



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

JOHN D. ROCKEFELLER IV
Governor

March 16, 1983

DAVID C. CALLAGHAN
Director
WILLIS H. HERTIG, JR.
Deputy Director
BRENT T. WAHLQUIST
Deputy Director

Mr. Earl M. Vickers, Director
Legislative Services
State Capitol Bldg. 1 - Room EW-132
Charleston, WV 25305

Attn: Mr. John R. Homburg:

Dear Sir:

As recipient of regulations for the Legislative Rule Making Review Committee I am hereby submitting 15 copies of Emergency Regulations as required under Chapter 29A-3-15 of the State's Administrative Procedures Act regarding the Hazardous Waste Management Regulations, Chapter 20-5E, Series XV, Section 5.00 - page 88 (Standards Applicable to Transporters of Hazardous Waste by Air and/or Water) and Section 13.00 - page 242 (Financial Requirements) and the statement of the facts and circumstances constituting the emergency.

If you or any members of the Committee have any questions, do not hesitate to contact my office at 348-2754.

Sincerely,


David C. Callaghan, Director
Department of Natural Resources

DCC/feh

enclosures

c The Honorable A. James Manchin,
Secretary of State

RECEIVED
MAR 16 1983
Legislative Services



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CHARLESTON 25306

JOHN D. ROCKEFELLER IV
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DAVID C. CALLAGHAN
Director
WILLIS H. HERTIG, JR.
Deputy Director

The Honorable A. James Manchin
Secretary of State
State Capitol
Charleston, WV 25305

Dear Mr. Secretary:

Enclosed are two (2) copies each of the State Register Filing Form as prescribed by your office and Emergency Regulations as authorized by Chapter 29A-3-15 regarding the Hazardous Waste Management Regulations, Chapter 20-5E, Series XV, Section 5.00 - page 88 (Standards Applicable to Transporters of Hazardous Waste by Air and/or Water) and Section 13.00 - page 242 (Financial Requirements) along with a statement of the facts and circumstances constituting the emergency which becomes effective as of this filing date.

I hereby certify that the enclosed are true and accurate copies of the official regulations promulgated by me on this the 16th day of March, 1983.

Sincerely,

David C. Callaghan, Director
Department of Natural Resources

DCC/feh

enclosures

c The Honorable John D. Rockefeller IV

Legislative Rule Making Review Committee (15 copies)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 3-16-83



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✓ c The Honorable A. James Manchin,
Secretary of State

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A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE 3-16-83

*Look at new
Filing in W.R. Book
3/7/84
these are outdated*



STATE OF WEST VIRGINIA
 OFFICE OF THE SECRETARY OF STATE
 CHARLESTON 25305

A. JAMES MANCHIN
 SECRETARY OF STATE

STATE REGISTER FILING

I, David C. Callaghan, Director,
 Title or Position

Department of Natural Resources, hereby submit to record in
 Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations;
- rules and regulations; or
- other - specify ().

This filing pertains to Emergency Regulations.

Chapter 20 & 29A
 Article 5E
 Series DNR XV
 Section _____
 Page No. _____

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

THIS DATE 3-16-83

- proposed rules and regulations are required to go to Legislative Rule Making Committee;
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

March 16, 1983
 Date Submitted

David C. Callaghan
 Signature of Person Authorizing
 this Filing

Section 5.00 Standards Applicable to Transporters of
Hazardous Waste by Air and/or Water.

The Director and the Water Resources Board hereby adopt and incorporate by reference 40 C.F.R. Part 263, as published in the Code of Federal Regulations on July 1, 1982 insofar as such regulations relate to the transportation of hazardous waste by air and water.

Wherever the term Administrator or Regional Administrator is used, the term shall have the meaning of the Director of the Department of Natural Resources.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 3-16-83

TRANSPORTATION OF HAZARDOUS WASTE BY AIR OR WATER

STATEMENT OF EMERGENCY

West Virginia Code § 20-5E-7(a) requires the Commissioner of Highways to promulgate rules and regulations governing the transportation of hazardous waste by vehicle upon the roads and highways of the State. Similarly § 20-5E-7(6) of the Act requires the Public Service Commission to promulgate rules and regulations governing transportation of hazardous waste by railroad in the State. However, no specific provision was made for regulatory authority by any agency to promulgate regulations for air or water transportation of hazardous waste. Yet the Director, under § 20-5E-6 is empowered to promulgate rules and regulations as are necessary to effectuate the purposes of the Act, and the Water Resources Board is given authority under § 20-5E-7(i) to promulgate rules and regulations governing discharges into the waters from hazardous waste facilities.

