



1985 DEC 12 PM 1:08

WEST VIRGINIA DEPARTMENT OF HIGHWAYS

1900 Washington Street, East
Charleston, West Virginia
25305

ARCH A. MOORE, JR
GOVERNOR

DEPARTMENT OF HIGHWAYS

WILLIAM S. RITCHIE, JR.
COMMISSIONER

December 12, 1985

NOTICE OF AGENCY APPROVAL

LEGISLATIVE RULE: Transportation of Hazardous Wastes by Highway
Transporters, Series VII

The attached legislative rule constitutes the official rule approved by
the WEST VIRGINIA DEPARTMENT OF HIGHWAYS
on the 12th. day of December, 1985 and filed pursuant to
law with the West Virginia Secretary of State and the Legislative Rule-
Making Review Committee.



W. S. Ritchie, Jr., Commissioner

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series VII, Transportation of Hazardous Wastes by Highway Transporters

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			88368.10	94995.71	--
Current Expense			27500.00	19495.00	--
Repairs & Alterations			N/A	N/A	--
Equipment			11000.00	11000.00	--
Other			--	--	--
Estimated Total Cost			126868.10	125490.71	--

2. Explanation of above estimates:

This exhibits the budgets approved by the Federal Environmental Protection Agency. 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 260 thru 270 effective August 5, 1985 which requires the transporting of hazardous wastes from "Small Quantity Generators" (producing between 100 kg. and 1000 kg. per month) to be subject to DOT approved shipping identification and Uniform Hazardous Waste Manifest requirements and recordkeeping requirements. These requirements will aid in the safe transportation of these wastes including the ability to identify these wastes for emergency response.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The budget exhibited has been submitted and approved by the Environmental Protection Agency and no foreseeable increases to administer the proposed rules and the enforcement program are anticipated.

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

The proposed amendments to the subject legislative rule will affect companies that produce between 100 kg. and 1000 kg. (200 - 2,200 lbs.) of hazardous waste during a one month period. The amendments will require the affected companies to properly manifest, mark, label, containerize and insure that the vehicle that is transporting the waste is properly placarded. The total economic impact cannot be identified since it is unknown at this time as to how many hazardous waste generators fall into the proposed regulated category.

C. Economic Impact on Citizens/Public at Large.

N/A

Date December 12, 1985



W. S. Ritchie, Jr., Commissioner

EMERGENCY
WEST VIRGINIA LEGISLATIVE RULES
COMMISSIONER OF HIGHWAYS

FILED
1985 DEC 12 PM 1:08

SECRETARY OF STATE

CHAPTER 20-5E
SERIES VII

Title: Transportation of Hazardous Wastes by Highway
Transporters

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 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. -- August 6, 1985

1.04. Effective Date. -- August 6, 1985

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.

EMERGENCY

Department of Highways
Leg. Rule, 20-5E
Series VII, Sec. 3.02

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.

3.03. Transporting Waste from Small Quantity Generators. -- Transporters who 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 3.1.4 e of the West Virginia Department of Natural Resources Hazardous Waste Regulations:

(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:

(a) The generators name, address, and signature.

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

(c) The DOT description of the waste, including the proper shipping name, hazard classification, and the "UN" or "NA" 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.

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

EMERGENCY

Department of Highways
Leg. Rule, 20-5E
Series VII, Sec. 3.03

(4) Comply with Section 5.01 of these regulations with reference to transportation requirements.

(5) Comply with Section 6 of these regulations with reference to discharge of Hazardous Waste.

31031 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.

31041 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.



FILED

1985 DEC 12 PM 1:08

WEST VIRGINIA DEPARTMENT OF HIGHWAYS

1900 Washington Street, East
Charleston, West Virginia
25305

ARCH A. MOORE, JR.
GOVERNOR

SECRETARY OF STATE
WILLIAM SCRITCHIE, JR.
COMMISSIONER

December 12, 1985

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

Re: Legislative Rules
Department of Highways Commissioner
Filing of Agency Approved Rule
Transportation of Hazardous
Wastes by Highway Transporters,
Series VII

Dear Secretary Hechler:

The following information is presented with the subject filing to inform you of the results of the associated Public Hearing of September 19, 1985. This public hearing was conducted by the Department of Natural Resources for receipt of comments to their filed Emergency Rules, Hazardous Waste Management, and for the Department of Highways' filed Emergency Rules, Transportation of Hazardous Wastes by Highway Transporters.

The public hearing was attended by six individuals with comments from two of the attendees. A synopsis of the comments and the responses are attached; however, none of the comments were directed to or required revisions to the Emergency Rule, Transportation of Hazardous Wastes by Highway Transporters. Therefore, no amendments to this Emergency Rule have been executed.

Sincerely yours,

W. S. Ritchie, Jr.
Commissioner

WSR:Cj
Attachment

PUBLIC HEARING

SEPTEMBER 19, 1985, 7:00 p.m.

EMERGENCY RULES

Hazardous Waste Management, West Virginia Department of Natural Resources
and
Transportation of Hazardous Wastes by Highway Transporters,
West Virginia Department of Highways

Public Hearing Moderator &
DNR representative: Mr. Ron Shipley
Dept. of Highways: Mr. James Youngblood

ATTENDEES

Mr. Robert Warden WV Manufacturers Association
Mr. Perry Bryant WV Citizen's Action Group
Ms. Kim Brown Poland Robinson & McElwee
Mr. Robert Lanham Robinson & McElwee
Mr. Mike Chow Olin Corporation
Mr. Bob Foster Union Carbide Corp.

