 A.2d 1171 (1986). Although only civil penalties were at issue in *American Recovery Co.*, similar language in the criminal provision renders the court's reasoning applicable to that provision as well.

112. MD. ENV'T CODE ANN. § 7-218 (1987).

113. *Id.* § 7-220(b)(1). The procedures and standards for responding to releases of hazardous substances are set forth in the Hazardous Substance Response Plan ("the Response Plan") published by the Department of the Environment. See *id.* §§ 7-223(d)(1), 7-223(e). The Secretary of the Environment is authorized to act according to the Response Plan to arrange for the removal of hazardous substances upon their release or threat of release, unless the Secretary determines that the owner or operator of the facility from which the release or threat of release emanates, or any other responsible party, will undertake proper and timely removal and remedial action. *Id.* § 7-222(a)(1).

114. *Id.* § 7-221(a). A "responsible person" evidently includes "[t]he owner or operator of the facility [from which the release or threatened release emanated] . . . or . . . any other responsible party." *Id.* § 7-222(a). Furthermore, the use of the term "or" in the phrase "owner or operator" suggests that the owner and the operator of the facility need not be the same person and that both owners and operators may be liable for reimbursement.

115. *Id.* § 7-221(b)(1) (1987).

116. *Id.* § 7-249(a). Special requirements for haulers of low-level nuclear waste are contained in section 7-250.

117. See *id.* § 7-253 (1987). For example, such persons must provide a manifest for each vehicle describing its cargo, possess evidence of all three types of certificates, label the substance transported, and report certain information periodically to the Department. *Id.*

118. See *City of Philadelphia v. New Jersey*, 437 U.S. 617 (1978) (New Jersey statute prohibiting importation of out-of-state solid or liquid waste held violative of Com-

quirements could be characterized collectively as a burden imposed on interstate commerce. Such a burden, if "clearly excessive in relation to the putative local benefits," is subject to invalidation under the Commerce Clause.¹¹⁹ Aside from limitations imposed by the Commerce Clause, a second limitation on the state's power to regulate hazardous waste transportation is the presence of extensive parallel regulation on the federal level.

C. Federal Regulation

1. The Hazardous Materials Transportation Act

Under the Hazardous Materials Transportation Act ("HMTA"),¹²⁰ the Department of Transportation ("DOT") is authorized to promulgate regulations concerning the transportation of¹²¹ and, in particular, the handling of¹²² hazardous materials.¹²³ Pursuant to this enabling legislation, the DOT has issued comprehensive regulations governing interstate transportation of hazardous wastes.¹²⁴

Any state or local requirement that is inconsistent with either the statutory requirements of the HMTA or the DOT regulations adopted thereunder is, with one important exception, expressly preempted.¹²⁵ The exception provides that upon application by an appropriate state agency, the Secretary of Transportation shall determine whether inconsistent state or local requirements (1) afford an equal or greater level of protection to the public than is afforded under the HMTA and (2) do not burden commerce unreasonably.¹²⁶ If the Secretary determines that both criteria are satisfied, then the HMTA does not preempt the inconsistent state or local requirement.

Under this codified preemption analysis procedure, if the Secretary's preliminary inquiry reveals that the state or local requirement is consistent with the federal scheme, then such requirement is not preempted,

merce Clause proscription of protectionist measures that impede interstate commerce).

119. 437 U.S. at 624; *see* *Browning-Ferris, Inc. v. Anne Arundel County*, 292 Md. 136, 143-44, 150, 438 A.2d 269, 272, 276 (1981) (ordinance requiring that all persons intending to transport hazardous wastes through county have on file with county an application and license issued by such county and a manifest detailing nature and quantity of each shipment, that such manifest accompany all hazardous waste shipments through county, and that each vehicle be registered annually and regularly inspected struck down as imposing undue burden on interstate commerce).

120. 49 U.S.C. §§ 1801-1812 (1976 & West Supp. 1988).

121. *Id.* §§ 1804, 1806 (1976).

122. *Id.* § 1805.

123. A "hazardous material" is defined as "a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce." *Id.* § 1802(2).

124. *See, e.g.*, 49 C.F.R. §§ 171.1-.3, 171.15-.16, 172.200-.205, 172.300-.338, 172.400-.407, 172.500-.519, 173.1-.34, 173.325-.1300, 177.800-.870 (1987).

