

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

-- ADVANCE NOTICE OF PROPOSED RULE-MAKING --

AGENCY: WV Department of Natural Resources TITLE NUMBER: 47

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §20-5G-6

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 41

TITLE OF RULE BEING PROPOSED: Hazardous Waste Emergency Response

Fund, Hazardous Waste Contingency Plan

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON Friday, July 1, 1988 AT 4:30 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Mr. Dennis H. Treacy


WV Department of Natural Resources

1800 Washington Street, East

Room 842

Charleston, West Virginia 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

ADVANCE NOTICE OF PROPOSED RULE-MAKING (ANPR)
HWERF HAZARDOUS WASTE CONTINGENCY PLAN

FILED

1988 MAY -5 PM 3:16

REGULATIONS: Department of Natural Resources, Hazardous Waste Emergency Response Fund, Hazardous Waste Contingency Plan

OFFICE OF WEST VIRGINIA
SERIES 41
SECRETARY OF STATE

AUTHORITY: W. Va. Code §20-5G-6

ACTION: Advance Notice of Proposed Rule-Making

SUMMARY: On March 10, 1984, the state legislature enacted the Hazardous Waste Emergency Response Fund, Article 5G of Chapter 20 of the West Virginia Code. This article required the Director of the Department of Natural Resources (DNR) to promulgate rules establishing a Hazardous Waste Contingency Plan (HWCP) "which shall set forth procedures and standards for responding to hazardous waste emergencies, for conducting remedial cleanup and maintenance of hazardous waste sites and for making expenditures from" the Hazardous Waste Emergency Response Fund created pursuant to Article 5G.

Today's filing is an advance notice of the Department's intent to propose rules to establish a state Hazardous Waste Contingency Plan requesting input from the public on the format and contents of the plan. This notice outlines the general requirements to be addressed by the proposed rules and seeks input from the public on the format and contents of the proposed rules.

The Department will receive written comments concerning the issues addressed in this notice until 4:30 p.m. on Friday, July 1, 1988. Comments or inquiries should be addressed to Mr. Dennis H. Treacy, WV Department of Natural Resources, 1800 Washington Street, East, Room 842, Charleston, West Virginia 25305.

SUPPLEMENTAL INFORMATION:

I. Background

West Virginia industries generate large quantities of hazardous waste. Some of these wastes are treated, stored or disposed of in the state. All these activities can create emergency situations posing a hazard to human health, safety or the environment. In 1980, the federal government enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which provides assistance to the states in responding to emergencies involving the release of hazardous substances. This law,

commonly known as "Superfund", also provides funds to the state to clean up hazardous waste sites with great potential for harm to public health, safety and environment when a responsible party to clean up the site cannot be found. The Superfund law requires the state to provide matching funds for cleanup activities and for the future operation and maintenance of these sites whenever the fund is used for remedial cleanups.

In 1984, the state legislature passed the Hazardous Waste Emergency Response Fund (HWERF) law. The primary purpose of this law is to establish a fund to which the hazardous waste generators in the State pay an annual fee based on the amount of hazardous waste generated. In addition, this law also directed the Director of DNR to establish "a state Hazardous Waste Contingency Plan which shall set forth procedures and standards for responding to hazardous waste emergencies, for conducting remedial cleanups, maintenance of hazardous waste sites and for making expenditures from the fund after the date of promulgation of the plan." The plan is required to include:

- (a) Methods for discovering, reporting and investigating sites at which hazardous waste may present significant risk of harm to the public health and safety or to the environment;
- (b) Appropriate roles for governmental, interstate, and non-governmental entities in effectuating the plan;
- (c) Methods for identifying, procuring, maintaining, and storing hazardous waste response equipment and supplies; and
- (d) Methods to identify the most appropriate and cost-effective emergency and remedial actions in view of the relative risk or danger presented by each case or event.

The HWCP required under HWERF will address situations requiring emergency response or remedial action involving only hazardous waste releases. The scope of the National Contingency Plan (NCP) under CERCLA is much broader. The NCP covers all situations involving releases of oil and hazardous substances which also includes hazardous wastes.

The development of a contingency plan to respond to hazardous waste incidents is also required under Part II G.1 of the West Virginia Hazardous Waste Emergency Response Plan. This WVHWERP is administered by the West Virginia Office of Emergency Services (WVOES). The objective of this plan is to respond to emergencies involving hazardous

materials. Under this plan, the Department of Natural Resources is the lead agency for emergency incidents involving hazardous wastes. The WVOES is required to consult the HWCP during incidents which involve hazardous wastes.

