

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

Form #3

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2011 JUL -3 AM 11:15

OFFICE OF THE SECRETARY OF STATE
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: WV Code 22-18-7(a)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Seven

TITLE OF RULE BEING AMENDED: Transportation of Hazardous Wastes Upon the Roads 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 8, 2011

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, 2010.

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.

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: Bldg. 5, Room 164
1900 Kanawha Blvd., E.
Charleston, WV 25305-0430

Phone Number: 304-558-2804 Email: marvin.g.murphy@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

Transportation of Hazardous Wastes Upon the Roads and Highways

Rule Title: _____

Rule Title: _____

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

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 8, 2011

Signature of Agency Head or Authorized Representative

Paul A. Mathis, Jr.

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 8, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* WV Dept. of Transp., 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 WV Code 22-18-7(a)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
May 27, 2011

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

c. Date of Public Hearing(s) *or* Public Comment Period ended:
June 27, 2011

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

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

July 8, 2011

- 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 Div. of Highways

Bldg. 5, Room 164

1900 Kanawha Blvd., E.

Charleston, WV 25305-0430

304-558-2804

marvin.g.murphy@wv.gov

kathy.j.holtsclaw@wv.gov

- 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.

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

TITLE 157
LEGISLATIVE RULE
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

FILED
2011 JUL -8 AM 11:15

OFFICE OF THE CLERK
SECRETARY OF STATE

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 33CSR20 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, ~~2009~~ 2010. Whenever state statutes or rules are incorporated into this rule, the reference is to the statute or rule in effect as of July 1, ~~2010~~ 2011.

§157-7-2. Definitions.

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

~~2.1.1.~~ 2.1.a. "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.~~ 2.1.b. "C.F.R." means Code of Federal Regulations.

~~2.1.3.~~ 2.1.c. "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.~~ 2.1.d. "Highway Transporter" means a person engaged or authorized to engage in off-site transportation of hazardous waste by road and highway.

~~2.1.5.~~ 2.1.e. "Offer" means that moment when the shipper (generator) certifies the uniform hazardous waste manifest.

~~2.1.6.~~ 2.1.f. "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.~~ 2.1.g. "Shipper" means any person transporting, and/or offering hazardous waste for off-site management by highway transporter.

~~2.1.8.~~ 2.1.h. "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.~~ 2.1.i. "Transporter" means any person accepting hazardous waste for transportation on the roads and highways of this state.

~~2.1.10.~~ 2.1.j. "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.~~ 2.1.k. "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.~~ 3.1.a. 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.~~ 3.1.b. 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.~~ 3.1.c. The highway transporter must ensure that the manifest accompanies the hazardous waste.

~~3.1.4.~~ 3.1.d. 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.~~ 3.2.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,

~~3.2.2.~~ 3.2.b. Retain one copy of the manifest in accordance with Section 4; and,

~~3.2.3.~~ 3.2.c. 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.~~ 3.3.a. The waste is being transported pursuant to a reclamation agreement as provided for in CFR 40 262.20(e);

~~3.3.2.~~ 3.3.b. The transporter records, on a log or shipping paper, the following information for each shipment;

~~3.3.3.~~ 3.3.c. The name, address, and U.S. EPA identification Number of the generator of the waste;

~~3.3.4.~~ 3.3.d. The quantity of waste accepted;

~~3.3.5.~~ 3.3.e. All DOT required shipping information;

~~3.3.6.~~ 3.3.f. The date the waste is accepted; and

~~3.3.7.~~ 3.3.g. The transporter carries this record when transporting waste to the reclamation facility; and

~~3.3.8.~~ 3.3.h. 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.~~ 3.4.a. Indicate on the manifest the date the hazardous waste left the United States, and;

~~3.4.2.~~ 3.4.b. Sign the manifest and retain one copy in accordance with Section 4 of these rules, and;

~~3.4.3.~~ 3.4.c. Return a signed copy of the manifest to the generator; and,

~~3.4.4.~~ 3.4.d. Give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

3.4.e In the case of exports other than those subject to subpart H of 40 CFR part 262, a transporter may not accept such waste from a primary exporter or other person if he knows the shipment does not conform to the EPA Acknowledgment of Consent; and unless, in addition to a manifest signed by the generator as provided in this section, the transporter shall also be provided with an EPA Acknowledgment of Consent which is attached to the manifest. For exports of hazardous waste subject to the requirements of subpart H of 40 CFR part 262, as incorporated by reference in Section 5.5 of 33 CSR 20, a transporter may not accept hazardous waste without a tracking document that includes all information required by 40 CFR 262.84, as incorporated by reference in Section 5.5 of 33 CSR 20.