125. 49 U.S.C. § 1811(a) (1976).

126. *Id.* § 1811(b).

i.e., preemption analysis proceeds no further. This result is significant in two respects. First, it means that there is no implied preemption by occupation of the field of hazardous waste transportation. Thus, a court examining a state or local law that has been challenged on preemption grounds should find that Congress did not intend to preempt the field of hazardous waste transportation.

Second, this result means that the Secretary does not examine whether a consistent state or local requirement imposes an unreasonable burden on commerce. Only when such requirement is inconsistent with the federal scheme does the Secretary's examination of the burden imposed on commerce become part of his preemption analysis. A consistent state or local requirement is not necessarily immunized from a Commerce Clause challenge, however. Typically, federal preemption and an unreasonable burden on commerce are independent grounds for invalidating a state or local law.¹²⁷

DOT regulations prescribe two tests by which to determine whether a state or local requirement is inconsistent with the federal scheme.¹²⁸ The Secretary must find either: (1) that compliance with both federal and state or local statutes is impossible,¹²⁹ or (2) that the state or local requirement is an obstacle to the accomplishment and execution of the HMTA and regulations adopted thereunder.¹³⁰ If either test is met, the state or local requirement is deemed to be inconsistent with the federal scheme. The difficulty in applying the second test is an absence of evidence concerning the relative importance Congress has attached to particular Congressional concerns and objectives.¹³¹

2. Hazardous Waste Management Under the RCRA

The RCRA takes an approach to the relationship between federal law and state or local law with respect to hazardous waste¹³² management that is comparable to the HMTA's approach. One of the stated objectives of the RCRA is the establishment of a federal-state partner-

127. In *Browning-Ferris, Inc. v. Anne Arundel County*, 292 Md. 136, 438 A.2d 269 (1981), the local ordinance under review was challenged and invalidated directly on Commerce Clause grounds, and the existence of extensive regulation of hazardous waste transportation under the HMTA was used only to demonstrate that the ordinance was unnecessary. 292 Md. at 149-50, 438 A.2d at 275-76. The court did not address the issue of whether the local ordinance was inconsistent with federal provisions. The doctrine of federal preemption is derived from article VI, clause 2 of the Constitution, whereas the notion of an unreasonable burden on interstate commerce is derived from article I, section 8, clause 3 of the Constitution.

128. Courts generally apply the same two tests. See Comment, *Preemption of Local Laws by the Hazardous Materials Transportation Act*, 53 U. CHI. L. REV. 654, 656-58 (1986) [hereinafter "*HMTA Preemption of Local Laws*"].

129. 49 C.F.R. § 107.209(c)(1) (1987).

130. 49 C.F.R. § 107.209(c)(2) (1987).

131. *HMTA Preemption of Local Laws*, *supra* note 128, at 657-58.

132. "Hazardous waste" is defined under the RCRA as:

a solid waste, or combination of solid wastes, which because of its quan-

ship to execute its purposes.¹³³ The RCRA directs the Administrator of the Environmental Protection Agency (the "Administrator") to promulgate guidelines to assist states in the development of their own hazardous waste programs.¹³⁴ The RCRA also sets forth procedures for the authorization of such programs by the Administrator, contingent upon each program's equivalency to and consistency with the federal program and upon the adequacy of the state program's enforcement of compliance with federal requirements.¹³⁵ Each state is also charged with undertaking a program to maintain an inventory of sites within the state that have been used for hazardous waste storage or disposal.¹³⁶ Finally, states and political subdivisions are prohibited from imposing requirements less stringent than those of the RCRA, but may impose more stringent requirements.¹³⁷ The import of these provisions is that although the federal program is not intended to preempt the field of hazardous waste management by occupation, concurrent state programs are permitted primarily for the purpose of facilitating implementation of the federal program.

