

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF THE SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: DEPARTMENT OF HIGHWAYS TITLE NUMBER: 157

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: SERIES 7

TITLE OF RULE BEING AMENDED: TRANSPORTATION OF HAZARDOUS WASTE

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 397

SECTION 64-2-20(5e)(7)(d), PASSED ON March 12, 1988

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: April 22, 1988



Allen Cuervo, Mgt. Analyst

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FILING OF LEGISLATIVE RULES

BY THE

DEPARTMENT OF HIGHWAYS

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WEST VIRGINIA LEGISLATIVE RULES
COMMISSIONER OF HIGHWAYS

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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. --

1.4 Effective Date. --

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.

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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) 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) 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) 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) 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.

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

{8} 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.

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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. --

(17) 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 7, 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.

(18) 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.

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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 CFR 40 263.22 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 CFR 40 262.20(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

(b) 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 of these regulations; 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,

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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, 49 C.F.R. 387 - Minimum levels of financial responsibilities for motor carriers, 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

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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
Telephone: 800-642-3074
- (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.

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

- (4) 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;

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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 in consultation with the West Virginia Department of Highways or West Virginia Department of Natural Resources charged with implementation of the West Virginia Hazardous Waste Management Act so that the hazardous waste discharge no longer presents a hazard to human health or the environment prior to releasing the transporter.

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.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
Deputy Secretary of State

Telephones: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

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SYSTEM SERVICES &
PROCEDURES DIVISION

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HIGHWAY SERVICES
DIVISION

M. H. HARRINGTON
Chief of Staff

RICH O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

TO: Allen Owens - Highways

FROM: RICH O. HARTMAN, DIR. ADMIN. LAW DIV.

DATE: June 29, 1988

THE ATTACHED RULE(S) RECENTLY FILED BY YOUR AGENCY HAVE BEEN ENTERED INTO THE COMPUTER. PLEASE REVIEW AND PROOF AND RETURN WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS PLEASE SIGN THIS MEMO AND RETURN TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF YOUR RULE(S) FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

Series 7

THE ATTACHED RULE(S) HAVE BEEN REVIEWED AND ARE CORRECT.

SIGNED: James E. Hargbloom

TITLE OF PERSON SIGNING: State Safety Officer

DATE: 7-11-88

THE ATTACHED RULE(S) HAVE BEEN REVIEWED AND NEEDS CORRECTED. THESE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____