3.5. Destination.

~~3.5.1.~~ 3.5.a. 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.~~ 3.5.a.1. The designated facility listed on the manifest;

~~3.5.1.b.~~ 3.5.a.2. The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility

because an emergency prevents delivery;

~~3.5.1.e.~~ 3.5.a.3. The next designated transporter; or,

~~3.5.1.d.~~ 3.5.a.4. The place outside the United States designated by the generator.

~~3.5.2.~~ 3.5.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 direction and must revise the manifest according to the generator's instructions.

3.5.c. If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

(i) For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with 157-7-4, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in 40 CFR 264.72(e)(1) through (6) or (f)(1) through (6) or 40 CFR 265.72(e)(1) through (6) or (f)(1) through (6), as incorporated by reference in Sections 7.2 and 8 of 33 CSR 20.

(ii) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with 157-7-4, and give a copy of the manifest

containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with 40 CFR 264.72(e)(1) through (6) or 40 CFR 265.72(e)(1) through (6), as incorporated by reference in Sections 7.2 and 8 of 33 CSR 20.

§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.~~ 6.3.a. The WV Division of Highways

1900 Kanawha Blvd., East
Charleston, WV 25305
Telephone: (304) 558-3028
twenty-four hours a day;

~~6.3.2.~~ 6.3.b. 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~~ 6.3.c. The National Response Center
Telephone: 1-800-424-8802 or
(202) 426-2675, but only if:

~~6.3.3.a.~~ 6.3.c.1. A person is killed;

or,

~~6.3.3.b.~~ 6.3.c.2. A person receives injuries requiring hospitalization; or,

~~6.3.3.e.~~ 6.3.c.3. Total property damage from the spill exceeds \$50,000; or,

~~6.3.3.d.~~ 6.3.c.4. The discharge involves radioactive waste and/or materials; or,

~~6.3.3.e.~~ 6.3.c.5. The discharge involves shipment of etiologic agents; or,

~~6.3.3.f.~~ 6.3.c.6. The situation, in the judgment of the carrier, should be reported.

~~6.3.4.~~ 6.3.d. The notice shall contain the following information:

~~6.3.3.e.~~ 6.3.d.1. Name of reporter;

~~6.3.4.b.~~ 6.3.d.2. Name and address of carrier;

~~6.3.4.e.~~ 6.3.d.3. Phone number where reporter can be reached;

~~6.3.4.d.~~ 6.3.d.4. Date, time and location of spill;

~~6.3.4.e.~~ 6.3.d.5. Extent of injuries, if any;

~~6.3.4.f.~~ 6.3.d.6. Type and quantity of hazardous waste involved, if any;

~~6.3.4.g.~~ 6.3.d.7. Description of incident and whether a continuing danger to life exists at the scene.

6.4. Written Report.

~~6.4.1.~~ 6.4.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, 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.~~ 6.4.b. The report shall contain the following information:

~~6.4.2.a.~~ 6.4.b.1. All information required by subdivision 6.3.d;

~~6.4.2.b.~~ 6.4.b.2. The location of the discharge in relation to surface water, public water supplies, groundwater, wildlife inhabitants, and agricultural production;

~~6.4.2.e.~~ 6.4.b.3. The quantity and description of the hazardous waste removed and the disposition of that material;

~~6.4.2.d.~~ 6.4.b.4. The disposition, quantity and description of the unremoved hazardous waste;

~~6.4.2.e.~~ 6.4.b.5. 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.

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>