

GENERAL ORDER NO. 209.3

IN THE MATTER OF
Rules Governing the Transportation
of Hazardous Waste by Rail Pursuant
to West Virginia Code §20-5E-7(b).

ABSTRACT OF PROMULGATION HISTORY

On October 18, 1985, the Staff filed a Petition to Commence Emergency Rulemaking Proceedings with the Commission. Emergency rulemaking proceedings are governed by West Virginia Code §29A-3-15 which provides that any agency may propose legislative rules, without hearing, which shall become effective immediately upon filing with the Secretary of State. West Virginia Code §29A-3-15(g) defines as an emergency the need to promulgate rules to comply with a deadline established by West Virginia law or Federal statute or regulation or to prevent substantial harm to the public interest.

Upon consideration of the Staff's petition, the Commission found that sufficient cause existed for emergency rulemaking as defined by West Virginia Code §29A-3-15. It would have been impossible to meet the Federal deadlines under normal rulemaking (West Virginia Code §29A-3-9) because of the requirement for a public hearing and/or comment period. In addition, the time period for revision to the Commission's Rules pursuant to West Virginia Code §20-5E-6(b) had lapsed with regard to several amendments to the Federal regulations. Therefore, the Commission commenced emergency rulemaking proceedings pursuant to Code §29A-3-15, by issuing General Order No. 209.2 on October 28, 1985.

West Virginia Code §29A-3-15(1) requires notice of public hearing to be filed on the proposed rule within sixty (60) days of the date the proposed rule was filed as an emergency rule, or else the emergency rule expires on the sixty-first day. The emergency rules filed by the Commission on October 28, 1985 are not temporary, but are to be effective until further amendment or repeal is necessary. Therefore, the Commission instituted rulemaking proceedings with public hearing as required by Code §29A-3-15(1) by issuing General Order 209.3 on December 20, 1985. In addition to the amendments to Rules 1.1, 1.2, 1.3, 1.4, 1.7, 1.9, 2.1 and 2.7 adopted in the emergency proceeding, the Commission proposed changes to Rules 1.0 and 1.6 for purposes of clarification.

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Notice of the proposed rulemaking and copies of the proposed rule were provided to interested parties in accordance with the requirements of the December 20, 1985 Order and West Virginia Code §24A-3-5. All interested parties were given the opportunity to file written comments on the proposed rules by 5:00 p.m., January 20, 1986.

Comments were received from the Environmental Protection Agency through a memorandum from the Department of Natural Resources and the United Transportation Union.

Upon consideration of the comments filed, the Commission amended Section 1.6 to ensure that hazardous waste shipments originating and terminating outside of West Virginia shall comply with sections 1.7 and 1.9 of the proposed rules and promulgated final rules by General Order 209.3 entered on March 24, 1986.

PSC
Leg. Rule/Adm. Reg. 24-1
Series XI

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
LEGISLATIVE RULE
CHAPTER 24-1
SERIES XI

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by Rail

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WEST VIRGINIA LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION
CHAPTER 24-1
SERIES XI

RULES AND REGULATIONS
GOVERNING THE TRANSPORTATION OF
HAZARDOUS WASTE BY RAIL

1. GENERAL

- 1.0 Scope - These regulations apply to all rail transporters who transport hazardous waste within or through the State of West Virginia.
- 1.1 Authority - West Virginia Code §20-5E-7(b).
- 1.2 Filing date - March 24, 1986
- 1.3 Effective date - May 23, 1986
- 1.4 For the purposes of these Regulations the Public Service Commission adopts by reference the Definitions of the Hazardous Waste Management Act, appearing in West Virginia Code §20-5E-3 (1981).
- 1.5 These regulations do not apply to on-site movements of hazardous waste by generators or by owners and/or operators of authorized hazardous waste management facilities.
- 1.6 Transportation of hazardous waste shipments which originate, terminate or occur entirely within the State of West Virginia shall comply with all of these rules. Transportation of hazardous waste shipments originating and terminating outside of West Virginia shall comply with sections 1.7, 1.9, 2, 3, 4 and 5 of these rules while in West Virginia.
- 1.7 A transporter of hazardous waste who transports hazardous waste into the United States from abroad or who mixes hazardous wastes of different DOT shipping descriptions by placing them into a single container must also comply with the standards applicable to generators of hazardous waste contained in Section 6 of the West Virginia DNR.
- 1.8 These rules are promulgated by the Public Service Commission of West Virginia and administered by the Railroad Safety Division of the Public Service Commission of West Virginia. Questions regarding these rules may be addressed to the Railroad Safety Division, Public Service Commission of West

Virginia, 201 Brooks Street, Post Office Box 812,
Charleston, West Virginia 25323; Telephone: (304) 340-0474.

