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WEST VIRGINIA DEPARTMENT OF HIGHWAYS

1900 Washington Street, East
Charleston, West Virginia
25305

SECRETARY OF STATE

WILLIAM S. RITCHIE, JR.
COMMISSIONER

ARCH A. MOORE, JR.
GOVERNOR

December 22, 1986

NOTICE OF PUBLIC HEARING AND COMMENT PERIOD ON PROPOSED RULE

AGENCY: West Virginia Department of Highways

RULE TYPE: Legislative

RULE TITLE: Transportation of Hazardous Wastes by Highway Mode,
Series VII

A PUBLIC HEARING ON THE ABOVE PROPOSED RULE WILL BE HELD AT 10:00 a.m.
ON February 4, 1987 AT Building 5, Room A-134, 1900 Washington Street,
East, Charleston, WV 25305

COMMENTS ARE LIMITED TO: ORAL WRITTEN BOTH XX

COMMENTS MAY ALSO BE MAILED TO: Mr. James E. Youngblood,
West Virginia Department of Highways, Room 307,
1900 Washington St., E. 25305

THE DEPARTMENT REQUESTS THAT PERSONS WISHING TO MAKE COMMENTS AT THE
HEARING MAKE AN EFFORT TO SUBMIT WRITTEN COMMENTS IN ORDER TO FACILITATE
A REVIEW OF THESE COMMENTS.

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.

W. S. Ritchie, Jr., Commissioner
West Virginia Department of Highways



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SECRET
OFFICE OF THE STATE

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WILLIAM S. RITCHIE, JR.
COMMISSIONER

December 22, 1986

Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Re: Legislative Rules
Highways Commissioner
Public Hearing/
Comment Period
Series VII

Dear Secretary Hechler:

The attached Notice of Public Hearing on Proposed Rule and Notice of Comment Period on Proposed Rule are being submitted for the Emergency rules filed by the Department of Highways on December 22, 1986. These rules were filed in order to comply with the Code of Federal Regulations, 40 CFR, Parts 261 thru 263 and 49 CFR, Parts 171 thru 173, 177 thru 179 and 390 thru 397. The cited Federal Regulations were published in the March 24, 1986 and November 21, 1986 "Federal Register", respectively.

Sincerely yours,

W. S. Ritchie, Jr.
Commissioner

WSR:Cj
Attachment

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FILING OF LEGISLATIVE RULES

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BY THE

SECRETARY OF STATE

DEPARTMENT OF HIGHWAYS

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WEST VIRGINIA LEGISLATIVE RULES
COMMISSIONER OF HIGHWAYS

CHAPTER 20-5E

SERIES VII

Title: Transportation of Hazardous Wastes by Highway
Transporters
Transportation of Hazardous Wastes by Highway Mode

Section 1. General

1.01. Scope. -- These legislative rules and regulations apply to all persons transporting hazardous waste by vehicle upon the roads and highways of this State if the transportation requires a manifest under Section 6 of the regulations of the Department of Natural Resources implementing the State Hazardous Waste Management Act or if the transportation requires a manifest under the provisions of 40 CFR Part 262 and 263. These legislative rules and regulations apply to all persons offering and/or transporting hazardous waste by highway mode upon the roads and highways of this state. These rules and regulations do not apply to on-site movements of hazardous waste by generators or by owners and/or operators of hazardous waste facilities that have been issued permits under the appropriate State or Federal law.

1.02. Authority. -- These legislative rules and regulations are promulgated by the West Virginia Department of Highways pursuant to the authority of West Virginia Code §20-5E-7(a) (Hazardous Waste Management Act of 1981). They are to be administered by the Highway Services Division, 1900 Washington Street, East, Charleston, West Virginia 25305; Telephone (304) 348-3338.

1.03. Filing Date. -- December 22, 1986

1.04. Effective Date. -- January 1, 1987

1.05. Enforcement. -- The Commissioner of Highways delegates the enforcement authority granted to him in the Hazardous Waste Management Act to the Highway Services Division as identified in the above section.

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Series VII, Sec. 1.6

1.6 Incorporation by Reference. -- Whenever federal statutes or regulations or state statutes or regulations are incorporated into these regulations, the reference is to the statute or regulation in effect on the date of enactment of the legislation authorizing these regulations.

Section 2. Definitions

2.01. Terms. -- Other than those terms defined in the following section, the terms used in these regulations shall have the same meaning ascribed to them in the regulations promulgated by the Director of the Department of Natural Resources pursuant to the State Hazardous Waste Management Act.

(1) "Highway/Transporter" -- means any transporter of hazardous waste by vehicle upon the roads and highways of the State of West Virginia.

