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WEST VIRGINIA DEPARTMENT OF HIGHWAYS

JOHN D. ROCKEFELLER IV  
GOVERNOR

1900 Washington Street, East  
Charleston, West Virginia  
25305

CHARLES L. MILLER  
COMMISSIONER

October 21, 1983

Honorable A. James Manchin  
Secretary of State  
Building 1, Room W-157  
Charleston, West Virginia 25305

Dear Secretary Manchin:

We have submitted the attached amendments to the Department's rules and regulations for the transportation of hazardous waste. We are filing these regulations under emergency provisions which are provided in Chapter 29A, Article 3, Section 15 of the West Virginia State Code. Attachment 1 is the justification of the emergency regulations. Attachment 2 is the changes which we have made in our regulations and attachment 3 is two complete copies of the revised regulations.

If you have any questions concerning this matter, please contact Mr. Robert M. San Julian of the Roadside Services Division.

Very truly yours,

Philip A. Shucet  
Executive Secretary-  
Planning Manager

PAS:LSw

Attachments

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

THIS DATE Oct. 21, 1983  
Administrative Law Division

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

SECRETARY OF STATE

Chapter 20-5E  
Series VII  
(1982)

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

THIS DATE 10/21/83

Administrative Law Division

Subject: Emergency rules for Transportation of Hazardous Waste  
by Highway Transporters

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Section 1. GENERAL

1.01 Scope - These regulations apply to all persons

transporting hazardous waste by vehicle upon the road 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. These regulations do not apply to on-site movements of hazardous waste by generators or by owners and/or operators that have been issued permits under the appropriate State or Federal law.

Section 4. RECORDKEEPING

4.03 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

5.02 A transporter of hazardous waste must also comply with 40 CFR Part 262, 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 DOT shipping descriptions by placing them into a single container.

5.03 A transporter must not transport hazardous wastes without having received an EPA identification number from the Administrator.

5.04 A transporter who has not received an EPA 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.

Justification For Emergency Regulations

(1) Reference is made to the West Virginia State Code Chapter 20, Section 5E, Article 22. "The State program is to be consistent and equal to the Federal program." The United States Environmental Protection Agency has indicated to us that the sections in the regulations which we are amending must be changed to be consistent with the Federal Regulations. In order to comply as soon as possible with the time limitations set in Chapter 20, Article 5E, Section 7 of the Code of West Virginia, 1931 as amended, these regulations are being filed as emergency regulations.

(2) It also should be noted that the United States Environmental Protection Agency has mandated these changes. If these changes have not been completed by December 1983, the state will not receive interim authorization for the management of the Hazardous Waste Management Act. This would jeopardize federal funding which the state is currently receiving. The loss of such funding would be substantially harmful to the public interest in that without the federal funds, the state program for the regulations of hazardous waste would be substantially impaired.

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A. JAMES MANCHIN  
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WEST VIRGINIA ADMINISTRATIVE REGULATIONS

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Chapter 20-5E  
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FILED IN THE OFFICE OF  
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THIS DATE 10/21/83

Administrative Law Division

Subject: Transportation of Hazardous Waste by Highway  
Transporters

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Section 1. GENERAL

1.01 Scope - These regulations apply to all persons

transporting hazardous waste by vehicle upon the road 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. These regulations do not apply to on-site movements of hazardous waste by generators or by owners and/or operators that have been issued permits under the appropriate State or Federal law.

1.02 Authority - These regulations are promulgated by the West Virginia Department of Highways pursuant to the authority of West Virginia Code §20-5E-7 (Hazardous Waste Management Act of 1981). They are to be administered by the Roadside Services Division, 1900 Washington Street, East, Charleston, West Virginia 25305; Telephone (304) 348-3338.

1.03 Enforcement - The Commissioner of Highways delegates the enforcement authority granted to him in the Hazardous Waste Management Act to the Roadside Services Division as identified in the above section.

