



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

September 19, 1986

ARCH A. MOORE, JR.
Governor

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OFFICE OF THE SECRETARY OF STATE

RONALD R. POTESTA
Director

MICHAEL A. FOTOS
Deputy Director

NOTICE OF EMERGENCY RULE

RULE TITLE: Hazardous Waste Management Regulations

The attached rule is filed as an Emergency Rule. The facts and circumstances constituting the emergency are as follows:

New federal regulations will prohibit land disposal of certain hazardous wastes, effective November 8, 1986, unless the current legislative rules are amended. Such a prohibition on land disposal would result in facility shutdowns or illegal treatment practices until costly alternative methods of disposal could be implemented. The emergency rule is necessary to prevent substantial harm to the public interest that would occur as a result of such facility shutdowns or illegal treatment practices.

A handwritten signature in cursive script, appearing to read "R. Potesta", written over a horizontal line.

Director



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DEPARTMENT OF NATURAL RESOURCES
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September 19, 1986

RONALD R. POTESTA
Director

MICHAEL A. FOTOS
Deputy Director

The Honorable Ken Hechler
Secretary of State
Capitol Complex, Suite 157-K
Charleston, West Virginia 25305

Re: Filing of Emergency Rules (Hazardous
Waste Management Regulations, Series
15), Notice of Public Hearing, and
Notice of Comment Period by the
Department of Natural Resources

Dear Mr. Hechler:

Enclosed please find for your filing a copy of amendments to the legislative rules of the Department of Natural Resources adopted and filed on an emergency basis.

If you have any questions, please contact Mr. Ronald A. Shipley, Special Assistant to the Director and State Hazardous Waste Coordinator, at 348-2761.

Sincerely,

Ronald R. Potesta
Director

RRP/jhb

Enclosures

cc: Legislative Rulemaking Review Committee
All State Hazardous Waste Agencies

West Virginia Administrative Regulations
Department of Natural Resources
Chapter 20-15, Series 4585
Hazardous Waste Management Regulations
Emergency Rule (Effective 9/22/86)

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3.1.2 Definition of Hazardous Waste

3.1.2.a A waste as defined in Section 3.1.1 is a hazardous waste if:

3.1.2.a.1 It is not excluded from regulation as a hazardous waste under Section 3.1.3(b); and

3.1.2.a.2 It meets any of the following criteria:

3.1.2.a.2.i It is listed in Section 3.4 and has not been excluded from the list in Section 3.4 pursuant to Section 16.

3.1.2.a.2.ii It is a mixture of a waste and a hazardous waste that is listed in Section 3.4 solely because it exhibits one or more of the characteristics of hazardous waste identified in Section 3.3, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in Section 3.3.

3.1.2.a.2.iii It is a mixture of a waste and one or more hazardous wastes listed in Section 3.4 and has not been excluded from this paragraph under Section 16 of these regulations; however, the following mixtures of solid wastes and hazardous wastes listed in Section 3.4 are not hazardous wastes (except by application of Sections 3.1.2.a.2.iv or 3.1.2.a.2.i) if the generator complies with the requirements contained in Section 3.1.2.a.3:

3.1.2.a.2.iii.A It is one or more of the following spent solvents listed in Section 3.4.2 - carbon tetrachloride, tetrachloroethylene, and trichloroethylene - provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million; or

3.1.2.a.2.iii.B It is one or more of the following spent solvents listed in Section 3.4.2 - methylene chloride, 1, 1, 1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, and spent chlorofluorocarbon solvents - provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be

discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 25 parts per million; or

3.1.2.a.2.iii.C It is the following waste listed in Section 3.4.3 - heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050); or

3.1.2.a.2.iii.D It is a discarded commercial chemical product, or chemical intermediate listed in Section 3.4.4, arising from "de minimis" losses of these materials from manufacturing operations produced in the manufacturing process. For purposes of this subsection, "de minimis" losses include those from normal material handling operations (e.g. spills from the unloading or transfer of materials from bins or other containers, or leaks from pipes, valves or other devices used to transfer materials); minor leaks from process equipment, storage tanks, or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers or the rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

3.1.2.a.2.iii.E It is a wastewater resulting from laboratory operations containing toxic (T) wastes listed in Section 3.4, provided the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pretreatment system, or provided the wastes' combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pretreatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation.