(1) "Audit" - examination by a West Virginia Department of Highways representative working in his official capacity of the uniform hazardous waste manifests and containers as they relate to hazardous waste transportation by shippers and/or transporters.

(2) "Vehicle" -- includes a vehicle/machine/tractor/trailer or semitrailer or any combination thereof propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property. It does not include a vehicle/locomotive or car operated exclusively on a rail or rails or a trolley bus operated by electric power derived from a fixed overhead wire furnishing local passenger transportation similar to street railway service.

(2) "Authorized" - any person and/or transport vehicle that has received an EPA Identification Number from the U.S. Environmental Protection Agency will have authority to transport or offer hazardous waste for transportation by highway mode upon the roads and highways of the state of West Virginia.

(3) "C.F.R." - Code of Federal Regulations incorporated into these rules and regulations by reference.

(4) "EPA Identification Number" - a twelve digit identification number issued by the U.S. Environmental

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Series VII, Sec. 2.1

Protection Agency that grants permission (authorized) to generate, treat, store, dispose, or transport hazardous waste.

{B} "Manifest" - means the shipping document EPA form 8700/22 and if necessary EPA form 8700/22A, originated and signed by the generator in accordance with the instructions included in the Appendix to 40 CFR Part 262.

(5) "Generator" - any person by site, whose act or process produces hazardous waste identified or listed in Section 3 of the West Virginia Department of Natural Resources Administrative Rules and Regulations implementing the West Virginia Hazardous Waste Management Act, and the U.S. Environmental Protection Agency Code of Federal Regulations Title 40, Section 261.

{B} "Manifest Document Number" - means the U.S. EPA twelve digit identification number assigned to the generator plus a unique five digit document number assigned to the Manifest by the generator for recording and reporting purposes.

{B} (6) "Hazardous Waste" - means a waste or combination of wastes, which because of its quantity, 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, disposed of or otherwise managed.

{A} (7) "Hazardous Waste Management" - means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.

(8) "Highway Mode" - any method of offering and/or transporting hazardous waste by transport vehicle upon the roads and highways of this state.

{Y} (9) "Highway Transporter" - any person transporting hazardous waste, or authorized to transport hazardous waste upon the roads and highways of the State of West Virginia.

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~~(7)~~ (10) "Person" - means any individual, trust, firm, joint stock company, public, private or government corporation, partnership, association, state or federal agency, the United States government, this State or any other state, municipality, county commission or any other political subdivision of a state or any interstate body.

(11) "Shipper" - any person preparing, transporting, and/or offering hazardous waste for off-site management by highway mode.

(12) "Transport Vehicle" - includes an automobile, van, tractor, trailer or semitrailer, portable tank, cargo tank, or any combination thereof, propelled or drawn by mechanical power and used upon the roads and highways for the transportation of hazardous waste or authorized to transport hazardous waste.

(13) "Transporter" - any person accepting hazardous waste by highway vehicle and transported on the roads and highways of this state.

~~(8)~~ (14) "Treatment" - means any method, technique or process including neutralization, designed to change the physical, chemical or biological character of composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amendable to recovery, amendable to storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(15) "Uniform Hazardous Waste Manifest" - the shipping document EPA form 8700-22 and, if necessary, EPA form 8700-22A, originated and signed by the generator in accordance with the instructions included in the Appendix to 40 C.F.R. Part 262.20(a).

(16) "Vehicle Inspection" - inspection by a Department of Highways representative working in his official capacity, including inspection of the uniform hazardous waste manifest, driver requirements, vehicle safety requirements, and/or cargo packaging requirements.

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Leg. Rule, 20-5E
Series VII, Sec. 3.

Section 3. Manifest System
Uniform Hazardous Waste Manifest System

3.01. General Requirements. --

(1) A generator or transporter who offers or transports hazardous waste for off-site treatment, storage, or disposal must prepare a Manifest OMB control number 2000-0404 on EPA form 8700-22, and, if necessary, EPA form 8700-22A in accordance with either section 6 of the regulations of the Department of Natural Resources implementing the State Hazardous Waste Management Act or 40 CFR Part 261, 262, and 263, as amended effective September 20, 1984.

(1) A shipper or transporter who offers or transports hazardous waste for off-site treatment, storage, or disposal must prepare a Manifest OMB control number 2000-0404 on EPA form 8700-22, and EPA form 8700-22A in accordance with Sections 3, 6 and 10 of the regulations of the Department of Natural Resources implementing the State Hazardous Waste Management Act or 40 CFR Part 261, 262, and 263, as amended.

(2) Before transporting the hazardous waste, the highway transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The highway transporter must return a signed copy to the generator before leaving the generator's property.

