



WEST VIRGINIA DEPARTMENT OF HIGHWAYS

1900 Washington Street, East  
Charleston, West Virginia  
25305

ARCH A. MOORE, JR  
GOVERNOR

WILLIAM S. RITCHIE, JR.  
COMMISSIONER

April 7, 1986

NOTICE OF FINAL FILING - LEGISLATIVE RULE

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

The attached legislative rule is hereby final filed with the Secretary  
of State by the WEST VIRGINIA DEPARTMENT OF HIGHWAYS  
as authorized by Senate Bill 434 Section 64-2-20(5e)(7)(c)

  
William S. Ritchie, Jr., Commissioner

1986 APR -7 PM 3:49  
OFFICE OF THE SECRETARY OF STATE

FILED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Department of Highways

Subject: Transportation of Hazardous Wastes by Highway  
Transporters

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PERTINENT DATES

Filed for public comment: August 9, 1985  
Public comment period ended: September 19, 1985  
Filed following public comment period: December 12, 1985  
Filed LRMRC: December 12, 1985  
Filed as emergency: August 15, 1985  
FN:

ABSTRACT

The proposed rule amends a current rule by adding language relating to the transportation of waste from small quantity generators.

Section 3.03 lists those requirements which must be met by transporters who accept hazardous waste from generators who produce between 100 kg and 1,000 kg per month, unless they are transporting acutely hazardous waste. It requires that the transporter not accept hazardous waste from small quantity generators unless the initial transporter is provided with a uniform hazardous waste manifest. This section has the information which the manifest must include.

AUTHORITY

Statutory authority: W. Va. Code, §20-5E-7(a):

(a) The commissioner of highways, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with rules and regulations required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of chapter twenty-nine-a of this code, shall promulgate, as necessary, rules and regulations governing the transportation of hazardous wastes by vehicle upon the roads and highways of this state. Such rules and regulations shall be consistent with applicable rules and regulations issued by the federal department of transportation and consistent with this article: Provided, That such rules and regulations shall apply to the interstate

transportation of hazardous wastes as well as the intrastate transportation of such waste within the boundaries of this state.

...

#### ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No. Under the above-cited code provision, the Commissioner has the specific authority to promulgate rules and regulations of the type proposed.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No, although counsel has a few minor clean-up language suggestions.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

W. Va. Code, §29A-3-11, requires submission to the Committee a brief summary of the content of the legislative rule and a description of any rule which the agency proposes to amend or repeal. This provision was not complied with.

1 Bill 4

2 H. B. <sup>1749</sup>

3 (By Delegate Casey)

4 (Introduced February 5, 1986; referred to the

5 Committee on Roads and Transportation with the direction )  
6 that it later be referred to the Committee  
7 on the Judiciary

8  
9  
10 A BILL to amend and reenact section twenty(five-e)(seven)  
11 article two, chapter sixty-four of the code of West Virginia,  
12 one thousand nine hundred thirty-one, as amended, relating to  
13 authorizing the commissioner of highways to promulgate  
14 legislative rules governing the transportation of hazardous  
15 wastes by vehicle upon the roads and highways of this state.

16 Be it enacted by the Legislature of West Virginia:

17 That section twenty(five-e)(seven), article two, chapter  
18 sixty-four of the code of West Virginia, one thousand nine  
19 hundred thirty-one, as amended, be amended to read as follows:

20 ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE  
21 LEGISLATIVE RULES.

22 §64-2-20(5e)(7). Department of highways.

1749

1 (a) The legislative rules filed in the state register on the  
2 twenty-first day of October, one thousand nine hundred eighty-  
3 three, relating to the commissioner of highways (transportation  
4 of hazardous waste by highway transporters) are authorized with  
5 the amendments set forth below:

6 Pages 3 and 7 after "40 CFR part 262" add the words "as  
7 amended through February 20, 1984,"

8 Page 7 after "49 CFR parts 171-179" add the words "as amended  
9 through February 20, 1984," and

10 Page 11 after "49 CFR part 171.16" add the words "as amended  
11 through February 20, 1984."

12 (b) The legislative rules filed in the state register on the  
13 seventh day of September, one thousand nine hundred eighty-four,  
14 modified by the commissioner of highways to meet the objections  
15 of the legislative rule-making review committee and refiled in  
16 the state register on the fifth day of October, one thousand nine  
17 hundred eighty-four, relating to the commissioner of highways  
18 (transportation of hazardous waste) are authorized with the  
19 amendment set forth below:

20 Page 5, by amending § 3.01 by adding thereto a new  
21 subsection, designated subsection (4), to read as follows: "(4)  
22 Before accepting hazardous waste from a rail transporter, a  
23 highway transporter must sign and date the manifest and provide a  
24 copy to the rail transporter."

1        (c) The legislative rules filed in the state register on th  
2 twelfth day of December, one thousand nine hundred eighty-five,  
3 relating to the commissioner of highways (governing the  
4 transportation of hazardous wastes by vehicle upon the roads and  
5 highways of this state) are authorized.

6  
7        NOTE: The purpose of this bill is to authorize the  
8 commissioner of highways to promulgate legislative rules relating  
9 to governing the transportation of hazardous wastes by vehicle  
10 upon the roads and highways of this state.

11  
12        Strike-throughs indicate language that would be stricken from  
13 the present law, and underscoring indicates new language that  
14 would be added.  
15

SENATE BILL NO. 432

1 Bill 4

(By Senator R. Williams

2  
3  
4 [Introduced February 3, 1986

5 referred to the Committee on Transportation; then to the  
6 Committee on the Judiciary

7  
8  
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(Plus all the volunteer  
help we can get)

STATE OF WEST VIRGINIA  
SECRETARY OF STATE

Charleston 25305

March 11, 1986

IMPORTANT NOTICE  
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TO: William Ritchie, Jr., Commissioner

FROM: RICH O. HARTMAN, DIRECTOR

RE: LEGISLATIVE RULE Transportation Of Hazardous Waste rules  
(as amended by the 1986 Legislature)

THE 1986 LEGISLATURE HAS AUTHORIZED YOUR AGENCY TO FINAL FILE AND ADOPT THE ABOVE LEGISLATIVE RULE. THIS AUTHORIZATION IS IN S.B. 434 64-2-20-(5e) (7) (c) SECTION                      PASSED ON March 8, 1986, EFFECTIVE FROM PASSAGE. YOU HAVE 60 DAYS FROM THAT DATE TO FINAL FILE THE ABOVE RULE WITH THIS OFFICE. NO RULE WILL BE ACCEPTED AFTER THAT DATE. YOU MAY ESTABLISH ANY EFFECTIVE DATE FOR YOUR RULE RANGING FROM THE SAME DATE YOU FINAL FILE TO 90 DAYS FROM THE DATE YOU FINAL FILE. REMEMBER TO RE-TYPE YOUR RULE IN ITS ENTIRETY FOLLOWING THE PROPER FORMAT. PLEASE CALL IF YOU HAVE ANY QUESTIONS.