



WEST VIRGINIA DEPARTMENT OF HIGHWAYS

1900 Washington Street, East
Charleston, West Virginia
25305

ARCH A. MOORE, JR.
GOVERNOR

WILLIAM S. RITCHIE, JR.
COMMISSIONER

February 25, 1987

NOTICE OF AGENCY APPROVAL

LEGISLATIVE RULE: Transportation of Hazardous Wastes Upon the
Roads and Highways, Series VII

The attached legislative rule constitutes the official rule approved by
the WEST VIRGINIA DEPARTMENT OF HIGHWAYS
on the 25th. day of February, 1987 and filed pursuant to
law with the West Virginia Secretary of State and the Legislative Rule-
Making Review Committee.

W. S. Ritchie, Jr. Commissioner

FILED
FEB 25 1987
MORNING

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series VII, Transportation of Hazardous Wastes Upon the
Roads and High

Type of Rule: X Legislative Interpretive Procedural

Agency Department of Highways Address 1900 Washington Street, East.
Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Personal Services			79784.91	85000.00	--
Current Expense			11584.00	15000.00	--
Repairs & Alterations			N/A	N/A	--
Equipment			3500.00	4500.00	--
Other			--	--	--
Estimated Total Cost			94868.91	104500.00	--

2. Explanation of above estimates:

This exhibits the budget submitted to the West Virginia Department of Natural Resources. The Department of Highways receives 75% of the funding it needs to administer the Transportation Section of the Hazardous Waste Management Act from the EPA.

3. Objectives of this rule:

This emergency rule permits compliance with current revisions to 40 CFR Parts 262 thru 263 and 49 CFR, Parts 171 thru 173, 177 thru 179 and 390 thru 397. These regulations were published in the March 24, 1986 and November 21, 1986 "Federal Register", respectively. These requirements will aid in the safe transportation of these wastes upon the roads and highways of this state.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There will be no foreseeable increase to the budget as submitted for the enforcement of the program.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

There will be no foreseeable economic impact.

C. Economic Impact on Citizens/Public at Large.

N/A

Date February 25, 1987



W. S. Ritchie, Jr., Commissioner

FILING OF LEGISLATIVE RULES

BY THE

DEPARTMENT OF HIGHWAYS

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SERIES VII

FILED
MAY 25 1973
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
Mode
Transportation of Hazardous Wastes Upon the Roads and
Highways

Section 1 General

1.1 Scope. -- These legislative rules and regulations apply to all persons offering and/or transporting hazardous waste by Highway/Mode 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 Hazardous Waste Management Act. (West Virginia Administrative Regulations, Department of Natural Resources, Series 35.) // 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.

1.2 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.

1.3 Filing Date. -- May 1, 1987

1.4 Effective Date. -- May 1, 1987

1.5 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.

EMERGENCY

Department of Highways
Leg. Rule, 20-5E
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

2.1 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} Y ADDITIONAL 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} 2.1.1 "Authorized" - any person and/or transport vehicle THAT WHO has received an EPA Identification Number from the U.S. Environmental Protection Agency WILL HAVE AUTHORITY WHICH ENABLES THAT PERSON TO transport or offer hazardous waste for transportation by highway mode vehicle upon the roads and highways of the state of West Virginia.

{3} 2.1.2 "C.F.R." - means Code of Federal Regulations. INCORPORATED INTO THESE RULES AND REGULATIONS BY REFERENCE.

{4} Y EPA IDENTIFICATION NUMBER // A TWELVE digit identification number issued by the U.S. Environmental Protection Agency THAT GRANTS PERMISSION (AUTHORIZED) TO generate, treat, store, dispose, or transport hazardous waste.

{5} Y GENERALORY // 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.

EMERGENCY

Department of Highways
Leg. Rule, 20-5E
Series VII, Sec. 2.1.3

(6) Hazardous Waste - 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.

(7) 2.1.3 "Hazardous Waste Management" - 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.

(9) 2.1.4 "Highway Transporter" - any person transporting hazardous waste, or authorized to transport hazardous waste upon the roads and highways of the state of West Virginia, a person engaged or authorized to engage in off-site transportation of hazardous waste by road and highway.

