

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

FILED

SEP 17 1 33 PM '97

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: PUBLIC SERVICE COMMISSION TITLE NUMBER: 150

CITE AUTHORITY: West Virginia Code §§24-1-7, 24A-1-1, 24-A-2-3 and 22-18-7(b)

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

West Virginia Code §24-1-7

AMENDMENT TO AN EXISTING RULE: YES X, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 11

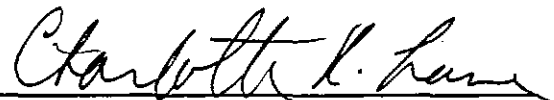
TITLE OF RULE BEING AMENDED: RULES AND REGULATIONS GOVERNING
THE TRANSPORTATION OF HAZARDOUS WASTE BY RAIL

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

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE

EFFECTIVE DATE OF THIS RULE IS November 20, 1997



Authorized Signature
CHARLOTTE R. LANE, CHAIRMAN

FISCAL NOTE

P.S.C.
Series 11

IN THE MATTER of reference to the Commission's Rules and Regulations Governing the Transportation of Hazardous Waste by Rail, M.C. G.O. NO. 208.5.

I. OBJECTIVES OF THE RULE

This rulemaking has been undertaken in response to a request from the West Virginia Division of Environmental Protection. The final rules make changes to certain statutory cites, delete references to West Virginia DNR and replace it with the Division of Environmental Protection and delete certain provisions of the rule which are incompatible with federal regulations or federal law.

II. COST OF IMPLEMENTING THE PROPOSED RULES:

There will be no significant implementation cost relating to this rulemaking for the State of West Virginia. The Commission does not anticipate additional costs to be incurred as a result of the rulemaking.

III. THE EFFECT THIS MEASURE WILL HAVE ON THE COSTS OR REVENUES OF STATE GOVERNMENT (Information required by fiscal notes for either house of the Legislature.)

This rulemaking will have no effect on the costs or revenues of state government.

IV. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS

This rulemaking will have no significant economic impact on the state or its residents.

DATE: September 17, 1997 AGENCY: Public Service Commission

SIGNATURE OF AUTHORIZED REPRESENTATIVE:


CHARLOTTE R. LANE, Chairman

SUMMARY OF THE RULE

This rulemaking has been undertaken in response to a request from the West Virginia Division of Environmental Protection. The final rules make changes to certain statutory cites, delete references to West Virginia DNR and replace it with the Division of Environmental Protection and delete certain provisions of the rule which are incompatible with federal regulations or federal law.

STATEMENT OF CIRCUMSTANCES REQUIRING RULE

The West Virginia Department of Environmental Protection requested that the Commission engage in rulemaking dealing with transportation of hazardous waste by rail. Changes were necessary to reference the appropriate state agency, make certain statutory cite changes and to change the rule to conform with federal law.

Public Service Commission

Richard E. Hitt, General Counsel



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

Phone: (304) 340-0317
FAX: (304) 340-0372

September 17, 1997

Judy Cooper, Director
Administrative Law Division
Secretary of State's Office
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

Re: Series 11 and Series 14

Dear Judy:

Enclosed for filing are the final rules of the Public Service Commission with respect to Series 11 and 14. I have submitted a completed Form 5; a Fiscal Note; a Brief Summary of the Rule; a Statement of Circumstances Requiring Rule; and a diskette containing the rule in electronic format.

If there are any problems or questions, please direct them to my attention. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard E. Hitt".

RICHARD E. HITT
General Counsel
(304) 340-0317

REH/mh
Enclosures

11cooper.wpd

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 17th day of September, 1997.

GENERAL ORDER NO. 208.5

IN THE MATTER OF

Commission proposed rules amending the
Rules and Regulations Governing the
Transportation of Hazardous Waste
by Rail.

COMMISSION ORDER

On March 20, 1996, the Commission promulgated certain amendments to its Rules and Regulations Governing the Transportation of Hazardous Waste by Rail, 150 C.S.R. Series 11 (Hazardous Rail Rules). The Commission initiated its proposed rulemaking at the request of the West Virginia Division of Environmental Protection (WVDEP). The period to file comments to the proposed amendments to the Hazardous Rail Rules expired on April 19, 1996 without comments being filed. However, the Commission received comments to the proposed amendments from the Association of Waste Hazardous Materials Transporters (Association) on April 29, 1996. Though untimely, the Commission accepted the Association's comments for further consideration.