The federal program under the RCRA consists of enabling provisions for the promulgation by the Administrator of standards applicable to generators¹³⁸ and transporters¹³⁹ of hazardous waste and to owners and operators of hazardous waste treatment, storage, or disposal facilities.¹⁴⁰ The Administrator is further responsible for instituting regulations requiring owners and operators of existing facilities and those planning to construct new facilities to obtain a permit.¹⁴¹ The Administrator is to promulgate standards applicable to transporters after consul-

tity, concentration, or physical, chemical, or infectious characteristics may —

(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

42 U.S.C. § 6903(5) (1982).

133. 42 U.S.C.A. § 6902(a)(7) (West Supp. 1988). Among those purposes to be fulfilled are the following: (1) assuring that hazardous waste management practices are conducted so as to protect human health and the environment, *id.* § 6902(a)(4); (2) requiring that hazardous waste be properly managed in the first instance so as to reduce the need for future corrective measures, *id.* § 6902(a)(5); and (3) minimizing the generation and land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling and reuse, and treatment, *id.* § 6902(a)(6).

134. 42 U.S.C. § 6926(a) (1982).

135. 42 U.S.C.A. § 6926(b) (West Supp. 1988).

136. 42 U.S.C. § 6933(a) (1982).

137. 42 U.S.C.A. § 6929 (West Supp. 1988).

138. *Id.* § 6922.

139. 42 U.S.C. § 6923 (1982 & West Supp. 1988).

140. 42 U.S.C.A. § 6924 (West Supp. 1988).

141. *Id.* § 6925(a).

tation with the Secretary of Transportation and the states.¹⁴² Such standards are to be consistent with the requirements of, and regulations under, the HMTA.¹⁴³

The RCRA requirements are enforced through several mechanisms. First, the Administrator may issue to violators orders either compelling compliance with RCRA requirements, assessing civil penalties, or both.¹⁴⁴ Alternatively, the Administrator may seek appropriate relief in a civil action against a violator, which relief may include a temporary or permanent injunction.¹⁴⁵ Second, certain knowing conduct in violation of the RCRA may render the violator subject to criminal penalties.¹⁴⁶ Furthermore, private plaintiffs acting as private attorneys general may bring suit seeking injunctive relief or assessment of civil penalties or both, but they may not seek purely private remedies.¹⁴⁷

3. The Toxic Substances Control Act

In addition to the HMTA and the RCRA, a third vehicle for the exercise of federal control over hazardous waste is the Toxic Substances Control Act ("TOSCA").¹⁴⁸ The provisions of TOSCA apply to those who manufacture and process chemical substances and mixtures that present an unreasonable risk of injury to health or the environment.¹⁴⁹ TOSCA authorizes the Administrator to promulgate regulations concerning such substances and mixtures, particularly with regard to their disposal.¹⁵⁰ Regulations governing the manner of disposal are expressly subordinated to conflicting state or local requirements.¹⁵¹

TOSCA preempts parallel state and local legislation, however, in two instances.¹⁵² First, federal testing requirements preempt state or local testing requirements.¹⁵³ Second, a state or local regulation applicable to chemical substances or mixtures and designed to prevent injury to health or the environment may operate concurrently with federal regulations only if the former is identical to the latter, which are adopted pur-

142. 42 U.S.C. § 6923(a) (1982).

143. *Id.* § 6923(b).

144. 42 U.S.C.A. § 6928(a)(1) (West Supp. 1988). An order may include suspension or revocation of a permit. *Id.* § 6928(a)(3). Compliance orders are themselves enforceable through civil penalties and suspension or revocation of permits. *Id.* § 6928(c).

145. *Id.* § 6928(a)(1). Such injunctive relief is not conditional upon a showing of inadequacy of legal remedies and risk of irreparable injury. *Environmental Defense Fund, Inc. v. Lamphier*, 714 F.2d 331, 337-38 (4th Cir. 1983).

146. 42 U.S.C.A. § 6928(d)-(e) (West Supp. 1988).

147. *Lamphier*, 714 F.2d at 337; *see also* 42 U.S.C. § 6972 (1982 & West Supp. 1988) (providing a private cause of action to enforce standards and requirements relating to solid or hazardous waste management).

148. 15 U.S.C. §§ 2601-2654 (1982 & Supp. IV 1986).

149. 15 U.S.C. § 2601(b)(1)-(2) (1982).

150. *See id.* §§ 2605(a)(3), 2605(a)(6)(A).

151. *Id.* § 2605(a)(6)(B).

152. *Id.* § 2617(a)(1).