2.1.5 "Offer" - that moment when the shipper (generator) certifies the uniform hazardous waste manifest.

(10) 2.1.6 "Person" - 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) 2.1.7 "Shipper" - any person preparing, transporting, and/or offering hazardous waste for off-site management by highway mode transporter.

(12) 2.1.8 "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.

EMERGENCY

Department of Highways
Leg. Rule, 20-5E
Series VII, Sec. 2.1.9

(13) 2.1.9 "Transporter" - any person accepting hazardous waste by highway/vehicle and transported for transportation on the roads and highways of this state.

(14) "Treatment" // any method // technique // or process // including neutralization // designed to change the physical // chemical // or biological character // or 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) 2.1.10 "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) 2.1.11 "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.

Section 3 Uniform Hazardous Waste Manifest System

3.1 General Requirements. --

(1) 3.1.1 A shipper or transporter Any person who offers or transports hazardous waste for off-site treatment, storage, or disposal must prepare a Manifest OMB control number ~~2000-0404~~ 2050-0039 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) 3.1.2 Before transporting the hazardous waste, the highway transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the shipper (generator). The highway transporter must return a signed copy to the generator before leaving the generator's property.

EMERGENCY

Department of Highways
Leg. Rule, 20-5E
Series VII, Sec. 3.1.3

(3) 3.1.3 The highway transporter must ensure that the manifest accompanies the hazardous waste.

(4) 3.1.4 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.

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

(1) 3.2.1 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) 3.2.2 Retain one copy of the manifest in accordance with Section 4; and,

(3) 3.2.3 Give the remaining copies of the manifest to the accepting transporter or designated facility.

3.3. Transporting Waste from Small Quantity Generators. -- 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:

A transporter transporting hazardous waste from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month need not comply with the requirements of this section or those of 263.22 provided that:

(1) 3.3.1 The waste is reclaimed under a contractual agreement pursuant to which:

The waste is being transported pursuant to a reclamation agreement as provided for in 262.20(e);

(2) 3.3.2 The type of waste and frequency of shipments are specified in the agreement;

The transporter records, on a log or shipping paper, the following information for each shipment:

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Department of Highways
Leg. Rule, 20-5E
Series VII, Sec. 3.3.3

(1) 3.3.3 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 claimer of the waste and

The name, address, and U.S. EPA identification Number of the generator of the waste;

(2) 3.3.4 The generator maintains a copy of the reclamation agreement in his files for a period of at least three years after termination or expiration of the agreement.

The quantity of waste accepted;

3.3.5 All DOT required shipping information;

3.3.6 The date the waste is accepted; and

3.3.7 The transporter carries this record when transporting waste to the reclamation facility; and

3.3.8 The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

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

(1) 3.4.1 Indicate on the manifest the date the hazardous waste left the United States, and,

(2) 3.4.2 Sign the manifest and retain one copy in accordance with Section 4; and,

(3) 3.4.3 Return a signed copy of the manifest to the generator.

3.5 Destination. --

(1) 3.5.1 The highway transporter must deliver the entire quantity of hazardous waste which he has accepted from a generator or a transporter to:

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

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Department of Highways
Leg. Rule, 20-5E
Series VII, Sec. 3.5.1.b

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

3.5.1.(c) The next designated transporter; or,

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

~~(2)~~ 3.5.2 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.

Section 4 Recordkeeping

4.1 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.

4.2 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.

4.3 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 Transporter/Shipper Transportation Requirements

5.1 Regulations. -- No ~~shipper~~ person 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.

EMERGENCY

Department of Highways
Leg. Rule, 20-5E
Series VII, Sec. 5.1

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.

5.2 Out of Service. -- Every Highway/Transporter hazardous waste 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 conducting vehicle inspections 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.

5.3 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.

5.4 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

6.1 Immediate Procedures. -- In the event of a discharge of hazardous waste during transportation, the highway transporter must take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge area).

6.2 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

EMERGENCY

Department of Highways
Leg. Rule, 20-5E
Series VII, Sec. 6.2

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.

