



WEST VIRGINIA DEPARTMENT OF HIGHWAYS

1900 Washington Street, East
Charleston, West Virginia
25305

September 7, 1984

John D. Rockefeller IV
GOVERNOR

Fred VanKirk
STATE HIGHWAY ENGINEER
ACTING COMMISSIONER

Honorable A. James Manchin
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Secretary Manchin:

Be advised that this letter constitutes notice of agency approval of changes to Series VII, "Transportation of Hazardous Wastes by Highway Transporters," as a result of comments adduced at the public hearing held on August 28, 1984.

These proposed rules were submitted to the Legislative Rule-Making Committee on September 7, 1984.

A fiscal note is attached indicating there will be no economic impact to the Department or general public as a result of these rules.

I hereby certify that the enclosed rules are true and accurate copies of Series VII, "Transportation of Hazardous Wastes by Highway Transporters."

Please stamp and return one copy to this office.

Sincerely yours,

Philip A. Shucet
Executive Secretary -
Planning Manager

PAS:h

Enclosures

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE Sept. 10, 1984
Administrative Law Division

FISCAL NOTE FOR PROPOSED RULES

Rule No. _____ Subject Amendments to Existing Administrative Rules and Regulations

Type of Rule: Legislative Interpretive Procedural

Agency Department of Highways Address 1900 Washington St., East
Charleston, WV 25305

Authorized Representative Philip A. Shucet Phone 348-2425

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$

Personal Services

Current Expense

Repairs and Alterations

Equipment

Others

These amendments will not increase or decrease costs to the State of West Virginia.

2. Explanation of above estimates.

These amended rules cover only the Hazardous Wastes Transportation Regulations.

3. Date July 9, 1984 Agency Department of Highways

Signature of Agency Head

Signature of Authorized Representative

Fred Van Hook

Philip A. Shucet

STATEMENT OF ECONOMIC IMPACT OF PROPOSED RULES OR REGULATIONS -

Agency Department of Highways

Amendments to Existing
Administrative Rules and
Regulations

Rule No. _____

Subject _____

1. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

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

NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date July 9, 1984

Agency Department of Highways

Signature of Agency Head

Signature of Authorized Representative

Fred Van Hook

John. Whit

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
COMMISSIONER OF HIGHWAYS

CHAPTER 20-5E

SERIES VII

(1983)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE 9-10-84
Administrative Law Division

Subject: 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 Roadside-Highway Services Division, 1900 Washington Street, East, Charleston, West Virginia 25305;

does not include a vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

(3) "Hazardous Waste" - means 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.

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

(5) "Manifest" - ~~means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal;~~ treatment or storage 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 CFR Part 262, and 263.

(6) "Manifest Document Number" - means the U. S. EPA twelve digit identification number assigned to the generator plus a unique five digit document number assigned to the Manifest by the generator for recording and reporting purposes.

(7) "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.

(8) "Treatment" - means 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, amenable to recovery, amenable 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.

Section 3. Manifest System

3.01. General Requirements. --

(1) ~~A highway transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest signed by the generator in accordance with either Section 6 of the regulations of the Department of Natural Resources implementing the State Hazardous Waste Management Act or 40 CFR Part 262, as amended through February 20, 1984.~~

(1) A generator or transporter who offers or transports hazardous waste for offsite treatment, storage, or disposal must prepare a Manifest OMB control number 2000-0404 on EPA form 8700-22, and, if necessary, EPA form 8700-22A in accordance with either Section 6 of the regulations of the Department of Natural Resources implementing the State Hazardous Waste Management Act or 40 CFR Part 262, and 263, as amended, effective September 20, 1984.

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.

4.02. 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.

4.03. 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. Transportation

5.01. Regulations. -- No highway transporter may transport a 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 and all applicable regulations of the Department of Transportation as set forth in 49 CFR Parts 171-179, and 49 CFR Parts 390-397, as amended through February-207-1984- May 31, 1984.