- 1.9 All transporters in the State must contact DNR and obtain an EPA Identification Number from the State before they accept hazardous waste for transport.

2. THE MANIFEST SYSTEM

- 2.1 (a) A rail carrier may not accept hazardous waste from a generator unless it is accompanied by a manifest signed by the generator in accordance with Section 6.02 of the West Virginia DNR Administrative Regulations, Chapter 20-5E, Series XV, Hazardous Waste Management Regulations 1985.
- (b) Before transporting the hazardous waste, the rail carriers must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.
- 2.2 When accepting hazardous waste from a non-rail transporter, the rail carrier must:
- (a) Sign and date the manifest acknowledging acceptance of the hazardous waste.
- (b) Return a signed copy of the manifest to the non-rail transporter.
- (c) Forward at least three (3) copies of the manifest to:
- (i) The next non-rail transporter, if any; or
 - (ii) The designated facility, if the shipment is to be delivered to that facility by rail; or
 - (iii) The last rail carrier to handle the waste in the United States
- (d) Retain one copy of the manifest and rail shipping papers in accordance with Section 3.0 below.
- 2.3 Rail carriers must ensure that a shipping paper containing all information required on the manifest (excluding the EPA

- identification number, generator certification, and signatures) accompanies the hazardous waste at all times.
- 2.4 When delivering hazardous waste to the designated facility, a rail carrier must:
- (a) Obtain the date of delivery and handwritten signatures of the owner or operator of the designated facility on the manifest, or the shipping paper if the manifest has not yet been received by the facility; and
 - (b) Retain a copy of the manifest or signed shipping paper in accordance with Section 3 below.
- 2.5 When delivering hazardous waste to a non-rail transporter a rail carrier must:
- (a) Obtain the date of delivery and the handwritten signature of the non-rail transporter on the manifest; and
 - (b) Retain a copy of the manifest in accordance with Section 3 below.
- 2.6 (a) The rail carrier must deliver the entire quantity of hazardous waste which he has accepted from a generator or another transporter to:
- (i) The designated facility listed on the manifest; or
 - (ii) The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or
 - (iii) The next designated transporter.
- (b) If the hazardous waste cannot be delivered in accordance with paragraph (a) above, the rail carrier must contact the generator for further directions and must revise the manifest according to the generator's instructions.
- 2.7 Transporters who transport hazardous waste out of the United States must:

- (a) Indicate on the manifest the date the hazardous waste left the United States; and
- (b) Sign the manifest and retain one copy in accordance with Section 3.1; and
- (c) Return a signed copy of the manifest to the generator.

3. RECORDKEEPING

- 3.1 For shipments by rail within the United States, the initial transporter of hazardous waste must keep a copy of the manifest and shipping paper containing all information required in Section 2.3 for a period of three years from the date the hazardous waste was accepted by the initial transporter.
- 3.2 For shipments by rail within the United States, the final rail transporter must keep a copy of the signed manifest, or the shipping paper if signed by the designated facility in lieu of the manifest, for a period of three years from the date the hazardous waste was accepted by the initial transporter.
- 3.3 A rail carrier 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.
- 3.4 The periods of record retention referred to above are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as required by the Commission.

4. LABELING

- 4.1 All rail cars transporting hazardous waste shall be so marked in accordance with the applicable provisions of the hazardous material regulations contained in 49 CFR 172 (as of October 2, 1981).
- 4.2 A rail transporter shall not accept packaged containers of hazardous waste for shipment unless all labeling and packaging requirements of these regulations have been met.