153. *Id.* § 2617(a)(2)(A).

suant to federal law, or if the former prohibits the use of such substances or mixtures in the state or political subdivision.¹⁵⁴ An exemption from this second instance in which preemption occurs exists for states or political subdivisions that promulgate regulations meeting the following criteria: (1) consistency with federal regulations;¹⁵⁵ (2) provision of a "significantly higher degree" of protection than federal regulations;¹⁵⁶ and (3) no undue burden on interstate commerce.¹⁵⁷ The Administrator is authorized to grant funds to a state for the establishment of a state program designed to facilitate the implementation of TOSCA policies within that state.¹⁵⁸

A significant aspect of TOSCA is the recently enacted amendment adding a subchapter that pertains to the control of asbestos hazards in school buildings.¹⁵⁹ This subchapter contains language authorizing the Administrator to prescribe standards for the transportation and disposal of asbestos-containing waste material to protect human health and the environment.¹⁶⁰ Alternatively, if the Administrator fails to prescribe such standards,¹⁶¹ local educational agencies are directed to provide for the transportation and disposal of asbestos-containing waste material in accordance with a document printed by the Environmental Protection Agency entitled "Asbestos Waste Management Guidance."¹⁶² The subchapter expressly negates preemption of state law¹⁶³ and does not preclude private legal remedies.¹⁶⁴

4. Superfund Legislation

Finally, perhaps the most significant federal enactment relevant to hazardous waste management is the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").¹⁶⁵ CERCLA essentially empowers the federal government¹⁶⁶ to clean up and other-

154. *Id.* § 2617(a)(2)(B). This instance in which preemption shall occur does not apply if the federal regulation is one imposing a requirement described in section 2605(a)(6) (concerning methods of disposal). *Id.*; see also *Potomac Electric Power Co. v. Sachs*, 639 F. Supp. 856, 860-62 (D. Md. 1986).

155. 15 U.S.C. § 2617(b)(1) (1982).

156. 15 U.S.C. § 2617(b)(2)(A) (1982).

157. *Id.* § 2617(b)(2)(B). Note that the three criteria established under section 2617(b) are cumulative, i.e., all three must be met in order for the exemption to apply; cf. 49 U.S.C. § 1811(a)-(b) (1976) (discussed *supra* notes 125-31 and accompanying text).

158. 15 U.S.C. § 2627(a) (1976).

159. 15 U.S.C. §§ 2641-2654 (Supp. IV 1986) (designated "Subchapter II -Asbestos Hazard Emergency Response").

160. *Id.* § 2643(h).

161. *Id.* § 2644(a)(1)(C).

162. *Id.* § 2644(f).

163. *Id.* § 2649(a), (c).

164. *Id.* § 2649(b).

165. 42 U.S.C. §§ 9601-9675 (1982 & West Supp. 1988).

166. Although the federal government is the primary actor under the CERCLA scheme, CERCLA calls for the establishment of a "national contingency plan," that is to be effectuated by federal, state, and local authorities and by interstate and nongovernmental entities. 42 U.S.C. § 9605(a)(4) (1982 & West Supp. 1988). See also MD.

wise respond to releases or substantial threats of release into the environment of pollutants or contaminants that may present imminent and substantial dangers to the public health or welfare.¹⁶⁷ Expenditures for such response costs are financed by a "Superfund,"¹⁶⁸ and such costs are recoverable against persons liable under CERCLA.¹⁶⁹ No CERCLA provision is to be construed as precluding any state from imposing additional liability or requirements concerning the release of hazardous substances within the state,¹⁷⁰ except to the extent that remedies under state law, when coupled with compensation under CERCLA, amount to a double recovery.¹⁷¹

A party need not be both an owner and an operator of a facility to incur liability under CERCLA.¹⁷² In fact, the term "owner" has been construed to encompass a bank that purchased at a foreclosure sale prop-