3.1.2.a.2.iv It exhibits any of the characteristics of hazardous waste identified in Section 3.3.

3.1.2.a.3 In order for a mixture of a waste and one or more hazardous wastes identified in Section 3.1.2.a.2.iii to be exempt from the definition of hazardous waste, the owner or operator must comply with the following:

3.1.2.a.3.i Before claiming an exemption, demonstrate in writing to the Chief that the weekly ratio of the usage of solvents to the flow of wastewater in the headworks of wastewater treatment does not exceed the values listed in 3.1.2.a.2.iii A or B; or the annualized ratio of average flow of laboratory wastes of the total flow of wastewater in the headworks of wastewater treatment or the combined annualized concentration in the headworks of wastewater

treatment does not exceed the values listed in Section 3.1.2.a.2.iii.E. He must also report annually to the Chief the ratios or values described in this paragraph for the previous year.

3.1.2.a.3.ii Annually submit to the Chief a list of hazardous wastes that are expected to be present in the mixture to be exempted.

3.1.2.a.3.iii Before claiming an exemption, demonstrate in writing to the Chief that the mixture consists of wastewater which is treated in a wastewater treatment facility, the discharge of which is subject to regulation under W. Va. Code §20-5A-1 (including wastewater at facilities which have eliminated the discharge of wastewater).

3.1.2.a.3.iv Provide a certification in writing to the Chief that groundwater monitoring complying with either 40 C.F.R. Part 265, Subpart F, or which is approved by the Chief, is or will be in place at the wastewater treatment facility identified in Section 3.1.2.a.3.iii. A time schedule for the installation of such groundwater monitoring must be included. (Note: This requirement does not apply to wastewater treatment units or containers.)

3.1.2.a.4 The owner or operator of each wastewater treatment facility receiving mixtures of wastes under Section 3.1.2.a.2 shall notify the Chief of the receipt of such wastes on a form prescribed by the Chief.

3.1.2.b A waste which is not excluded from regulation under paragraph (a)(1) of this section becomes a hazardous waste when any of the following events occur:

3.1.2.b.1 In the case of a waste listed in Section 3.4 when the waste first meets the listing description set forth in Section 3.4;

3.1.2.b.2 In the case of a mixture of a waste and one or more listed hazardous wastes, when a hazardous waste listed in Section 3.4 is first added to the waste;

3.1.2.b.3 In the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in Section 3.3.

3.1.2.c Unless and until it meets the criteria of paragraph (d):

3.1.2.c.1 A hazardous waste will remain a hazardous waste.

3.1.2.c.2.i Except as otherwise provided in paragraph 3.1.2.c.2.ii of this section, any waste generated from the treatment, storage,

or disposal of a hazardous waste, including any sludge, spill residue, ash, emissions control dust, or leachate (but not including precipitation run-off) is a hazardous waste. (However, materials that are reclaimed from waste that are used beneficially are not wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

3.1.2.c.2.ii The following wastes are not hazardous wastes even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste: (A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332); (B) Wastes from burning any of the materials exempted from regulation by Section 3.1.5.a.3.

3.1.2.d Any waste described in paragraph (c) is not a hazardous waste if it meets the following criteria:

3.1.2.d.1 In the case of any waste, it does not exhibit any of the characteristics identified in Section 3.3.

3.1.2.d.2 In the case of a waste which is a listed waste under Section 3.4, contains a waste listed under Section 3.4 or is derived from a waste listed in Section 3.4, it also has been excluded from paragraph (c) under Section 16.