(3) The highway transporter must ensure that the manifest accompanies the hazardous waste.

(4) Before accepting hazardous waste from a rail transporter, a highway transporter must sign and date the manifest and provide a copy to the rail transporter.

3.02. Number and Delivery of Copies. -- A highway transporter who delivers a hazardous waste to another transporter or to the designated facility must:

(1) Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and,

(2) Retain one copy of the manifest in accordance with Section 4; and,

(3) Give the remaining copies of the manifest to the accepting transporter or designated facility.

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Leg. Rule, 20-5E
Series VII, Sec. 3.3

3.03. Transporting Waste from Small Quantity

Generators. -- Transporters who only accept hazardous waste from generators who produce between 100/kg and 1000/kg per month are only subject to the following regulations unless they are transporting acutely hazardous waste as regulated in 311A/e of the West Virginia Department of Natural Resources Hazardous Waste Regulations:

These regulations do not apply to hazardous waste produced by generators of greater than 100 kg. but less than 1000 kg. in a calendar month where:

(1) Transporters shall not accept hazardous waste from small quantity generators unless the initial transporter is provided with a Uniform Hazardous Waste Manifest that must accompany the shipment. The information on the manifest must include:

The waste is reclaimed under a contractual agreement pursuant to which:

(a) The generator's name, address, and signature;

The type of waste and frequency of shipments are specified in the agreement;

(b) The name and address of the facility designated to receive the hazardous waste;

The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

(c) The DOT description of the waste, including the proper shipping name, hazard classification, and the UNW or WMA identification number;

(d) The number and type of containers;

(e) The total quantity of hazardous waste being transported;

(2) Each container will be properly marked, labeled, and meet all DOT specifications;

The generator maintains a copy of the reclamation agreement in his files for a period of at least

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Series VII, Sec. 3.3

three years after termination or expiration of the agreement.

(B) Comply with Section 4 of these regulations with reference to recordkeeping requirements.

(A) Comply with Section 5 of these regulations with reference to transportation requirements.

(B) Comply with Section 6 of these regulations with reference to discharge of hazardous waste.

3.04. Transfers to Foreign Consignees - Required Information. -- Transporters who transport hazardous wastes out of the United States must:

(1) Indicate on the manifest the date the hazardous waste left the United States, and,

(2) Sign the manifest and retain one copy in accordance with Section 4; and,

(3) Return a signed copy of the manifest to the generator.

3.05. Destination. --

(1) The highway transporter must deliver the entire quantity of hazardous waste which he has accepted from a generator or a transporter to:

(a) The designated facility listed on the manifest; or,

(b) The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or,

(c) The next designated transporter; or,

(d) The place outside the United States designated by the generator.

(2) If the hazardous waste cannot be delivered in accordance with paragraph (a) of this section, the highway transporter must contact the generator for further direction and must revise the manifest according to the generator's instructions.

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Leg. Rule, 20-5E
Series VII, Sec. 4.

Section 4. Recordkeeping

4.01. Record Retention - General Requirements. -- A highway transporter of hazardous waste must keep a copy of the manifest signed by the generator, himself, and the next designated transporter or the owner or the operator of the designated facility for a period of three years from the date the hazardous waste was accepted by the initial transporter.

4.02. Record Retention - Foreign Shipments - Requirements. -- A transporter who transports hazardous waste out of the United States must keep a copy of the manifest indicating that the hazardous waste left the United States for a period of three years from the date the hazardous waste was accepted by the initial transporter.

4.03. Automatic Periods of Retention. -- The periods of retention referred to in this Section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator and/or the West Virginia Department of Highways.

Section 5. Transportation
Transporter/Shipper

5.01. Regulations. -- No highway transporter may transport a hazardous waste in this state except in accordance with the requirements of these regulations, the Department of Natural Resources regulations implementing the Hazardous Waste Management Act and all applicable regulations of the Department of Transportation as set forth in 49 CFR Parts 171-179 and 49 CFR Parts 390-397 as amended through September 20, 1984.

No shipper will transport or offer and no transporter will accept hazardous waste in this state except in accordance with the requirements of these regulations, the Department of Natural Resources regulations implementing the Hazardous Waste Management Act, all applicable regulations of the Federal Environment Protection Agency 40 C.F.R. 261, 262, 263, and the Federal Highway Administration Department of Transportation as set forth in 49 C.F.R. Parts 171 through 173, 177 through 179 and 49 C.F.R. 390 through 397 as amended.