II. Purpose of Notice of Proposed Rule-Making

The purpose of this notice is to invite comments and input from the regulated community, the public, and other agencies who may be involved in responses to incidents involving accidental releases of hazardous wastes, on the contents, the format or other aspects of the rules relating to HWCP which the Department is required to promulgate.

III. Suggested Outline of the Plan

The Department believes that the primary purposes of the HWCP should be as follows:

- (a) To describe the method, procedures and policy of the Department related to the funding and operation of responses to emergency hazardous waste situations and uncontrolled waste sites;
- (b) To describe the roles and responsibilities of the Department, other state and local agencies, and the federal government in any remedial action related to hazardous wastes financed using funds from HWERF;
- (c) To provide guidance concerning certain methods of response to such situations funded under HWERF; and
- (d) To prescribe the procedures to be employed by non-governmental organizations when responding to sites or situations funded under HWERF.

To achieve these purposes, the DNR proposes the following outline for the plan as detailed below:

- (a) Filing Information
 - Scope, Purpose and Authority
- (b) Abbreviations and Definitions
- (c) Roles and Responsibilities
 - Department of Natural Resources
 - Coordination with state agencies
 - Coordination with federal agencies

Local participation
Non-governmental participation
Relationship to National Contingency Plan,
WV Hazardous Materials Emergency
Response Plan and other such plans.

(d) Organization

Organization Concepts
Planning and Coordination
State Response Team (SRT)
Response Operations
Multi-State Responses
Special Considerations
Health and Safety of Responders
Public Information

(e) Hazardous Waste Site Responses

General
Relation to Federal Responses
Discovery and Notification
Preliminary Assessment
Emergency Responses
Site Evaluation for NPL/SPL Determination
Remedial Action at NPL/SPL Sites
Documentation and Cost Recovery
Other Party Responses
Community Relations and Public Information
Response Remedies

(f) Transportation Incidents Involving Hazardous Wastes

(g) State Natural Resources Trustee

IV. Suggested Contents of the Plan

The following is a discussion of the specific issues that the DNR believes should be addressed in the plan.

(a) Roles and Responsibilities of the DNR while using HWERF

DNR will be the lead agency for all emergency responses or emergency remedial actions undertaken utilizing HWERF and shall coordinate with all agencies involved. The DNR will use authorities to compel responsible parties to undertake the response action.

The authorization of funding for all such emergency responses or emergency remedial actions from the

HWERF will be made by the Director of DNR or his designee. In case of cooperative agreements or contracts with response organizations the Director of DNR or his designee shall be signatory if HWERF is used for responses.

The Department shall comply with all Federal or State statutes or regulations during this response. The Department shall consult appropriate Federal or State agencies if required before selecting the appropriate remedial action.

The Department shall prepare a State Priorities List (SPL) for establishing priorities of remedial action. The list will include, at a minimum, the State sites included in the National Priorities List (NPL).

(b) Other State Agencies Involved in Actions Involving HWERF

Other agencies involved in response and remedial actions could be:

- (1) West Virginia Office of Emergency Services
- (2) West Virginia Department of Health
- (3) West Virginia Department of Highways
- (4) Emergency Medical Services
- (5) West Virginia Air Pollution Control Commission
- (6) West Virginia Public Service Commission
- (7) State Fire Commission
- (8) Any other agency recommended by WVOES in consultation with other agencies
- (9) West Virginia Department of Agriculture

All these agencies shall ensure that actions taken by them are consistent with the HWCP. These agencies shall provide services, at a minimum, in responding to emergencies involving hazardous wastes, as contained in the West Virginia Hazardous Materials Emergency Response Plan.

A Memorandum of Understanding may also be developed between the DNR and agencies listed above regarding their roles in response and remedial actions.

The DNR may utilize all the available technical and scientific information generated by industry, universities and other entities which it finds useful for response operations.

(c) Coordination with Federal Agencies

Federal assistance will be requested by the DNR. The different agencies that could be involved in the response to hazardous waste incidents include, but are not limited to, the U. S. Environmental Protection Agency, the U. S. Coast Guard, Agency for Toxic Substances and Disease Registry (ATSDR) and Federal Emergency Management Agency (FEMA).

(d) Relationship to Other Plans

This plan shall be consistent with the West Virginia Emergency Response Act, the National Contingency Plan and the West Virginia Hazardous Material Emergency Response Plan.

