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OCT 18 8 44 AM '00

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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October 16, 2000

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Jim Youngblood
Highways, Division of
Capitol Complex
Building 5, Room A-949

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Transportation of Hazardous Wastes Upon the Roads and Highways, 157CSR7**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Highways
Subject: Transportation of Hazardous Wastes Upon the Roads and Highways, 157CSR7
Counsel: Rita A. Pauley
Date: October 6, 2000

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE
OCT 11 9 30 AM '00
FILED

PERTINENT DATES

Filed for public comment: July 21, 2000
Public comment period ended: August 2, 2000
Filed following public comment period: August 28, 2000
Filed LRMRC: August 28, 2000
Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule amends a current legislative rule which governs the transportation of hazardous waste by vehicle upon our roads and highways. This rule only applies if the transportation of hazardous waste requires a manifest under the Hazardous Waste Management Act.

The amendments to the rule update the references to the W.Va. Code and rules as well as federal statutes and regulations. Whenever federal statutes or regulations are incorporated into the rule, the reference is to the statute or regulation in effect on July 1, 1999. Whenever state statutes or rules are incorporated into this rule, the reference is to the statute or rule in effect on July 1, 2000.

AUTHORITY

Statutory authority: W.Va. Code, §22-18-17, which provides, in part, as follows:

(a) The commissioner of the division of highways, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with legislative rules 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, legislative rules governing the transportation of hazardous wastes by vehicle upon the roads and highways of this state. Such legislative rules shall be consistent with applicable rules issued by the federal department of transportation and consistent with this article: *Provided*, That such legislative rules apply to the interstate transportation of hazardous waste within the boundaries of this state, as well as the intrastate transportation of such waste.

ANALYSIS

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

No.

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.

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?

Yes.

VIII. OTHER.