- ENV'T CODE ANN. § 7-223(d)(2) (1987) (requiring the State Hazardous Substance Response Plan, *supra* note 113, to be consistent with the national contingency plan).
167. 42 U.S.C.A. § 9604(a)(1) (West Supp. 1988); *United States v. Maryland Bank & Trust Co.*, 632 F. Supp. 573, 576 (D. Md. 1986); *see also* 42 U.S.C. § 9606(a) (1982) (authorizing the Attorney General to bring abatement actions); 42 U.S.C.A. § 9659(a) (West Supp. 1988) (authorizing citizens' suits); *id.* § 9623 (authorizing local governments to seek reimbursement from federal government for local responses).
168. 42 U.S.C. § 9611 (1982 & West Supp. 1988). The term "Fund" or "Trust Fund" as used in CERCLA refers to the Hazardous Substance Superfund established under article 26, section 9507 of the United States Code. 26 U.S.C. § 9507 (Supp. IV 1986).
169. 42 U.S.C. § 9607(a) (1982 & West Supp. 1988). The following parties are subject to liability for cleanup costs and other response and remedial costs incurred by a governmental or private entity with respect to a facility from which there is a release or threatened release of hazardous substances: (1) the "owner and operator" of the facility; (2) anyone who owned or operated such facility when hazardous substances were disposed there; (3) anyone owning or possessing hazardous substances and who arranged for their disposal at, or transport to, such facility; and (4) anyone accepting hazardous substances for transport to such facility. 42 U.S.C.A. § 9607(a)(1)-(4) (West Supp. 1988).
170. 42 U.S.C. § 9614(a) (1982).
171. *Id.* § 9614(b). This provision corresponds to section 7-220(b)(1) of the Environment article of the Maryland Annotated Code, which provides for state Superfund financing "to the extent the costs are not reimbursable under the federal act," and with section 7-222(b) of the same article, which provides that the Department of the Environment "in any removal or remedial action under this subtitle may not duplicate removal or remedial actions taken under the federal act." MD. ENV'T CODE ANN. §§ 7-220(b)(1), 7-222(b) (1987).
172. *United States v. Maryland Bank & Trust Co.*, 632 F. Supp. 573, 577 (D. Md. 1986). The source of ambiguity in CERCLA with respect to whether a person must be both owner and operator of a facility in order to incur liability is the language of section 9607(a)(1), which imposes liability on "the owner *and* operator of . . . a facility." 42 U.S.C.A. § 9607(a)(1) (West Supp. 1988) (emphasis added). Arguably, if Congress had meant "the owner *and the* operator," it would have employed such phraseology. Adding to the ambiguity is the language of definitional section 9601(20)(A), which states, "The term 'owner *or* operator' means . . . in the case of an onshore facility . . . any person owning or operating such facility. . . ." 42 U.S.C.A. 9601(20)(A) (West Supp. 1988) (emphasis added). The phrase "owner *and* operator," by negative implication, might have a different meaning from the phrase "owner *or* operator," which is used elsewhere in CERCLA. *See, e.g.*, 42

erty on which hazardous wastes have been dumped.¹⁷³ Whether the term "owner" is intended also to encompass mortgagees who are treated under state law as holding legal title is unsettled.¹⁷⁴ The Congressional intent, however, was to establish a broad focus of liability for cleanup costs under CERCLA.¹⁷⁵

Among the defenses available to a CERCLA defendant, perhaps the most significant in terms of demonstrating this intended broad focus of CERCLA liability is the "third party" defense, whereby the defendant must prove that: (1) the actual or threatened release was caused solely by the act or omission of a third party; (2) the defendant exercised reasonable care with respect to the substance; and (3) the defendant took precautions against foreseeable acts or omissions by such third party.¹⁷⁶ This is an affirmative defense¹⁷⁷ that requires the defendant, who is otherwise strictly liable,¹⁷⁸ to disprove his liability by a preponderance of the evidence once the government has made a prima facie showing that the defendant is within the class of persons subject to liability.¹⁷⁹ The government need not establish the defendant's failure to exercise reasonable care, nor must it establish that the actual or threatened release was caused by an act or omission of the defendant.

Several significant procedural rules govern CERCLA litigation. First, CERCLA provides for joint and several liability unless the defendants meet the burden of establishing a basis for apportionment under principles of federal common law.¹⁸⁰ Second, a three-year statute of limi-

U.S.C.A. §§ 9607(c)(1), (h), 9608(a)(1) (West Supp. 1988) (all using the phrase "owner or operator").