5.02. Compliance With Federal Hazardous Waste

Regulations. -- A transporter of hazardous waste

must also comply with 40 CFR Part 262, and 263, as amended through February-20-1984-May 31, 1984, Standards Applicable to Generators of Hazardous Waste, if he:

(1) Transports hazardous waste into the United States from abroad; or,

(2) Mixes hazardous wastes of different Department of Transportation shipping descriptions by placing them into a single container.

5.03. Identification Number Required. -- A transporter must not transport hazardous wastes without having received an Environmental Protection Agency identification number from the Administrator.

5.04. 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

6.01. 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).

waste, the highway transporter shall file a written report, as specified in 49 CFR 171.16, as amended through May 31, 1984, with the West Virginia Department of Highways, the West Virginia Department of Natural Resources, Division of Water Resources, and the United States Department of Transportation.

(2) The report shall contain the following information:

- (a) All information required by Section ~~6-2(d)~~ 6.03(d).
- (b) The location of the discharge in relation to surface water, public water supplies, groundwater, wildlife inhabitants, and agricultural production;
- (c) The quantity and description of the hazardous waste removed and the disposition of that material;
- (d) The disposition, quantity and description of the unremoved hazardous waste;
- (e) A copy of the hazardous waste manifest shall be attached to the report.

6.05. 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 so that the hazardous waste discharge

WEST VIRGINIA

1313 CHARLESTON NATIONAL PLAZA
CHARLESTON, WV 25301
(304) 342-2123

MANUFACTURERS ASSOCIATION

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August 28, 1984

DEPARTMENT OF HIGHWAYS
CORRESPONDENCE &
CENTRAL FILES

Mr. Phillip A. Shucet
Executive Secretary-Planning Manager
West Virginia Department of Highways
1900 Washington Street, East
Charleston, West Virginia 25305

Re: Proposed Amendments to Series VII,
West Virginia Department of Highways'
Rules and Regulations

Dear Mr. Shucet:

The Environmental Affairs Committee of the West Virginia Manufacturers Association has reviewed the proposed amendments to Series VII of the West Virginia Department of Highways' Rules and Regulations filed with the Secretary of State on July 9, 1984. Our organization has taken an active role in the past in the review and preparation of comments on regulations promulgated under our State Hazardous Waste Management Act and appreciates the opportunity to comment on these proposed amendments.

Our review of the regulations suggests that they have been amended to keep the West Virginia program current with the federal program as it relates to the use of manifests in the transportation of hazardous waste. We compliment the Department in its efforts to keep its regulations up to date with EPA changes in as much as this eliminates the burden on our members of being forced to comply with two different regulatory requirements simultaneously.

Our comments on individual changes in the regulations are as follows:

1. Section 2.01(5) - This section is to be amended by revising the definition of the term "manifest". The new definition makes reference to the instructions for completing EPA form 8700-22 as reflected in the "Appendix to 40 C.F.R. Part 262 and 263." Our review of these referenced regulations indicates that the instructions for completing the manifest are contained only in the Appendix to 40 C.F.R. Part 262. Therefore, we recommend that the words "and 263" be deleted from this definition.

Mr. Phillip A. Shucet
Page 2
August 28, 1984

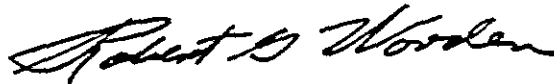
2. Section 3.01(1) - This section has been revised by adapting the language of EPA regulations found at 40 C.F.R. §262.20. However, EPA's Part 262 regulations are directed to generators of hazardous waste, whereas the Department's regulations are directed at transporters. See, Section 1.01 of DOH regulations. Generators are regulated under Section 6.00 of the regulations of the Director of the Department of Natural Resources, Series XV. We believe the DOH regulations should be limited to transporters and should not regulate generators to avoid the possibility of conflicting regulations being adopted by different state agencies applicable to generators. With this goal in mind, we recommend that Section 3.01(1) only by referencing the effective date of recent changes to Parts 262 and 263 of 40 C.F.R. relating to manifests, i.e., September 20, 1984, be revised to read as follows:

(1) A highway transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest in accordance with either Section 6 of the regulations of the Department of Natural Resources implementing the State Hazardous Waste Management Act or 40 C.F.R. Part 262 and 263, as amended, ~~through February 20, 1984~~ effective September 20, 1984.