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

- (1) 6.3.1 The West Virginia Department of Highways
1900 Washington Street, East
Charleston, West Virginia 25305
Telephone: (304) 348-3028;
twenty-four hours a day;
- (2) 6.3.2 The West Virginia Department of Natural Resources
Division of Waste Management
1260 Greenbrier Street
Charleston, West Virginia 25311
- (3) 6.3.3 The National Response Center
1-800-424-8802 or (202) 426-2675,
but only if:
 - 6.3.3.(a) A person is killed; or,
 - 6.3.3.(b) A person receives injuries requiring hospitalization; or,
 - 6.3.3.(c) Total property damage from the spill exceeds \$50,000; or,
 - 6.3.3.(d) The discharge involves radioactive waste and/or materials; or,
 - 6.3.3.(e) The discharge involves shipment of etiologic agents; or,
 - 6.3.3.(f) The situation, in the judgment of the carrier, should be reported.

EMERGENCY

Department of Highways
Leg. Rule, 20-5E
Series VII, Sec. 6.3.4

- (1) 6.3.4 The notice shall contain the following information:
- 6.3.4.(a) Name of reporter;
 - 6.3.4.(b) Name and address of carrier;
 - 6.3.4.(c) Phone number where reporter can be reached;
 - 6.3.4.(d) Date, time and location of spill;
 - 6.3.4.(e) Extent of injuries, if any;
 - 6.3.4.(f) Type and quantity of hazardous waste involved, if any;
 - 6.3.4.(g) Description of incident and whether a continuing danger to life exists at the scene.

6.4 Written Report. --

(1) 6.4.1 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, with the West Virginia Department of Highways, the West Virginia Department of Natural Resources, and the United States Department of Transportation.

(2) 6.4.2 The report shall contain the following information:

- 6.4.2.(a) All information required by Section 6.3(d);
- 6.4.2.(b) The location of the discharge in relation to surface water, public water supplies, groundwater, wildlife inhabitants, and agricultural production;

EMERGENCY

Department of Highways
Leg. Rule, 20-5E
Series VII, Sec. 6.4.2.c

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

6.5 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.

6.6 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.



WEST VIRGINIA DEPARTMENT OF HIGHWAYS

1900 Washington Street, East
Charleston, West Virginia
25305

ARCH A. MOORE, JR.
GOVERNOR

WILLIAM S. RITCHIE, JR.
COMMISSIONER

February 25, 1987

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

Re: Legislative Rules, Series VII
Department of Highways Commissioner
Filing of Agency Approved Rule
Transportation of Hazardous Wastes
Upon the Roads and Highways


Dear Secretary Hechler:

The following information is presented to inform you of the results of the associated Public Hearing of February 4, 1987. This public hearing was conducted by the Department of Highways (attendance list attached) with only one set of comments submitted. A copy of the comments is attached.

Of the fourteen comments submitted, five comments addressed duplicative regulations with the Department of Natural Resources and five comments recommended revising the definitions of "authorized", "C.F.R.", "hazardous waste", "highway transporter", and "shipper". The remaining four comments identified one definition "vehicle inspection" that was considered unnecessary, two comments identified provisions that the Department's legal authority was questioned and one comment addressed an inconsistency with the Secretary of State's prescribed format.

All comments were thoroughly reviewed and found to be of substance; therefore, each has been addressed in this submission of the subject legislative rules.

Sincerely yours,


W. S. Ritchie, Jr.
Commissioner

WSR:Cj
Attachment

PUBLIC HEARING

FEBRUARY 4, 1987, 10:00 a.m.

EMERGENCY RULES

Transportation of Hazardous Wastes by Highway Mode,
West Virginia Department of Highways

Public Hearing Moderator Mr. Mal Brennan

Dept. of Highways: Mr. James Youngblood

ATTENDEES

Mr. Ron Shipley WV Department of Natural Resources

Mr. Jeff Herold WV Department of Natural Resources

Mr. Reilly Sane WV Department of Natural Resources

Mr. Bob Foster Union Carbide Corp.



