

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

RECEIVED
2009 JUL 30 PM 4:04

SECRETARY OF STATE
STATE OF WEST VIRGINIA

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Department of Transportation Division of Highways TITLE NUMBER: 157

CITE AUTHORITY: W.Va. Code 22-18-7(a)

AMENDMENT TO AN EXISTING RULE: YES NO

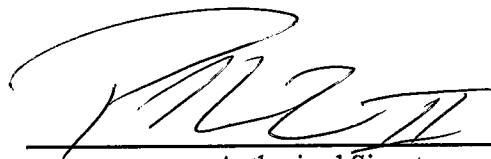
IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 7

TITLE OF RULE BEING AMENDED: Transportation of Hazardous Wastes Upon the Road and Highways

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

Division of Highways, Series 7
Transportation of Hazardous Wastes
Upon the Roads and Highways
Proposed Amendments to a Legislative Rule
July 30, 2009

SUMMARY OF PROPOSED RULE:

Series 7 provides general rules for the transportation of hazardous wastes by vehicle upon the roads and highways of West Virginia. These rules are applicable if the transport requires a manifest under Section 6 of the rules of the West Virginia Division of Environmental Protection implementing the Hazardous Waste Management Act.

STATEMENT OF CIRCUMSTANCES:

This rule filing is necessary to comply with time limitations established by changes to federal statute, 40 CFR and 49 CFR. Subsequently, 33 CSR 20, Hazardous Waste Management Rule, was changed with an effective date of June 1, 2009.

Non-compliance with the aforementioned code will jeopardize full federal funding of West Virginia's hazardous waste program, which could impact the public health and safety.

In response to a comment to the initial filing of proposed amendment to this rule, the month in the last date in section 1.6 of this rule has been changed from July to June. This change is to more closely coordinate with 33 CSR 20, which uses June 1, as the effective date.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Transportation of Hazardous Wastes Upon the Roads and Highways

Rule Title: _____
 Type of Rule: Legislative Interpretive Procedural
 Agency: WV Department of Transportation - Division of Highways
 Address: Building 5, Room 164
 1900 Kanawha Blvd. E.
 Charleston, WV 25305-0430
 Phone Number: (304) 558-2804 Email: mmurphy@wv.gov; kholtsclaw@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Transportation of Hazardous Wastes Upon the Roads and Highways

- 3. Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

These rule changes do not impact any annual or fiscal year costs.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not have a fiscal impact**, and/or any special issues **not captured elsewhere** on this form.

Date: July 30, 2009

Signature of Agency Head or Authorized Representative



A handwritten signature in black ink is written over a horizontal line. The signature is stylized and appears to be the initials 'J. M. C.' followed by a surname.

LINKS TO FEDERAL CODE AND STATE RULES FOR SERIES 7

<http://www.epa.gov/lawsregs/search/40cfr.html>

<http://www.access.gpo.gov/cgi-bin/cfrassemble.cgi?title=200349>

<http://www.wvsos.com/csr/verify.asp?TitleSeries=33-20>

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 30, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Transportation - Division of
Highways
Bldg. 5, Room 164
1900 Kanawha Blvd. E.
Charleston, WV 25305-0430

LEGISLATIVE RULE TITLE: Transportation of Hazardous Wastes Upon the Roads and
Highways

1. Authorizing statute(s) citation W.Va. Code 22-18-7(a)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 26, 2009

b. What other notice, including advertising, did you give of the hearing?
None

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 27, 2009 at 4:00 p.m.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 30, 2009

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Marvin Murphy, Kathy Holtsclaw

WV Division of Highways

Bldg. 5, Room 164

1900 Kanawha Blvd. E.

Charleston, WV 25305-0430

- g. **IF DIFFERENT FROM ITEM 'F'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached



west virginia department of environmental protection

Division of Water and Waste Management
601. 57th Street, SE
Charleston, WV 25304

Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

July 28, 2009

Marvin Murphy
Kathy Holstclaw
WV Division of Highways
Bldg. 5, Room 164
1900 Kanawha Blvd., E.
Charleston, WV 25305-0430

RE: Rule 157 CSR 7, "Transportation of Hazardous Wastes Upon the Roads and Highways"

Dear Mr. Murphy and Ms. Holstclaw:

First I want to thank and commend you for taking the time to modify Rule 157 CSR 7 to reflect the 2009 changes to Rule 33CSR 20, the "Hazardous Waste Management System" brought about by amendments to the federal hazardous waste regulations found in 40 CFR Parts 260 through 279. Keeping up to date regarding constantly changing federal regulations can be a burden.

I ask, however, that you use the date of **June 1, 2009**, rather than July 1, 2009, to more closely coordinate with Rule 33 CSR 20, which uses June 1, 2009, as the effective date.

Thank you for your consideration of this comment, and please do not hesitate to contact me at 304 926 0499, extension 1317 if you have questions.

Sincerely,

Carroll Cather
Hazardous Waste Program Coordinator
WVDEP
Division of Water and Waste Management

Promoting a healthy environment.

RECEIVED
2009 JUL 30 PM 4:04
SECRETARY OF STATE
STATE OF WEST VIRGINIA

**TITLE 157
LEGISLATIVE RULE
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS**

**SERIES 7
TRANSPORTATION OF HAZARDOUS WASTES UPON
THE ROADS AND HIGHWAYS**

§157-7-1. General.