173. See *Maryland Bank & Trust Co.*, 632 F. Supp. at 577-80.

174. As originally enacted, section 9601(20)(A) expressly excluded "a person, who, without participating in the management of a . . . facility, holds indicia of ownership primarily to protect his security interest in the . . . facility" from the definition of "owner or operator." See 42 U.S.C. § 9601(20)(A) (1982). Through this exclusion, Congress intended to protect banks that hold mortgages in jurisdictions governed by the common law of mortgages. *Maryland Bank & Trust Co.*, 632 F. Supp. at 580. The current definition of "owner or operator" contains no such exclusionary language. See 42 U.S.C.A. § 9601(20)(A) (West Supp. 1988).

175. See *Maryland Bank & Trust Co.*, 632 F. Supp. at 578 ("An examination of the legislative history . . . convinces the Court to interpret the language of [the section imposing liability] broadly. . .").

176. 42 U.S.C. § 9607(b)(3) (1982) (discussed in *Maryland Bank & Trust Co.*, 632 F. Supp. at 581).

177. 632 F. Supp. at 581.

178. See *United States v. Dickerson*, 640 F. Supp. 448, 451 (D. Md. 1986).

179. 42 U.S.C. § 9607(b) (1982).

180. *Dickerson*, 640 F. Supp. at 450; see 42 U.S.C.A. § 9613(f) (West Supp. 1988) (setting forth entitlement to, and procedure for, contribution among parties held liable, which suggests that defendants are jointly and severally liable). CERCLA differs in this respect from Maryland's Superfund legislation, which provides that in an action to recover response costs, the state "shall seek recovery against all responsible persons" and "on an apportionment basis in accordance with a person's contribution to the situation or problem, when there is a reasonable basis for determining the contribution of a responsible person." MD. ENV'T CODE ANN. § 7-221(b)(2)(i)-(ii) (1987) (emphasis added).

tations applies to "claims" under CERCLA.¹⁸¹ This three-year limitation, however, does not apply to suits for reimbursement of response costs.¹⁸² Further, when the United States brings suit in its sovereign capacity, the doctrine of laches does not apply.¹⁸³ Third, because suits for reimbursement under CERCLA are deemed to be equitable in nature, no right to a jury trial exists.¹⁸⁴ Fourth, because such reimbursement is characterized as equitable relief, a liability insurer has no duty to defend a CERCLA suit for such relief against the insured where the policy limits the insurer's duty to defend to suits for "damages."¹⁸⁵ Finally, the federal government obtains an automatic lien upon all real property that is subject to or affected by cleanup or remedial action and upon real property that belongs to the person held liable in the CERCLA suit.¹⁸⁶

IV. CONCLUSION

This comment has set forth the principal federal, state, and local statutory provisions that affect nonhazardous solid and hazardous waste management in Maryland and has explored how the provisions imposed by each governmental level interact. The manner in which control of nonhazardous solid waste has developed in the state of Maryland reflects a trend away from local land use measures and toward comprehensive regional and state management with federal funding, approval, and guidelines. Local management of nonhazardous solid waste, however, is still a vital component of the overall regulatory scheme. Conversely, hazardous waste management is systematized chiefly by federal legislation, which is either mimicked or implemented by state legislation. Currently, the most formidable element of the federal hazardous waste regulatory scheme is CERCLA, particularly with respect to its aggressive and far-reaching enforcement provisions.

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181. 42 U.S.C. § 9612(d) (1982).

182. *Dickerson*, 640 F. Supp. at 450-51; *see also* 42 U.S.C.A. § 9613(g)(2) (West Supp. 1988) (providing limitations periods for civil actions under CERCLA for reimbursement of response costs as follows: (1) for remedial action — within six years after initiation of physical on-site construction of such remedial action, and (2) for removal action — within three years after completion of removal, within six years after a presidential determination that continued response action is necessary, or if remedial action is initiated within three years after completion of removal action, under limitations period for remedial action).

183. *Dickerson*, 640 F. Supp. at 451.

184. *Id.* at 453.

185. *Maryland Casualty Co. v. Armco*, 822 F.2d 1348, 1354 (4th Cir. 1987), *aff'g*, 643 F. Supp. 430 (D. Md. 1986).

186. 42 U.S.C.A. § 9607(l)(1) (West Supp. 1988). Such a lien arises either when response costs are incurred or when written notice of potential liability is provided to the person held liable, whichever occurs later. *Id.* § 9607(l)(2). The lien continues until the liability is satisfied or until the statute of limitations has run. *Id.*