3. Section 5.02 - This section is revised by adding a reference to 40 C.F.R. Part 263 and amendments through "May 31, 1984." We believe this reference is not sufficient to incorporate EPA's regulations on the uniform manifest which do not become effective until September 20, 1984. In order to incorporate these changes to EPA regulations, we suggest the date "May 31, 1984" be replaced with "September 20, 1984."

Again, we appreciate the opportunity to comment on these regulations. Should you have any questions concerning these comments, please contact me or the Chairman of our Environmental Affairs Committee, Bob Foster, whose number is 747-3406.

Very truly yours,



Robert G. Worden, President

RGW/vlp

SUBJECT: West Virginia Manufacturers Association

DATE: August 31, 1984

RECEIVED

SEP 5 1984

DEPARTMENT OF HIGHWAYS
CORRESPONDENCE &
CENTRAL FILES

CC - COMMISSIONER	EM - ENVIRONMENTAL AND PROCESS MONITOR	HS - CONSTRUCTION, MAINTENANCE & MATERIALS ENGINEER
CA - ASSISTANT COMMISSIONER FOR ADMINISTRATION	AI - PUBLIC INFORMATION DIVISION	
CH - STATE HIGHWAY ENGINEER	RR - ROADSIDE SERVICES DIVISION	SM - MAINTENANCE DIVISION
CP - AUDITING DIVISION	RC - REGIONAL COMMUNITY AFFAIRS COORDINATORS	SC - CONSTRUCTION DIVISION
CL - LEGAL DIVISION	RO - OFFICE SERVICES DIVISION	ST - MATERIALS CONTROL, SOIL & TESTING DIVISION
CB - BUSINESS MANAGER	AE - EQUIPMENT DIVISION	BF - FINANCE DIVISION
CE - EXECUTIVE SECRETARY - PLANNING MANAGER	AL - PERSONNEL DIVISION	BI - SYSTEMS SERVICES & PROCEDURES DIVISION
EO - EQUAL EMPLOYMENT OPPORTUNITY DIVISION	WO - DEVELOPMENT ENGINEER	BC - PROJECT CONTROL DIVISION
EN - ENVIRONMENTAL	DS - STRUCTURES DIVISION	BP - PROCUREMENT DIVISION
EP - PLANNING DIVISION	DV - ROADWAY DESIGN DIVISION	DISTRICT ENGINEERS
	DT - TRAFFIC ENGINEERING DIVISION	
ER - RESEARCH AND SPECIAL STUDIES DIVISION	DR - RIGHT OF WAY DIVISION	
EX - CORRESPONDENCE AND CENTRAL FILES	HF - FIELD OPERATIONS ENGINEER	

FROM: TO: MEMORANDUM INITIALS

AR CE

Reference is made to the recommendations by the West Virginia Manufacturers Association to the proposed amendments to Series VII, West Virginia Department of Highways' Rules and Regulations. We offer the following comments on their recommendations:

Recommendation #1

We concur with this comment: Reference to deleting Section 263 from Section 2.01(5). We will delete this from our regulations.

Recommendation #2

Concerning the generator regulation. The Department feels it is important to regulate the generators when they are preparing the waste material for transportation. The only aspects that the department will regulate concerning the generator will be containerization, marking, labeling and proper completion of the manifest. We feel this is an important aspect in regulating the transportation section of the Hazardous Waste Management Act; therefore, we cannot accept this recommendation.

Recommendation #3

Currently, we cannot adopt this recommendation. We would have a void in our regulations from today's date until September 20, 1984.

lll
CCL:SV