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Leg. Rule, 20-5E
Series VII, Sec. 5.2

5.02. Compliance With Federal Hazardous Waste Regulations ///A/Transporter of Hazardous Waste must also comply with 40 CFR Part 262 and 263 as amended through September 20, 1984, standards applicable to generators of hazardous waste //if/they/

5.2 Out of Service. -- Every highway transporter or authorized hazardous waste transporter operating upon the roads and highways of this state must be in compliance with all applicable rules and regulations enforced by the West Virginia Department of Highways. If any of these Rules and Regulations are in violation by a highway transporter, the Department of Highways representative working in his official capacity may deem the driver, vehicle and cargo out-of-service until all said violations are corrected and the driver, vehicle and/or cargo are deemed to be in compliance prior to permitting the vehicle to continue its journey.

(1) //Transporters Hazardous Waste into the United States from abroad //or/

(2) //Mixed Hazardous Wastes of different Department of Transportation shipping descriptions by placing them into a single container/

5.03. Identification Number Required. -- U.S. EPA Identification Number Required. -- A transporter must not transport hazardous wastes without having received an Environmental Protection Agency identification number from the Administrator/, if required by the West Virginia Department of Natural Resources implementing the Hazardous Waste Management Act and/or the U. S. Environmental Protection Agency.

5.04. Identification Number Application Procedure /// U.S. EPA Identification Number Application - Procedure. -- A transporter who has not received an Environmental Protection Agency identification number may obtain one by applying to the Administrator using EPA Form 8700-12. Upon receiving the request, the Administrator will assign an EPA identification number to the transporter.

Section 6. Discharges

6.01. Immediate Procedures. -- In the event of a discharge of hazardous waste during transportation, the highway transporter must take appropriate immediate action to protect

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Leg. Rule, 20-5E
Series VII, Sec. 6.1

human health and the environment (e.g., notify local authorities, dike the discharge area).

6.02. Removal of Waste - Emergency Measures. -- If a discharge of hazardous waste occurs during transportation and an official (state, local government, or Federal agency) acting within the scope of his official responsibilities determines that immediate removal of the waste is necessary to protect human health or the environment, that official may authorize the removal of the waste by transporters who do not have EPA identification numbers and without the preparation of a manifest.

6.03. Required Notices. -- A highway transporter who has discharged hazardous waste must give notice to:

- (1) The West Virginia Department of Highways
1900 Washington Street, East
Charleston, West Virginia 25305
Telephone: (304) 348-3028; twenty-four
hours a day;
- (2) The West Virginia Department of
Natural Resources
Division of Water Resources
Division of Waste Management
1021 Greenbrier Street
1260 Greenbrier Street
Charleston, West Virginia 25311
- (3) The National Response Center
1-800-424-8802 or (202) 426-2675, but only
if:
 - (a) A person is killed; or,
 - (b) A person receives injuries requiring
hospitalization; or,
 - (c) Total property damage from the spill
exceeds \$50,000; or,
 - (d) The discharge involves radioactive
waste and/or materials; or,
 - (e) The discharge involves shipment of
etiologic agents; or,

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Leg. Rule, 20-5E
Series VII, Sec. 6.3

- (f) The situation, in the judgment of the carrier, should be reported.
- (4) The notice shall contain the following information:
 - (a) Name of reporter;
 - (b) Name and address of carrier;
 - (c) Phone number where reporter can be reached;
 - (d) Date, time and location of spill;
 - (e) Extent of injuries, if any;
 - (f) Type and quantity of hazardous waste involved, if any;
 - (g) Description of incident and whether a continuing danger to life exists at the scene.

6.04. Written Report. --

(1) Within fifteen (15) calendar days of the date of discovery of the discharge of any quantity of hazardous waste, the highway transporter shall file a written report, as specified in 49 CFR 171.16, as amended ~~through September 20, 1984~~, with the West Virginia Department of Highways, the West Virginia Department of Natural Resources, ~~Division of Water Resources~~, and the United States Department of Transportation.

- information:
- (2) The report shall contain the following information:
 - (a) All information required by Section 6.03(d);
 - (b) The location of the discharge in relation to surface water, public water supplies, groundwater, wildlife inhabitants, and agricultural production;

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Leg. Rule, 20-5E
Series VII, Sec. 6.4

- (c) The quantity and description of the hazardous waste removed and the disposition of that material;
- (d) The disposition, quantity and description of the unremoved hazardous waste;
- (e) A copy of the hazardous waste manifest shall be attached to the report.

6.05. Clean Up. -- A highway transporter shall clean up any hazardous waste discharge that occurs during transportation or take such action as may be required or approved by Federal, State or local officials so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

6.06. Obligation. -- Nothing in this section shall relieve a highway transporter of the obligation of complying with applicable Special Regulations contained in Series II, Chapter 3, Section 1 of the Administrative Regulations of the Water Resources Board.