

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Department of Transportation, Division of Highways TITLE NUMBER: 157

CITE AUTHORITY §22-18-7(a)

AMENDMENT TO AN EXISTING RULE: YES NO

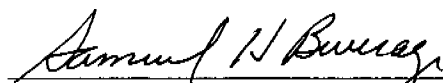
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Samuel H. Beverage, P.E.
Commissioner of Highways

\$4.80



**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION**

1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0440 • 304/558-0444

Cecil H. Underwood
Governor

Samuel G. Bonasso, P. E.
Secretary

July 22, 1999

**The Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, West Virginia 25305**

Dear Secretary Hechler:

**Notice of Rule Modification of a Proposed Rule
Division of Highways, Series 7**

The attached information is being submitted by the Commissioner of Highways with my consent and agreement in accordance with the provisions of Chapter 5G, Article 1 of the State Code.

This submission includes modifications adopted by the Legislative Rule Making Review Committee in its meeting on July 11, 1999. A revised statement of circumstances is included in this submission to explain the modifications.

Yours truly,

A handwritten signature in black ink, appearing to read "S.G. BONASSO". The signature is stylized and written in a cursive-like font.

**Samuel G. Bonasso, P.E.
Secretary**

SGB:Mc

Attachments

Changes to 157CSR7
Transportation of Hazardous Wastes Upon the Roads and Highways
Introduced by Counsel at the
L.R.M.R.C. Meeting on July 11, 1999

Revised Statement of Circumstances

- 1) **Revise subsection 1.6.** Since the original proposed rule filing, new federal and state statutes have been filed and enacted. Therefore, the revision to the incorporation by reference of federal statutes in effect on July 1, 1998 and state statutes in effect on July 1, 1999 is required.

LEGISLATIVE RULES
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

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157CSR7

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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

TITLE 157
LEGISLATIVE RULES
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

SERIES 7
TRANSPORTATION OF HAZARDOUS WASTES UPON THE ROADS AND HIGHWAYS

§157-7-1. General.

1.1. Scope. ~~These~~ This legislative rules and regulations applyies 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 ~~Section 6 of the regulations of~~ 33 CSR 20 by the Division of Environmental Protection implementing the Hazardous Waste Management Act- ~~(West Virginia Administrative Regulations Title 33 of the Legislative Rules, Division of Environmental Protection, Office of Waste Management, Series 35 20, or by 40 CFR Parts 266, Subpart M; 273, "Universal Waste"; or 279, "Used Oil".)~~

1.2. Authority. W. Va. Code ~~§20-5E-7(a)~~ 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 ~~the Enforcement Division~~ Highways' State Safety Officer as identified in the above section.

1.6. Incorporation by Reference. Whenever federal statutes or regulations ~~or state statutes or regulations~~ are incorporated into ~~these regulations~~ this rule, the reference is to the statute or regulation in effect ~~on the date of enactment of the legislation authorizing these regulations.~~ as of July 1, 1997 1998. Whenever state statutes or rules are incorporated into this rule, the reference is to the statute or rule in effect as of July 1, 1998 1999.

§157-7-2. Definitions.

2.1. ~~Terms. Other than these~~ The terms used in this rule are defined as follows 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 Division of Environmental Protection pursuant to the State Hazardous Waste Management Act.~~

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 ~~includes~~ 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 ~~262-20(a)~~.

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 ~~Sections 6-5 and 10-6 of the regulations of the Division of Environmental Protection implementing the State Hazardous Waste Management Act~~ 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 ~~regulations~~ rules; ~~and,~~

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; ~~or,~~

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

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 these regulations this rule; b) 33 CSR 20 of the Division of Environmental Protection regulations implementing the Hazardous Waste Management Act; c) all applicable regulations of the Federal Environment Protection Agency 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) the Federal Highway Administration Department of Transportation as set forth in 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 in violation violated by a highway transporter, the Division of Highways representative conducting vehicle inspections may deem the driver, vehicle and cargo out-of-service. until a All said violations are must be corrected and the driver, vehicle and/or cargo are deemed found to be in compliance prior to permitting 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, if as required by the West Virginia Division of Environmental Protection. rules implementing the Hazardous Waste Management Act.

5.4. U.S. EPA Identification Number Application ~~Procedure~~. 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 ~~immediate~~ 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 ~~Emergency Measures~~. If a discharge of hazardous waste occurs during transportation and a government official, ~~(state, local government, or Federal agency)~~ acting within the scope of his ~~official responsibilities~~ 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 West Virginia Division of Highways
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305
Telephone: (304) 558-3028; twenty-four hours a day;

6.3.2. The West Virginia Division of Environmental Protection
Office of Waste Management
~~1260 Greenbrier~~ 1356 Hansford Street
Charleston, West Virginia ~~25311~~ 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 Division 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 Section 6.3(d).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 Division 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 Office of Water Resources.



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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE SECRETARY OF STATE

*State Capitol - Room MB-49
Charleston, West Virginia 25305
Phone: (304) 347-4840
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*Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel*

*Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant*

July 11, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Alan Cuervo
Division of Highways
Building 5, Room 715
Charleston, WV 25305

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 rule be withdrawn; a statement of reasons for such recommendation is attached.
