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STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

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PROPOSED RULES

STATE REGISTER FILING

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AGENCY PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

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TYPE OF RULE Legislative

TITLE OF RULE RULES GOVERNING THE TRANSPORTATION OF HAZARDOUS WASTE

BY RAIL

CHAPTER 24 ARTICLE 1 SERIES XI

AUTHORITY 24-1-7; 20-5E-7(b)

+++++

CHECK APPLICABLE ITEMS BELOW TO SHOW KIND OF ACTION BEING TAKEN

NEW RULE

NOTICE OF HEARING

AMENDMENTS TO EXISTING RULE

NOTICE OF AGENCY APPROVAL
(legislative rules only)

REPEAL OF EXISTING RULE

NOTICE OF AGENCY ADOPTION
(interpretive & procedural
rules only)

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FILING OF RULES WHICH
REQUIRES AN ORIGINAL AND
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FINAL FILING

FIRST EMERGENCY FILING

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§ 20-5E-1. Short title.

This article may be known and cited as the "Hazardous Waste Management Act." (1981, c. 119.)

§ 20-5E-2. Declaration of policy.

(a) The legislature finds that:

(1) Continuing technological progress and increases in the amount of manufacture and the abatement of air and water pollution have resulted in ever increasing quantities of hazardous wastes;

(2) The public health and safety and the environment are threatened where hazardous wastes are not managed in an environmentally sound manner;

(3) The knowledge and technology necessary for alleviating adverse health, environmental and aesthetic impacts resulting from current hazardous waste management and disposal practices are generally available;

(4) The manufacture, refinement, processing, treatment and use of coal, raw chemicals, ores, petroleum, gas and other natural and synthetic products are activities that make a significant contribution to the economy of this State; and

(5) The problem of managing hazardous wastes has become a matter of statewide concern.

(b) Therefore, it is hereby declared that the purposes of this article are:

(1) To protect the public health and safety, and the environment from the effects of the improper, inadequate or unsound management of hazardous wastes;

(2) To establish a program of regulation over the storage, transportation, treatment and disposal of hazardous wastes;

(3) To assure the safe and adequate management of hazardous wastes within this State; and

(4) To assume regulatory primacy through Subtitle C of the federal Solid Waste Disposal Act, as amended. (1981, c. 119.)

Editor's note. — The federal Solid Waste Disposal Act, referred to in (b)(4), is compiled in 42 U.S.C. §§ 3251 — 3259, 6901 et seq. W. Va. Law Review. — Flannery and

Poland, "Hazardous Waste Management Act — Closing the Circle." 84 W. Va. L. Rev. 347 (1982).

§ 20-5E-3. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(1) "Chief" means the chief of the division of water resources of the department of natural resources;

(2) "Director" means the director of the department of natural resources;

(3) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters;

(4) "Division" means the division of water resources of the department of natural resources;

(5) "Generation" means the act or process of producing hazardous waste materials;

(6) "Hazardous waste" means a waste or combination of wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics, may (A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed;

(7) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes;

(8) "Manifest" means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage;

(9) "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;

(10) "Storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste;

(11) "Treatment" means any method, technique or process including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous;

(12) "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the federal Water Pollution Control Act, as amended, or source, special nuclear or byproduct material as defined by the federal Atomic Energy Act of 1954, as amended. (1981, c. 119.)

Public Service Commission Of West Virginia

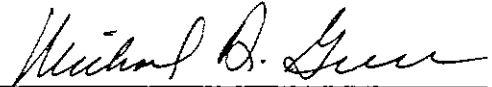
Michael D. Greer, Chairman
James D. Casto, Commissioner
Charlotte R. Lane, Commissioner



201 Brooks Street, P. O. Box 812
Charleston, West Virginia 25323

C E R T I F I C A T I O N

I, Michael D. Greer, Chairman of the West Virginia Public Service Commission, do hereby certify that the rules and regulations contained herein are the lawfully proposed emergency legislative rules of the West Virginia Public Service Commission.



Chairman.

October 28, 1985

Date

Public Service Commission Of West Virginia

Michael D. Greer, Chairman
James D. Casto, Commissioner
Charlotte R. Lane, Commissioner



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Charleston, West Virginia 25323
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NOTICE OF EMERGENCY RULE

RULE TITLE: Rules Governing the Transportation of Hazardous Waste by Rail.