The Commission determined that it was reasonable that WVDEP should be given notice of the Association's comments and an opportunity to respond. By Order dated May 24, 1996, the Commission gave WVDEP twenty-five (25) days to respond to the Association's comments.

By letter dated July 22, 1996, WVDEP advised the Commission that it had been unable to discuss the Association's comments with, and receive input regarding those comments with, EPA Region III's Regional Counsel. Therefore, WVDEP requested an extension until August 1, 1996 to respond to the Association's comments.

By Order entered August 6, 1996, the Commission granted WVDEP an extension of time to, and including, August 8, 1996, to respond to the Association's comments.

On August 8, 1996, WVDEP filed its response to the Association's comments. WVDEP filed a correction to its response with the Commission on August 13, 1996.

Also on August 13, 1996, the Association filed reply comments responding to WVDEP's August 8, 1996 response.

DISCUSSION

After reviewing the comments of both WVDEP and the Association, as well as other regulatory and legal authorities, the Commission concludes that the Association's comments have merit and that the proposed amendments to the Hazardous Rail Rules should be modified.

The Association originally objected to proposed Hazardous Rail Rule 5.4.1, which replaced the term "hazardous waste" with "hazardous material," noting that this is the only time the rules use the latter term. The Association also contended that the Commission's requirements pertaining to the submission of written incident reports are preempted under the Hazardous Materials Transport Act (HMTA) and the rules implementing the HMTA promulgated by the U.S. Department of Transportation (USDOT). Among other things, the Association pointed out that the U.S. EPA relies upon USDOT's existing system of regulations governing the interstate and intrastate transport of hazardous wastes and materials. Association Comments, at 2, citing 45 Fed. Reg. 12740 (Feb. 26, 1980; 45 Fed. Reg. 34566-67 (May 22, 1980)). Moreover, USDOT's regulations incorporate the criteria established by federal courts for determining whether non-federal requirements are preempted by federal requirements. As the Association noted, those regulations provide, in pertinent part, that:

. . . any requirement of a state . . . is inconsistent with [the hazardous materials regulations (HMRs)] if it applies because that material is a waste material and applies differently from or in addition to the requirements of [the HMRs].

49 C.F.R. §171.3(c)(emphasis added). Under these authorities, the Association contends that the proposed amendment to Hazardous Rail Rule 5.4.1 that would require written reports of hazardous waste discharges to be submitted to the Commission and WVDEP¹ is additional to, and therefore preempted by, the written report requirements in 49 C.F.R. §171.16.²

¹Currently, Hazardous Rail Rule 5.4.1 requires written reports, as specified in 49 C.F.R. §171.16, to be filed with the Commission's Railroad Safety Division, the West Virginia Department of Natural Resources (WVDNR), and the USDOT within fifteen (15) days of the date of discovery of a discharge of hazardous waste. The proposed amendment would require the filing of reports within thirty (30) days rather than 15 days, and would replace the WVDNR with WVDEP.

²This portion of the HMRs, entitled "Detailed hazardous materials incident reports," provides, in pertinent part:

(a) Each carrier who transports hazardous materials shall report in writing, in duplicate, on DOT Form F 5800.1 (Rev. 6/89) to the [USDOT] within 30 days of the date of discovery, each incident that occurs during the course of transportation . . . in which . . . there has

In response to the Association's comments, WVDEP noted that the proposed amendment to Hazardous Rail Rule 5.4.1 is a technical "cleanup" of the existing rule since it requires reports to be submitted to WVDEP rather than WVDNR. In addition, WVDEP argued that the reporting requirement in both current, and proposed, Hazardous Rail Rule 5.4.1 is a requirement of both federal law (under the Resource Conservation & Recovery Act or RCRA) and state law (pursuant to the federally-authorized state RCRA program). Lastly, WVDEP asserted that the reference to hazardous "material" rather than "waste" in proposed Hazardous Rail Rule 5.4.1 was a "distinction without a difference" since hazardous materials, once discharged (e.g., spilled, leaking) are considered a hazardous waste under RCRA.