KEN HECHLER
Secretary of State

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Deputy Secretary of State

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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

October 31, 1986

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Natural Resources

RULE: Amendments to Series ³⁵ Hazardous Waste Management Rules,
Section 3.1.2 "Definition of Hazardous Waste"

DATE FILED AS AN EMERGENCY RULE: September 19, 1986

DECISION NO. 20-86

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER
Secretary of State

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OFFICE OF THE SECRETARY OF STATE



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Special Assistant

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

DECISION

Emergency Rule Decision
(ERD 20-86)

AGENCY: Department of Natural Resources
RULE: Amendments to Series 15 Hazardous Waste Management
Rules, Section 3.1.2 "Definition of Hazardous Waste"
DATE FILED AS AN EMERGENCY RULE: September 19, 1986

- par. 1 The Department of Natural Resources (DNR) has filed as emergency rule the above titled amendment.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope if its statutory authority in promulgating the emergency rule; or 3) can show than an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The DNR has filed this emergency rule with supporting documents with the Secretary of State on September 19, 1986.

par. 7 It is the determination of the Secretary of State that the Department of Natural Resources has complied with the procedural requirements of WV Code §29A-3-15.

par. 8 (B) Statutory Authority -- WV Code §20-5E-6(a) reads:

§20-5E-6. Promulgation of regulations by director.

(a) The director has overall responsibility for the promulgation of rules and regulations under this article. Within six months of the effective date of this article (July 9, 1981) the director shall promulgate the following rules and regulations; in consultation with the department of health, the air pollution control commission, the office of emergency services, the public service commission, the state fire marshal, the department of public safety, the department of highways, the department of agriculture, the water resources board and the department of mines office of oil and gas. In promulgating and revising such rules and regulations the director shall comply with the provisions of chapter twenty-nine-A (§29A-1-1 et seq.) of this Code, shall avoid duplication in the maximum extent practicable with the appropriate provisions of the acts and laws set out in subsection (b), section five [§20-5E-5(b)] of this article and shall be consistent with the rules and regulations promulgated by the federal environmental protection agency pursuant to the federal Solid Waste Disposal Act, as amended.

par. 9 It is the determination of the Secretary of State that the Department of Natural Resources has not exceeded its statutory authority by adopting this rule.

par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The Department of Natural Resources claims this rule is "to prevent substantial harm to the public interest."

par. 13 The DNR states the following:


New federal regulations will prohibit land disposal of certain hazardous wastes, effective November 8, 1986, unless the current legislative rules are amended. Such a prohibition on land disposal would result in facility shutdowns or illegal treatment practices until costly alternative methods of disposal could be implemented. The emergency rule is necessary to prevent substantial harm to the public interest that would occur as a result of such facility shutdowns or illegal treatment practices.

par. 14 As stated in ERD 1-86 par. 19 and 20, such economic factors are sufficient to justify emergency filing.

par. 16 The Secretary of State determines that the Department of Natural Resources has demonstrated the need to make effective this proposal.

par. 17 It is the decision of the Secretary of State that this proposal by the Department of Natural Resources is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Department of Natural Resources; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.

par. 18 This decision shall be cited as Emergency Rule Decision 20-86 or ERD 20-86 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Department of Natural Resources, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

Entered _____

SECRETARY OF STATE
1986 OCT 31 PM 4:39

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KENTUCKY AND WEST VIRGINIA

September 30, 1986

Mr. Rich Hartman
Secretary of State's Office
State Capitol Building
Charleston, West Virginia 25305

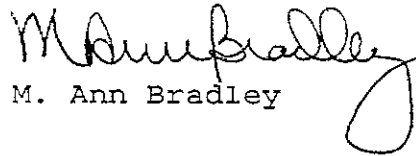
Re: Emergency Regulations - West Virginia
Department of Natural Resources
(Hazardous Waste Management Regulations,
Series 15), Filed September 19, 1986

Dear Rich:

As discussed in our telephone conversation, I am enclosing for your review a copy of the comments of the West Virginia Manufacturers Association on the Advance Notice of Proposed Rulemaking issued by the Department of Natural Resources last June. The comments discuss, in several places, the importance of this regulation to West Virginia industry.

Should you have any questions after reviewing the comments, please do not hesitate to contact me.

Very truly yours,


M. Ann Bradley

MAB:ag

Enclosure