1.04 Filing Date - These regulations are promulgated on the 31st day of March, 1982, and filed on the 31st day of March, 1982, in the Secretary of State's office.

1.05 Effective Date - These regulations become effective on the 31st day of March, 1982.

Section 2. DEFINITIONS

2.01 Other than those terms defined in the following section, the terms used in these regulations shall have the same meaning ascribed to them in the regulations promulgated by the Director of the Department of Natural Resources pursuant to the State Hazardous Waste Management Act.

(1) "Highway transporter" means any transporter of hazardous waste by vehicle upon the roads and highways of the State of West Virginia.

(2) "Vehicle" - includes a vehicle, machine, tractor, trailer or semitrailer, or any combination thereof, propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property. It 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

Section 3. THE MANIFEST SYSTEM

3.01(a) 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.

(b) Before transporting the hazardous waste, the highway transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The

highway transporter must return a signed copy to the generator before leaving the generator's property.

(c) The highway transporter must ensure that the manifest accompanies the hazardous waste.

3.02 A highway transporter who delivers a hazardous waste to another transporter or to the designated facility must:

(a) 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

(b) retain one copy of the manifest in accordance with Section 4; and

(c) give the remaining copies of the manifest to the accepting transporter or designated facility.

3.03 Transporters who transport hazardous wastes 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 4; and

(c) return a signed copy of the manifest to the generator.

3.04(a) The highway transporter must deliver the entire quantity of hazardous waste which he has accepted from a generator or a transporter to:

(1) The designated facility listed on the manifest; or

(2) The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or

(3) The next designated transporter; or

(4) The place outside the United States designated by the generator.

(b) If the hazardous waste cannot be delivered in accordance with paragraph (a) of this section, the highway transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

Section 4. RECORDKEEPING

- 4.01 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 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 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 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 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.

5.02 A transporter of hazardous waste must also comply with 40 CFR Part 262, 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 DOT shipping descriptions by placing them into a single container.

5.03 A transporter must not transport hazardous wastes without having received an EPA identification number from the Administrator.

5.04 A transporter who has not received an EPA 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 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).

6.02 If a discharge of hazardous waste occurs during transportation and an official (state, local government, or a Federal agency) acting within the scope of his official responsibilities 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.

6.03 A highway transporter who has discharged hazardous waste must give notice to:

- (a) The West Virginia Department of Highways  
1900 Washington Street, East  
Charleston, West Virginia 25305  
Telephone (304) 348-3028 twenty-four hours a day;
- (b) The West Virginia Department of Natural Resources  
Division of Water Resources  
1201 Greenbrier Street  
Charleston, West Virginia 25314
- (c) The National Response Center  
1-800-424-8802 or (202) 426-2675, but only if:
  - (i) A person is killed; or
  - (ii) A person receives injuries requiring hospitalization; or
  - (iii) Total property damage from the spill exceeds \$50,000; or

- (iv) The discharge involves radioactive waste and/or materials; or
  - (v) The discharge involves shipment of etiologic agents; or
  - (vi) The situation, in the judgment of the carrier, should be reported.
- (d) The notice shall contain the following information:
- (i) Name of reporter;
  - (ii) Name and address of carrier;
  - (iii) Phone number where reporter can be reached;
  - (iv) Date, time and location of spill;
  - (v) Extent of injuries, if any;
  - (vi) Type and quantity of hazardous waste involved, if any;
  - (vii) Description of incident and whether a continuing danger to life exists at the scene.

6.04(a) 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, 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.

(b) The report shall contain the following information:

- (i) All information required by Section 6.2(d);
- (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.

6.05 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 no longer presents a hazard to human health or the environment.

6.06 Nothing in this section shall relieve a highway transporter of the obligation of complying with the applicable Special Regulations contained in Series II, Chapter 3, Section 1 of the Administrative Regulations of the Water Resources Board.

TRANSPORTATION OF HAZARDOUS WASTES  
BY HIGHWAY TRANSPORTERS

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