The Director is also required to perform any and all acts necessary to carry out the purposes and requirements of Subtitle C of the Solid Waste Disposal Act.

The Federal Solid Waste Disposal Act and the regulations promulgated thereunder establishes deadlines for States to apply for interim or full authorization. In such application the State has to demonstrate substantial equivalency to the Federal program in order to operate their program in lieu of the Federal government.

Representatives from the Federal Environmental Protection Agency have determined that absence or omission of regulations governing transportation by air and water of hazardous wastes leaves the State program fatally defective, and ineligible for interim or full authorization.

Consequently, the promulgation of these regulations as emergency regulations is necessary to meet a time deadline established by a Federal statute.

Section 13.00 Financial Requirements

The Director hereby adopts and incorporates by reference 40 C.F.R. Part 264, Subpart H, as published in the Code of Federal Regulations on July 1, 1982 with the following modifications: Sections 264.143(f), § 264.145(f), and § 264.147(f), shall be amended by the addition of the following paragraph:

"Notwithstanding the above, the Director may disallow use of this test on the basis of information that the owner or operator has violated or is in violation of any state or federal law or regulation pertaining to environmental protection. The owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance."

Section 264.149 and § 264.150 shall be deleted.

Wherever the term Administrator or Regional Administrator is used, the term shall have the meaning of the Director of the Department of Natural Resources.

STATEMENT OF EMERGENCY

FINANCIAL RESPONSIBILITY

West Virginia Code § 20-5E-6(a)(4) requires the Director of the Department of Natural Resources to promulgate within six months of the effective date of the Act (July 9, 1981):

"Rules and regulations establishing such performance standards applicable to owners and operators of facilities for the treatment, storage or disposal of hazardous waste identified or listed under this article as may be necessary to protect public health and safety and the environment, which standards shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of such rules and regulations and shall include, but need not be limited to, requirements respecting: (A) maintaining records of all hazardous wastes identified or listed under this article which are treated, stored or disposed of, as the case may be, and the manner in which such wastes were treated, stored or disposed of; (B) satisfactory reporting, monitoring and inspection and compliance with the manifest system referred to in subdivision (3), subsection (a) of this section; (C) treatment, storage or disposal of all such waste received by the facility pursuant to such operating methods, techniques and practices as may be satisfactory to the directors; (D) the location, design and construction of such hazardous waste treatment, disposal or storage facilities; (E) contingency plans for effective action to minimize unanticipated damage from any treatment, storage or disposal of any such hazardous waste; (F) the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel and financial responsibility as may be necessary or desirable; however, no private entity may be precluded by reason of criteria established under this subsection from the ownership or operation of facilities providing hazardous waste treatment, storage or disposal services where such entity can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of specified hazardous waste; and (G) compliance with the requirements of section eight of this article respecting permits for treatment, storage or disposal."

All of the regulations referred to above were promulgated by the Director on March 24, 1982, except for the financial responsibility regulations required in subsection (F).

Therefore, the promulgation of the financial responsibility regulations is proper inasmuch as such regulations are necessary to comply with the time limitation established by West Virginia Code § 20-5E-6. Furthermore, the emergency promulgation of the financial responsibility regulations meets the test of an "emergency" because of deadlines established by Federal statute and regulations on when States must apply for either interim or full authorization.

West Virginia Code § 20-5E-5(a) requires the Director to do "...any and all Acts necessary to carry out the purposes and requirements of Subtitle C of the Solid Waste Disposal Act".

Finally, these regulations meet the requirements of an "emergency" in that such regulations are necessary to prevent substantial harm to the public interest. These regulations require facilities to employ various methods of demonstrating financial responsibility for adequate closure and post closure of hazardous waste facilities. The Legislature found as stated in West Virginia Code § 20-5E-2 that:

"[T]he public health and safety and the environment are threatened where hazardous wastes are not managed in an environmentally sound manner...."

The Legislature declared further that the purpose of Chapter 20, Article 5E was "...to protect the public health and safety, and the environment from the effect of the improper management of hazardous waste and to assume... the safe and adequate

management of hazardous waste within the State..."

For all of the reasons cited above, it is submitted that such rules must be promulgated on an emergency basis.