WEST VIRGINIA DEPARTMENT OF HIGHWAYS

1900 Washington Street, East
Charleston, West Virginia
25305

ARCH A. MOORE, JR.
GOVERNOR

WILLIAM S. RITCHIE, JR.
COMMISSIONER

February 20, 1987

Mr. Robert G. Worden, President
West Virginia Manufacturers Association
405 Capitol Street, #414
Charleston, West Virginia 25301

Dear Mr. Worden:

We want to thank you for the comments you submitted concerning the West Virginia Department of Highways proposed legislative rules. Your comments were very beneficial and were reviewed by both the Department of Highways and Ron Shipley, who is in charge of regulatory affairs for the Department of Natural Resources. We have adopted many of your comments.

We have enclosed a copy of the legislative rules. We sincerely hope that we can continue to work together in order to satisfy our goals. Again, we would like to thank you and the Association.

Very truly yours,

W. S. Ritchie, Jr.
Commissioner

By: 
J. Craig Rothwell
Deputy Commissioner

JCR:Lw

Enclosure



WEST VIRGINIA

MANUFACTURERS ASSOCIATION

SUITE 414
405 CAPITOL STREET
CHARLESTON, WV 25301
TELEPHONE (304) 342-2123

COMMENTS OF THE WEST VIRGINIA MANUFACTURERS ASSOCIATION
ON PROPOSED LEGISLATIVE RULES OF
THE WEST VIRGINIA DEPARTMENT OF HIGHWAYS, SERIES VII,
TRANSPORTATION OF HAZARDOUS WASTES BY HIGHWAY MODE

Prepared By

ENVIRONMENTAL CONTROL COMMITTEE OF THE
WEST VIRGINIA MANUFACTURERS ASSOCIATION

and

ROBINSON & McELWEE

Submitted

February 4, 1987

COMMENTS OF THE WEST VIRGINIA MANUFACTURERS ASSOCIATION
ON PROPOSED LEGISLATIVE RULES OF THE
THE DEPARTMENT OF HIGHWAYS, SERIES VII,
TRANSPORTATION OF HAZARDOUS WASTES BY HIGHWAY MODE

On December 22, 1986, the West Virginia Department of Highways (WVDOH) filed with the Secretary of State proposed legislative rules regarding the "Transportation of Hazardous Wastes by Highway Mode," Series VII. These rules were proposed pursuant to the rulemaking authority granted to the WVDOH under the West Virginia Hazardous Waste Management Act, W. Va. Code §20-5E-1 et seq. (1985 Repl. Vol.) ("the State Act"). The notice of public hearing and comment period on these proposed rules requested written comments in order to facilitate review. In response to this request, the West Virginia Manufacturers Association ("WVMA") files these comments on the proposed legislative rules of the WVDOH.

The West Virginia Manufacturers Association, comprised of approximately 215 members, has historically taken an active and supportive role in the development of the West Virginia hazardous waste management program. In addition to supporting the passage of the State Hazardous Waste Management Act, the WVMA has filed numerous and extensive comments on regulations proposed by the seven agencies with rulemaking power under the State law. The goal of our organization in participating in these legislative and rulemaking activities is to assure that West Virginia adopts a rational and responsible State hazardous waste program. We have commented repeatedly that we believe the State program should mirror, whenever possible, the federal program for the management of hazardous wastes under the Resource

Conservation and Recovery Act, as amended, 42 U.S.C.S. §6901 et seq. (1982 & 1986 Cum. Supp.) and regulations promulgated thereunder by the U.S. Environmental Protection Agency. It is our belief that the competitive position of industry in West Virginia will be enhanced to the extent that the requirements of State environmental regulations closely follow the federal requirements and that provisions more stringent than the federal requirements should not be adopted unless special circumstances exist in this State which require some additional level of protection.