After considering the Association and WVDEP's comments and researching applicable regulatory and other legal authorities, the Commission concludes that the requirement that waste haulers file written incident reports with the Commission and WVDEP are inconsistent with the regulations promulgated pursuant to the HMTA and therefore would be preempted. Hazardous Rail Rule 5.4.1's requirement that incident reports be submitted to the Commission and WVDEP is clearly in addition to the USDOT's requirement in 49 C.F.R. §171.16(a) that incident reports be filed with the USDOT -- and no other agency, state or federal -- within 30-days of the discovery of the incident.³ Except in limited situations, such as immediate, emergency reporting to state and local agencies, requirements which are additional to federal regulations promulgated under the HMTA are preempted, even if such requirements do not conflict with the federal regulation. This is made fairly clear by the requirements of 49 C.F.R. §171.3(c)(2). This conclusion is also supported by two (2) early Inconsistency Rulings of the USDOT -- IR-2 and IR-3. In IR-2, the USDOT ruled that a provision of Rhode Island's rules governing the transport of liquefied natural and propane gas, which required written accident reports to be submitted to two state agencies within 24 hours, were additional to notice requirements already required under the HMRS and were therefore preempted. See 44 Fed. Reg. 75566, 75571/3-73/1 (Dec. 20, 1979). In IR-3, the USDOT ruled that the City of Boston's rule that requiring the same written reports submitted to USDOT after an unintentional release of hazardous materials to be filed with the City was additional to, and therefore preempted by, the HMRS. See 46 Fed. Reg. 18918, 18924/3 (March 26, 1981). In so ruling, USDOT claimed that, in the legislative history of the HMTA, Congress expressed a desire to preclude a multiplicity of State and local regulations and, in USDOT's opinion, intended to make redundant State or local action unnecessary. Id.

been an unintentional release of hazardous materials .
. . . or any quantity of hazardous waste has been
discharged during transportation. . . .

49 C.F.R. §171.16(a). Additional information must be provided if a report relates to a discharge of hazardous waste. 49 C.F.R. §171.16(a)(1)&(2).

³This applies to both the current version of Hazardous Rail Rule 5.4.1 as well as the proposed version of that rule.

at 18942/3.

WVDEP's August 8, 1996 response does not satisfactorily address the Association's comments or these other authorities. Moreover, the law appears to clearly compel the conclusion that Hazardous Rail Rule 5.4.1's requirement -- both in the current rule, as well as the proposed rule -- that written discharge reports be submitted to the Commission and WVDEP, is preempted under the HMTA and the regulations implementing that statute. Therefore, the Commission concludes that the written reports required by 49 C.F.R. §171.16 should not be filed with the Commission or WVDEP. Moreover, the Commission concludes that existing Hazardous Rail Rule 5.4.2 should be deleted in its entirety, since it sets forth specific information required to be provided in the reports to the Commission and WVDEP which appear to go beyond the information required in 49 C.F.R. §171.16. The Commission will delete Hazardous Rail Rule 5.4.2 despite the fact that the Association did not address its comments specifically to that rule.

With respect to the reference to hazardous "material" rather than "waste," WVDEP concedes that the terminology is a "distinction without a difference." For the sake of consistency, and to reduce the potential for confusion among the regulated industry, the Commission will retain the current rule's use of the term "hazardous waste."

One other amendment to the Hazardous Rail Rules is necessary, though neither WVDEP nor the Association addressed the issue. The current version of Hazardous Rail Rule 6.2 refers to "Chapter 20, Article 5E of the West Virginia Code. . . ." This statutory cite is no longer correct. Hazardous Rail Rule 6.2 should be revised to cite to "Chapter 22, Article 18 of the West Virginia Code" -- the current location of the West Virginia Hazardous Waste Management Act.

FINDINGS OF FACT

1. On March 20, 1996, the Commission promulgated certain amendments to its Rules and Regulations Governing the Transportation of Hazardous Waste by Rail, 150 C.S.R. Series 11 (Hazardous Rail Rules).
2. The period to file comments to the proposed amendments to the Hazardous Rail Rules expired on April 19, 1996 without comments being filed.
3. The Commission received comments to the proposed amendments from the Association of Waste Hazardous Materials Transporters (Association) on April 29, 1996.
4. Though untimely, the Commission accepted the Association's comments for further consideration.
5. By Order date May 24, 1996, the Commission gave the West Virginia Division of Environmental Protection (WVDEP) twenty-five (25) days to respond to the Associations comments.