(e) Organization

The planning and coordination of response will be accomplished through a State Response Team (SRT) which will consist of representatives from the DNR, the Office of Emergency Services, the Department of Health, the Department of Highways, and the Air Pollution Control Commission. The representatives of the DNR and the OES will be co-chairmen of the team. This SRT will be activated at the occurrence of incidents of extreme emergencies involving hazardous wastes.

The Division of Waste Management (DWM) of the DNR will be the state coordinator for responses under this plan.

The DWM will designate an On Scene Coordinator (OSC)/Remedial Project Manager (RPM) for areas of the state who shall coordinate emergency responses/remedial actions.

The DWM shall also establish state Technical Assistance Team (TAT) comprised of inspectors and other technical persons and an Environmental Response Team (ERT) comprised of technical personnel from different state agencies. TAT and ERT will assist OSC in emergency responses and in assessing the sites with releases as necessary.

The OSC for every response should be aware of threats to human health and safety and shall ensure that proper precautions are taken.

All the information to the public shall be coordinated by the Public Information Office of the DNR.

(f) Hazardous Waste Emergency Response and Remedial Action

Emergency and remedial responses to actions pursuant to this plan will be taken only when the responsible party refuses to act, does not respond in a timely manner, or cannot respond because of limited capabilities and when the federal funds for the response are not available within a reasonable time of their request. The DNR will supervise responses pursuant to HWERF and may terminate the response by the responsible party, if found unsatisfactory.

The DNR responses pursuant to this plan may be categorized as follows:

- (1) Emergency Actions - actions where significant risks of harm to public health or safety or environment exists from hazardous waste incidents or where there is existing or threatened risk of harm to public health, safety or environment from hazardous waste emergency situations. Such actions will involve reducing the danger or removing of the hazardous wastes from the environment.
- (2) Remedial Action - actions where there is existing or threatened risk of harm to public health, safety or environment at uncontrolled hazardous waste sites or at State Priority List (SPL) sites where emergency action has been taken. Such actions will be consistent with permanent remedy.

In addition to situations cited above, the HWERF money will also be spent to finance the state share of EPA-sponsored remedial actions pursuant to CERCLA.

A reasonable time for EPA to respond to DNR requests is suggested as follows:

Emergency Actions

- (1) Response required as soon as it is reasonably possible after telephone notice of situations needing immediate responses.
- (2) Within two weeks of request over the telephone (confirmed in writing within 48 hours of the telephone request) for situations needing

mitigation or removal.

- (3) Emergency action shall be limited to a maximum duration of six months and to a maximum funding of \$100,000 per site.

Remedial Actions

The Department will perform remedial activities at State Priority List sites using the following procedures:

Procedures for discovery of hazardous waste incident, situation or uncontrolled site shall be established and each discovery shall be properly recorded.

A preliminary assessment shall be made for hazardous waste emergency situations or uncontrolled sites, according to the NCP. This shall be followed by a site investigation where required according to the NCP.

Remedial action shall be limited by the availability of funds in Hazardous Waste Emergency Response Fund.

Expenditures from the HWERF shall be approved by the Director or his authorized representative.

The activities that could be included under remedial action are contamination studies, design of remedial work, mobilization of personnel and equipment, public information, evaluation and reporting of response action and recovery of costs of response action. The Director can approve the expenditure by the Department personnel or contractors.

(g) Transportation Incidents Involving Hazardous Wastes

The Department of Highways will be the lead agency in transportation incidents involving hazardous wastes. If the DOH cannot handle the incident through its internal emergency response organization they shall inform the West Virginia Emergency Operations Center to request assistance.

Hazardous waste transportation incidents occurring by means other than highway transit shall be reported to West Virginia Emergency Operations

Center.

(h) State Natural Resources Trustee

The state agencies will act as trustees for damage to natural resources belonging to, managed by, controlled by or pertaining to them. These trustees shall be responsible for assessing damages to resources and seeking recovery for losses from the person or from the Trust Fund under CERCLA and devising and carrying out restoration, rehabilitation and replacement plans pursuant to CERCLA.

V. Request for Comments

The Department is requesting comments from the public, regulated community and other agencies that may be involved in the Hazardous Waste Contingency Plan on the outline and contents of the suggested plan. The Department is also requesting any additional input from all interested parties on the format and contents of the plan consistent with the West Virginia Code Chapter 20, Article 5G.