With respect to the regulations proposed by the WVDOH, we offer the following comments:

I. General - The proposed rules purport to regulate persons other than transporters, e.g., all persons offering wastes for transport. Previously, the WVDOH rules applied only to persons transporting hazardous waste. The authority of the Commissioner of Highways under the State Act is limited to the promulgation of rules and regulations "... governing the transportation of hazardous wastes by vehicles upon roads and highways of this State." W. Va. Code §20-5E-7(a). (1985 Repl. Vol.). It is the Director of the Department of Natural Resources (DNR) who is given authority over hazardous waste activities prior to transportation and, in particular, is directed to promulgate regulations regarding the use of a manifest system and standards for generators. See W. Va. Code §20-5E-6(a)(3). (1985 Repl. Vol.). The DNR Director has responded to this mandate by

promulgating a full set of regulations governing all activities associated with the management of hazardous wastes prior to its transportation off-site. See Legislative Rules, West Virginia Department of Natural Resources, Series 35. In particular, under the regulations applicable to generators of hazardous waste, the DNR has adopted manifest requirements (Sec. 6.2), pre-transport requirements (Sec. 6.3) and recordkeeping requirements (Sec. 6.4).

Thus, under the State Act, jurisdiction to regulate activities "prior to transportation lies exclusively with DNR Director. Perhaps of equal significance is the fact that the State Act, in delegating rulemaking authority to the Commissioner of Highways, specifies that any rules promulgated must avoid "duplication to the maximum extent practicable with rules and regulations required to be promulgated pursuant to this article by the [DNR] Director" W. Va. Code §20-5E-7(a). (1985 Repl. Vol.). Clearly, by attempting to regulate the activities of hazardous waste generators prior to transportation of the waste, the WVDOH has usurped DNR jurisdiction under the State Act. In addition, by regulating these activities, the proposed rules duplicate DNR regulations. The purpose of the prohibition in the State law is obvious. With seven agencies involved in rulemaking associated with one law, there was a serious concern that ~~over-regulation and duplicative requirements would result. This~~ is precisely the result that would occur if the rules proposed by the WVDOH were to be adopted.

2. Sec. 2.01(2) - The new definition for "authorized" is more of a regulation than a definition. In addition, this definition should recognize the authority of the West Virginia DNR with regard to identification numbers. ~~If the term is to be retained in the regulations, we suggest that it be revised to read as follows:-~~

"Authorized" - any transporter and/or transport vehicle that has received an EPA identification number through the West Virginia Department of Natural Resources or the U.S. Environmental Protection Agency.

3. Sec. 2.01(3) - The definition for "C.F.R." suggests that the entire Code of Federal Regulations is incorporated by reference in these regulations. We suggest the following revision to this definition:

"C.F.R." - the Code of Federal Regulations, portions of which are incorporated into these rules by reference.

4. Sec. 2.01(4), 2.01(5), 2.01(14) - Each of these terms for which definitions are to be added are already defined in the DNR hazardous waste regulations. The proposed regulations are unnecessary and duplicative and violate the spirit and the letter of the West Virginia Hazardous Waste Management Act. Our concerns about unnecessary duplication were previously discussed in paragraph 1 of these comments. We propose that the definition for "generator" be deleted entirely, inasmuch as the WVDOH has no jurisdiction over hazardous waste generators, for the reasons previously discussed. If the other definitions are to be

retained, they should be made identical with the Department of Natural Resources definitions.

5. Sec. 2.01(6) - The definition of "hazardous waste" is inappropriate in these regulations. Under the State Act, the Department of Natural Resources has exclusive authority to designate by regulation what constitutes a hazardous waste under the definition contained in the statute. See W. Va. Code §20-5E-6(a)(2). (1985 Repl. Vol). The statutory definition in the proposed rules may not be substituted for the regulatory definition adopted by the DNR.

6. Sec. 2.01(9) - The proposed definition for "highway transporter" is not consistent with the DNR definition of "transporter" which refers to the movement of wastes "off-site." Because the scope of the WVDOH regulations is limited by statute to the transportation of hazardous wastes by highway, the term "highway transporter" should define a class of persons who fall within the DNR definition of "transporter." For these reasons, we urge that the definition be revised to read as follows:

"Highway transporter" - a person engaged in the off-site transportation of hazardous wastes by highway.