6. By letter dated July 22, 1996, WVDEP requested an extension until August 1, 1996 to respond to the Association's comments.

7. By Order entered August 6, 1996, the Commission granted WVDEP an extension of time to, and including, August 8, 1996, to respond to the Association's comments.

8. On August 8, 1996, WVDEP filed its response to the Association's comments. WVDEP filed a correction to its response with the Commission on August 13, 1996.

9. Also on August 13, 1996, the Association filed reply comments responding to WVDEP's August 8, 1996 response.

CONCLUSIONS OF LAW

1. Hazardous Rail Rule 5.4.1's requirement -- both in the current rule, as well as the proposed rule -- that written discharge reports be submitted to the Commission and WVDEP, is preempted under the HMTA and the regulations implementing that statute. See 49 C.F.R. §171.3; see also 44 Fed. Reg. 75566, 75571/3-73/1 (Dec. 20, 1979) and 46 Fed. Reg. 18918, 18924/3 (March 26, 1981).

2. Hazardous Rail Rule 5.4.1 should be amended to delete the requirement that the written reports required by 49 C.F.R. §171.16 must be filed with the Commission and WVDEP.

3. Hazardous Rail Rule 5.4.2 is preempted under the HMTA and the regulations implementing that statute. See 49 C.F.R. §171.3; see also 44 Fed. Reg. 75566, 75571/3-73/1 (Dec. 20, 1979) and 46 Fed. Reg. 18918, 18924/3 (March 26, 1981).

4. The Hazardous Rail Rules should be amended to delete, in its entirety, Hazardous Rail Rule 5.4.2.

5. For the sake of consistency, and to reduce the potential for confusion among the regulated industry, the Commission will retain the current Hazardous Rail Rule 5.4.1's reference to "hazardous waste."

6. Hazardous Rail Rule 6.2 should be amended to cite to "Chapter 22, Article 18 of the West Virginia Code" -- the current location of the West Virginia Hazardous Waste Management Act.

7. Except as otherwise provided herein, the proposed amendments to the Hazardous Rail Rules should be adopted as final rules of the Commission to become effective November 20, 1997.

ORDER

IT IS, THEREFORE, ORDERED that Hazardous Rail Rule 5.4.1 should be amended to delete the requirement that the written reports required by 49 C.F.R. §171.16 must be filed with the Commission and WVDEP.

IT IS FURTHER ORDERED that the Hazardous Rail Rules should be amended to delete, in its entirety, Hazardous Rail Rule 5.4.2.

IT IS FURTHER ORDERED that the current Hazardous Rail Rule 5.4.1's reference to "hazardous waste" should be retained.

IT IS FURTHER ORDERED that Hazardous Rail Rule 6.2 should be amended to cite to "Chapter 22, Article 18 of the West Virginia Code."

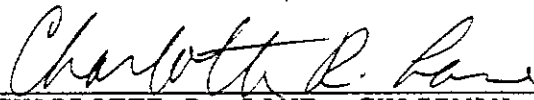
IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this Order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.



OTIS D. CASTO, COMMISSIONER



RICHARD D. FRUM, COMMISSIONER



CHARLOTTE R. LANE, CHAIRMAN

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9/2/97TITLE 150
LEGISLATIVE RULES
PUBLIC SERVICE COMMISSION

SEP 17 1 33 PM '97

SERIES 11
RULES AND REGULATIONS GOVERNING THE TRANSPORTATION OF
HAZARDOUS WASTE BY RAILOFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§150-11-1. General.

1.1. Scope -- These regulations apply to all rail transporters who transport hazardous waste within or through the State of West Virginia.

1.2. Authority -- W. Va. Code §22-18-7(b) ~~§20-5E-7b.~~

1.3. Filing date -- ~~March 24, 1986~~ September 17, 1997

1.4. Effective date -- ~~May 23, 1986~~ November 20, 1997

1.5. 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 §22-18-3 (~~1981~~).

1.6. These regulations do not apply to on-site movements of hazardous waste by generators or by owners and/or operations of authorized hazardous waste management facilities.