1.1. Scope. -- This legislative rule applies to all persons offering and/or transporting hazardous waste by vehicle upon the roads and highways of this State if the transportation requires a manifest under 33 CSR 20 by the Department of Environmental Protection implementing the Hazardous Waste Management Act or by 40 CFR Parts 266, Subpart M; 273, "Universal Waste"; or 279, "Used Oil").

1.2. Authority. -- W. Va. Code §22-18-7(a).

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 Highways' State Safety Officer.

1.6. Incorporation by Reference. Whenever federal statutes or regulations are incorporated into this rule, the reference is to the statute or regulation in effect as of July 1, ~~2007~~ 2008. Whenever state statutes or rules are incorporated into this rule, the reference is to the statute or rule in effect as of ~~July~~ June 1, 2008. 2009.

§157-7-2. Definitions.

2.1. Terms. The terms used in this rule are defined as follows.

2.1.1. "Authorized" means any person and/or transport vehicle who has received an EPA Identification Number from the U.S.

Environmental Protection Agency which enables that person to transport or offer hazardous waste for transportation by highway vehicle upon the roads and highways of the state of West Virginia.

2.1.2. "C.F.R." means Code of Federal Regulations.

2.1.3. "Hazardous Waste Management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.

2.1.4. "Highway Transporter" means a person engaged or authorized to engage in off-site transportation of hazardous waste by road and highway.

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

2.1.6. "Person" means 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.

2.1.7. "Shipper" means any person transporting, and/or offering hazardous waste for off-site management by highway transporter.

2.1.8. "Transport Vehicle" means 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.

2.1.9. "Transporter" means any person accepting hazardous waste for transportation on the roads and highways of this state.

2.1.10. "Uniform Hazardous Waste Manifest" means 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.

2.1.11. "Vehicle Inspection" means inspection by a Division 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.

§157-7-3. Uniform Hazardous Waste Manifest System.

3.1. General Requirements.

3.1.1. Any person who offers or transports hazardous waste for off-site treatment, storage, or disposal must prepare a Manifest OMB control number 2050-0039 on EPA form 8700-22, and EPA form 8700-22A in accordance with 33 CSR 20-5 and 20-6 or 40 CFR 262, and 263, as amended.

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.

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

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:

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,

3.2.2. Retain one copy of the manifest in accordance with Section 4; and,

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. 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:

3.3.1. The waste is being transported pursuant to a reclamation agreement as provided for in CFR 40 262.20(e);

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

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

3.3.4. 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 (3) 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:

3.4.1. Indicate on the manifest the date the hazardous waste left the United States, and;

3.4.2. Sign the manifest and retain one copy in accordance with Section 4 of these rules;

3.4.3. Return a signed copy of the manifest to the generator; and,

3.4.4. Give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

3.5. Destination.

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;

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

3.5.1.c. The next designated transporter; or,

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

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.

§157-7-4. 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 (3) 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 (3) 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 of the U.S. Environmental Protection Agency and/or the West Virginia Division of Highways.

§157-7-5. Transportation Requirements.

5.1. Regulations. No person will transport or offer to transport and no transporter will accept hazardous waste in this state except in accordance with: a.) the requirements of this rule; b.) 33 CSR 20 of the Department of Environmental Protection implementing the Hazardous Waste Management Act; c.) 40 C.F.R. 262, 263, 266 Subpart M, 273, "Universal Waste", and 279, "Used Oil" of the U.S. Environmental Protection Agency; and d.) 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 of the Federal Highway Administration, Department of Transportation as amended. All of these rules and regulations are incorporated by reference.

5.2. Out of Service. Every 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 Division of Highways. If any of these Rules and Regulations are violated by a highway transporter, the Division of Highways representative conducting vehicle inspections may deem the driver, vehicle and cargo out-of-service. All said violations must be corrected and the driver, vehicle and/or cargo are found to be in compliance before the vehicle is allowed 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 of the U.S. Environmental Protection Agency, as required by the West Virginia Department of Environmental Protection.

5.4. U.S. EPA Identification Number Application. A transporter who has not received an Environmental Protection Agency identification number may obtain one by applying to the Administrator of the U.S. Environmental Protection Agency using EPA Form 8700-12. Upon receiving the request, the Administrator of the U.S. Environmental Protection Agency will assign an EPA identification number to the transporter.

§157-7-6. Discharges.

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

6.2. Emergency Measures for Removal of Waste. If a discharge of hazardous waste occurs during transportation and a government official, acting within the scope of his authority, determines 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:

6.3.1. The WV Division of Highways
1900 Kanawha Boulevard, East
Charleston, WV 25305
Telephone: (304) 558-3028;
twenty-four hours a day;

6.3.2. The WV Department of
Environmental Protection
Division of Water and Waste
Management
1356 Hansford Street
Charleston, WV 25301-1401
Telephone: 800-642-3074

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.

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.

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 Division of Highways, the West Virginia Department of Environmental Protection, and the United States Department of Transportation.

6.4.2. The report shall contain the following information:

6.4.2.a. All information required by subdivision 6.3.4;

6.4.2.b. The location of the discharge in relation to surface water, public water supplies, groundwater, wildlife inhabitants, and agricultural production;

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 Division of Highways or West Virginia

Department of Environmental Protection 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 sections of the Legislative rule "Special Regulations" of the Division of Water Resources.