5. DISCHARGES

- 5.1 In the event of a discharge of hazardous waste during transportation, the rail transporter must take appropriate immediate action to protect human health and the environment. (e.g. notify local authorities, dike the discharge area). Any discharges shall be primarily the responsibility of the rail carriers.
- 5.2 If a discharge of hazardous waste occurs during rail transportation, and an official (State or Federal Agency) acting within the scope of his official responsibilities determines that the immediate removal of the waste is necessary to protect human health or the environment, that official may authorize removal of the waste by transporters who do not have EPA identification numbers and without the preparation of a manifest.
- 5.3 (a) A rail transporter must give notice of a discharge to:
- (i) The Railroad Safety Division of the Public Service Commission of West Virginia, 201 Brooks Street, Post Office Box 812, Charleston, West Virginia, 25323; Telephone (304) 340-0474.
 - (ii) The West Virginia Department of Natural Resources, Division of Water Resources.
 - (iii) The National Response Center, 800-424-3802 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 discharge exceeds \$50,000; or
 - (D) The discharge involves radioactive waste and/or materials; or
 - (E) The discharge involves shipment of etiologic agents; or
 - (F) The situation, in the judgment of the carrier, should be reported. (e.g., a

continuing danger to life exists at the scene of the incident).

(b) The notice shall contain the following information:

- (i) Name of reporter.
- (ii) Name and address of transporter.
- (iii) Phone number where reporter can be reached.
- (iv) Date, time and location of discharge.
- (v) Extent of injuries, if any.
- (vi) Type and quantity of hazardous waste involved, if available.
- (vii) Description of incident and whether a continuing danger to life exists at the scene.

5.4 (a) Within 15 calendar days of the date of discovery to the discharge of any quantity of hazardous waste, the rail transporter shall file a written report, as specified in 49 CFR 171.16 (as of October 2, 1981), with the Railroad Safety Division of the Public Service Commission of West Virginia, the West Virginia Department of Natural Resources, and the United States Department of Transportation.

(b) The report shall contain the following information:

- (i) All information required by Rule 5.3(b).
- (ii) The location of the discharge in relation to surface water, public water supplies, groundwater, wildlife inhabitants and agricultural production.
- (iii) The quantity and description of the hazardous waste removed and the disposition of that material;
- (iv) The disposition, quantity, and description of the unremoved hazardous waste;
- (v) A copy of the hazardous waste manifest shall

be attached to the report.

- 5.5 A rail 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. REVISIONS TO REGULATIONS

- 6.1 For the purpose of assuring that (a) these regulations are consistent with the regulations of the United States Environmental Protection Agency adopted pursuant to the federal Solid Waste Disposal Act, as amended, (b) the state hazardous waste management program is equivalent to and consistent with the federal hazardous waste management program adopted pursuant to Subtitle C of the federal Solid Waste Disposal Act, as amended, (c) changes in the regulations of the United States Environmental Protection Agency which have been adopted by reference in these regulations are properly placed into effect under state law, and (d) the requirements of the state Hazardous Waste Management Act are otherwise satisfied, the Commission shall revise these regulations in accordance with the procedures set forth in Section 6.2, as necessary.
- 6.2 Whenever there shall be an amendment of the federal Solid Waste Disposal Act, as amended, or the adoption or revision of rules and regulations required to be promulgated by the federal solid Waste Disposal Act, as amended, or amendments to the rules and regulations of other State agencies promulgated pursuant to the provisions of the State Hazardous Waste Management Act, which amendments create a need for the revision of these regulations consistent with the discussion set forth in Section 6.1 of these regulations, the Commission shall within 30 days of the effective date of such amendment initiate such action as may be necessary under the provisions of Chapter 24, Article 1, and Chapter 20, Article 5E of the West Virginia Code to amend these regulations at the earliest practicable date.
- 6.3 Persons desiring to call to the attention of the Commission amendments to the federal Solid Waste Disposal Act, as amended, regulations promulgated pursuant thereto, or amendments to the rules and regulations of other state agencies promulgated pursuant to the provisions of the State

Hazardous Waste Management Act, may do so by filing a notice with the commission identifying the amendment which has been made to the federal Solid Waste Disposal Act, as amended, regulations promulgated pursuant thereto, or rules and regulations of other state agencies pursuant to the State Hazardous Waste Management Act, and identifying the provisions of these regulations which such person believes should be amended.

7. VARIANCES

- 7.1 The Commission may grant a variance from one more of the specific provisions of these regulations upon written application from any person who is subject to these regulations.
- 7.2 An application for a variance must: (a) identify specific provisions of these regulations from which a variance is sought; and (b) demonstrate that suspension or modification of the identified provision will, on the basis of conditions unique and peculiar to the applicant's particular situation, have no significant adverse impact on public health or the new environment.
- 7.3 The Commission may not grant any variance which would result in requirements which are any less strict than the applicable federal law or regulations.