7. Sec. 2.01(11) - The proposed definition for "shipper", if adopted, would include any person preparing or offering hazardous wastes for off-site management. As discussed in our comments in paragraph 1, above, consistent with the delineation of

responsibilities under the State Act, the DNR regulations already cover the activities of "preparing" and "offering" wastes for transportation under the generator standards. While the WVDOH may have jurisdiction over the activities of "shippers" under other provisions of State law, the WVDOH is without legal authority to regulate these activities under the State Act and, for that reason, this definition and all reference to "shippers" should be deleted from the Series VII regulations.

8. Sec. 2.01(13) - The term "transporter" is already defined in the DNR regulations and should not be repeated here unless the definition provided is identical to that contained in the DNR regulations.

9. Sec. 2.01(16) - The addition of the definition for "vehicle inspection" appears unnecessary as the phrase is not used anywhere in the regulations. For this reason, we recommend its deletion from the final version of these rules.

10. Sec. 3.01 - This provision places requirements upon "shippers" and persons who offer hazardous waste for off-site treatment storage or disposal. As discussed in paragraph 1, above, the WVDOH is without legal authority to regulate these activities. Therefore, this subsection 3.01(1) should be deleted from the regulations. We also by way of information that the current OMB control number for the EPA form 8700-22A is 2050-0039, rather than 2000-0404.

11. Sec. 3.03 - New language is proposed to be added to this section which purports to regulate generators of more than 100, but less than 1,000 kilograms of hazardous waste in a calendar month. See 40 C.F.R. §262.20(e) (1986) (corresponding EPA regulation for generators). As discussed in paragraph 1, above, the WVDOH has no legal authority to regulate the activities of these generators. As a practical matter, the DNR has already proposed to include the appropriate language for generators in Section 10.1.1 of its hazardous waste regulations. See, Proposed Legislative Rules, West Virginia Department of Natural Resources, Series 35 (filed with the Secretary of State on January 7, 1987). We do believe, however, that it would be appropriate for the WVDOH to adopt regulations corresponding to 40 C.F.R. §263.20(h) and thereby regulate the activities of transporters transporting hazardous waste from small quantity generators, rather than attempting to regulate the activities of the generators themselves. Therefore, we recommend that Section 3.03 be revised to read as follows:

"3.3 - Transporting wastes from small quantity generators.

3.3.1 - A transporter transporting hazardous waste from a generator who generates greater than 100 kilograms, but less than 1,000 kilograms of hazardous waste in a calendar month, need not comply with the requirements of these regulations provided that:

3.3.1.a - The waste is being transported pursuant to a reclamation agreement as provided for in Section 10 of the hazardous waste regulations of the Department of Natural Resources (Series 35);

3.3.1.b - The highway transporter records, on a log or shipping paper, the following information for each shipment:

3.3.1.b.i - The name, address and US EPA identification number of the generator of the waste;

3.3.1.b.ii - The quantity of waste accepted;

3.3.1.b.iii - All DOT-required shipping information;

3.3.1.b.iv - The date the waste is accepted; and,

3.3.1.c - The highway transporter carries this record when transporting waste to the reclamation facility; and,

3.3.1.d - The highway transporter retains these records for a period of at least three years after termination or expiration of the agreement.

Sec. 5.01 - This provision purports to regulate "shippers" as well as "transporters." For reasons previously stated, the WVDOH has no legal authority over such activities under the State Act.

13. Sec. 5.02 - This provision seeks to force compliance with all DOH regulations. While the WVDOH may have authority under other laws to enforce other regulations, their authority under the State Hazardous Waste Management Act is not so broad. These regulations may address only the enforcement of regulations promulgated under the State Act. Furthermore, any cease and desist order issued by the Commissioner under these regulations must conform to the authority granted in W. Va. Code §20-5E-14.

The proposed provision would be broader than the authority that has been delegated under the State law.

14. Format - We note that the numbering system in these proposed rules does not conform with the regulations of the Secretary of State with regard to administrative rules. See Section 8, Series 6, Legislative Rules of the Secretary of State.

CONCLUSION

The West Virginia Manufacturers Association appreciates the opportunity to file comments on these proposed regulations. We ask that these comments be given due and deliberate consideration in the finalization of these proposed rules.

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