RESPONSE TO COMMENTS
DEPARTMENT OF NATURAL RESOURCES
AND DEPARTMENT OF HIGHWAYS
RULEMAKING CONCERNING SMALL QUANTITY GENERATORS
AND WASTE MINIMIZATION CERTIFICATIONS

The Departments of Natural Resources and Highways received several comments from two sources. Below is a synopsis of those comments and the Departments' responses.

1. Comment: State regulations are not needed at this time since EPA regulations apply on the federal level. In addition, EPA issued proposed rules on August 1 for further regulation of small quantity generators. West Virginia should not impose unnecessary regulations now, but rather wait for completion of EPA's rulemaking.

Answer: Although federal regulations do apply to West Virginia's small quantity generators, there are several reasons why state regulations should be enacted now on an emergency basis. First, the West Virginia Department of Highways and the Department of Natural Resources are the principal implementing agencies for these regulations. Although EPA has promulgated regulations, they will not play an important role in implementing the SQG or WMC regulations in West Virginia. For example, EPA does not plan to conduct any training seminars to explain these new requirements or conduct any inspections to ensure compliance. Consequently the State needs to adopt these regulations into their program to both heighten their visibility for West Virginia's generators and, secondly, to allow the State to enforce these provisions if necessary.

Most importantly, however, there are statutory reasons for promulgating these regulations. Under the State's Hazardous Waste Management Act (Chapter 20, Article 5E) the State Hazardous Waste Management Agencies must promulgate changes to their regulations within six months of federal changes. EPA promulgated the SQG and WMC regulations on July 15, 1985. Thus, the State has until December 15, 1985, to meet its State statutory obligations. Consequently, emergency regulations will be needed. Because of the cited program reasons, the State has decided to proceed with emergency regulations now instead of in December.

2. Comment: The State should begin a concentrated effort to educate small quantity generators regarding their new obligations. As part of this effort a toll-free hazardous waste Hot-Line should be established to answer questions.

Answer: Both the Department of Natural Resources and the Department of Highways have agreed to conduct training seminars targeted for small quantity generators. In addition, we agree that a toll-free hot-line is a good idea and we are looking into how to establish one, its costs, and how to make it effective.

3. Comment: Historically, DNR regulations have been more stringent than the federal rules because the HWMA regulations prohibited disposal of hazardous waste in "municipal landfills". DNR regulations did allow for disposal of SQG hazardous wastes in "industrial landfills" permitted under Article 5A. This alternative was illusory since none of these landfills were operated on a commercial basis. Limited availability of TSD facilities because of these restrictions means that compliance with DNR regulations will be more difficult for SQG's in West Virginia than in other states. Therefore, a commercial site must be established in West Virginia as soon as possible.

Answer: The departments agree that a commercial site in West Virginia would be a positive step. We are discussing with the Governor the possibility that he establish a committee to begin working on this issue. We must, however, address other portions of this comment.

It is correct that DNR has prohibited disposal of hazardous waste in municipal landfills for some time. The department's judgment in this matter has been vindicated by the recent Hazardous and Solid Waste Act Amendments of 1984 which also prohibited hazardous waste disposal in municipal landfills. As we noted in our comment to DNR regulation 3.1.4.g.4.iv, after March 31, 1986, a SQG will not be able to send its hazardous waste to even an industrial waste landfill (according to federal law). Consequently, the federal program will not only "catch-up" to the State's program, but will be even more stringent.

4. Comment: Generators should be informed of what information they should provide in its annual report concerning waste minimization.

Answer: The State agrees and has therefore amended Section 6.4.2 of DNR's regulations.

5. Comment: The State should require its annual report biennially consistent with EPA's requirement.

Answer: The State visited this issue previously when EPA changed its reporting requirements from annually to biennially. Several reasons exist for maintaining annual reporting including a statutory requirement under the Hazardous Waste Emergency Response Fund (Chapter 20, Article 5G) that generators file annual reports. As we noted in the preamble to the SQG regulations, the State HWMA imposes responsibilities on the State agencies concerning waste minimization which are greater than the federal responsibilities. DNR believes that requiring annual reports will aid in meeting these statutory responsibilities.

6. Comment: Section 3.1.4g should refer to the exclusion under Section 3.1.4 rather than the exclusion of Section 6 for conformity with EPA program requirements.

Answer: Concur. Change incorporated.

7. Comment: Section 3.1.4.g.4.ii should include references to 40 CFR Parts 270, 265 and 20-5E-10 of the West Virginia Code.

Answer: Concur. Change incorporated.

8. Comment: The reference to 6.5.1 in 6.1.3 is incorrect. It should be 6.5.2.

Answer: Concur. Change incorporated.

9. Comment: The reference in Section 6, Appendix 1 to the Uniform Hazardous Waste Manifest should be July 15, 1985, not July 15, 1984.

Answer: Concur. Change incorporated.

10. Comment: In Section 8.5.4 the word "measure" should be "closure".

Answer: Concur. Change incorporated.