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

Under Public Service Commission (PSC) order dated September 9, 1982 in the matter of General Order No. 209, the Commission promulgated rules and regulations for the government of hazardous waste by rail pursuant to the provisions of the West Virginia hazardous waste management act, codified as Article 5E of Chapter 20 of the West Virginia Code. Under the hazardous waste management act West Virginia is establishing a hazardous waste control program operated in conjunction with, and under the authority of, the U.S. Environmental Protection Agency (EPA).

In its review of the aforesaid PSC regulations, the EPA noted changes required in the PSC rules in order to make the PSC rules substantially equivalent to the Federal rules. The State rules must be substantially equivalent to the Federal rules in order for the State to receive authorization to regulate hazardous waste under the Federal program. Federal authorization is necessary in order for West Virginia to receive funding from the EPA to implement the State program.

The West Virginia hazardous waste management program presently faces a deadline of November 8, 1985 by which time the State program must be substantially equivalent to the Federal rules. In order to implement the necessary changes to the PSC rules prior to November 8, 1985 it is necessary to promulgate the changes as emergency rules. It would obviously be impossible to undertake these changes in only a few days via the normal rulemaking process.

Furthermore, West Virginia Code §20-5E-6(b) requires revisions to State regulations within six months of the effective date of related amendments to Federal laws and regulations. The six-month deadline has lapsed with regard to amendments to EPA regulations embodied in 40 CFR §§ 263.10(c)(1), 263.11(a)(b), 263.20(g) and 271.11(a).

Handwritten signature of Michael D. Greer.
Michael D. Greer, Chairman

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EMERGENCY
WEST VIRGINIA LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION
CHAPTER 24-1
SERIES XI

RULES GOVERNING THE TRANSPORTATION OF HAZARDOUS WASTE BY RAIL.

1. General

- 1.0 Scope. - These regulations apply to all rail transporters who transport hazardous waste in shipments that originate, terminate or occur entirely within the State of West Virginia.
- 1.1 These rules are promulgated pursuant to West Virginia Code §20-5E-7(b).
- 1.2 Filing date - October 28, 1985
- 1.3 Effective date - October 28, 1985
- 1.4 For the purposes of these Regulations the Public Service Commission adopts by reference the Definitions of the Hazardous Waste Management Act, appearing in West Virginia Code §20-5E-3 (1981).
- 1.5 These regulations do not apply to on-site movements of hazardous waste by generators or by owners and/or operators of authorized hazardous waste management facilities.
- 1.6 Transportation of hazardous waste shipments originating and terminating outside of West Virginia shall comply with sections 2, 3, 4 and 5 of these rules while in West Virginia.
- 1.7 A transporter of hazardous waste who transports hazardous waste into the United States from abroad or who mixes hazardous wastes of different DOT shipping descriptions by placing them into a single container must also comply with the standards applicable to generators of hazardous waste contained in Section 6 of the West Virginia DNR.
- 1.8 These rules are promulgated by the Public Service Commission of West Virginia and administered by the Railroad Safety Division of the Public Service Commission of West Virginia. Questions regarding these rules may be addressed to the Railroad Safety Division, Public Service Commission of West

Emergency
PSC
Leg. Rule/Adm. Reg. 24-1
Series XI

Virginia, 201 Brooks Street, Post Office Box 812,
Charleston, West Virginia 25323; Telephone: (304) 340-0474.

- 1.9 All transporters in the State must contact DNR and obtain an EPA Identification Number from the State before they accept hazardous waste for transport.
- 2.0 The Manifest System
- 2.1 (a) ~~A rail carrier may not accept hazardous waste from a generator unless it is accompanied by a manifest signed by the generator in accordance with Section 5 of the "Manifest Regulation for Hazardous Waste Management" established in the rules of the Department of Natural Resources.~~
- 2.1 (a) A rail carrier may not accept hazardous waste from a generator unless it is accompanied by a manifest signed by the generator in accordance with Section 6.02 of the West Virginia DNR Administrative Regulations, Chapter 20-5E, Series XV, Hazardous Waste Management Regulations 1985.
- 2.7 Transporters who transport hazardous waste out of the United States must:
- (a) Indicate on the manifest the date the hazardous waste left the United States; and
- (b) Sign the manifest and retain one copy in accordance with Section 3.1; and
- (c) Return a signed copy of the manifest to the generator.