1.7. Transportation of hazardous waste shipments which originate, terminate or occur entirely within the State of West Virginia shall comply with all of these rules. Transportation of hazardous waste shipments originating and terminating outside of West Virginia shall comply with sections 1.8., 1.10., 2., 3., 4. and 5. of these rules while in West Virginia.

1.8. 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 Division of Environmental Protection (DEP).

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

1.10. All transporters in the State must contact DNR the Division of Environmental Protection and obtain an EPA Identification Number from the State before they accept hazardous waste for transport.

§150-11-2. The Manifest System.

2.1.

2.1.1. 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 6.2 of the West Virginia DNR Division of Environmental Protection Administrative Regulations, Chapter, 20-5E, Series 35, 22-18 Hazardous Waste Management Regulations 1991 Rules 47 CSR 35.

2.1.2. Before transporting the hazardous waste, the rail carriers must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.

2.2. When accepting hazardous waste from a non-rail transporter, the rail carrier must:

2.2.1. Sign and date the manifest acknowledging acceptance of the hazardous waste.

2.2.2. Return a signed copy of the manifest to the non-rail transporter.

2.2.3. Forward at least three (3) copies of the manifest to:

- a. The next non-rail transporter, if any; or
- b. The designated facility, if the shipment is to be delivered to that facility by rail; or
- c. The last rail carrier to handle the waste in the United States.

2.2.4. Retain one copy of the manifest and rail shipping papers in accordance with Section 3. below.

2.3. Rail carriers must ensure that a shipping paper containing all information required on the manifest including the "EPA Acknowledgment of Consent" for waste being exported from the U.S. (excluding the EPA identification number, generator certification, and signatures) accompanies the hazardous waste at all times.

2.4. When delivering hazardous waste to the designated

facility, a rail carrier must:

2.4.1. Obtain the date of delivery and handwritten signatures of the owner or operator of the designated facility on the manifest, or the shipping paper if the manifest has not yet been received by the facility; and

2.4.2. Retain a copy of the manifest or signed shipping paper in accordance with Section 3. below.

2.5. When delivering hazardous waste to a non-rail transporter a rail carrier must:

2.5.1. Obtain the date of delivery and the handwritten signature of the non-rail transporter on the manifest; and

2.5.2. Retain a copy of the manifest in accordance with Section 3. below.

2.6.

2.6.1. The rail carrier must deliver the entire quantity of hazardous waste which he has accepted from a generator or another transporter to:

a. The designated facility listed on the manifest; or

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

c. The next designated transporter.

2.6.2. If the hazardous waste cannot be delivered in accordance with paragraph 2.6.1.a. above, the rail carrier must contact the generator for further directions and must revise the manifest according to the generator's instructions.

2.7. Transporters who transport hazardous waste out of the United States must:

2.7.1. Indicate on the manifest the date the hazardous waste left the United States; and

2.7.2. Sign the manifest and retain one copy in accordance with Section 3.1.; and

2.7.3. Return a signed copy of the manifest to the

generator; and

2.7.4. Provide a copy of the required manifest to the U.S. Customs Office at the point of departure from the United States.

§150-11-3. Recordkeeping.

3.1. For shipments by rail within the United States, the initial transporter of hazardous waste must keep a copy of the manifest and shipping paper containing all information required in Section 2.3. for a period of three years from the date the hazardous waste was accepted by the initial transporter.

3.2. For shipments by rail within the United States, the final rail transporter must keep a copy of the signed manifest, or the shipping paper if signed by the designated facility in lieu of the manifest, for a period of three years from the date the hazardous waste was accepted by the initial transporter.

3.3. A rail carrier 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 years from the date the hazardous waste was accepted by the initial transporter.

3.4. The periods of record retention referred to above are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as required by the Commission.

§150-11-4. Labeling.

4.1. All rail cars transporting hazardous waste shall be so marked in accordance with the applicable provisions of the hazardous material regulations contained in 49 CFR 172 (~~as of October 27, 1981~~).

4.2. A rail transporter shall not accept packaged containers of hazardous waste for shipment unless all labeling and packaging requirements of these regulations have been met.

§150-11-5. Discharges.

5.1. In the event of a discharge of hazardous waste during transportation, the rail transporter must take appropriate immediate action to protect human health and the environment. (e.g. notify local authorities, in the discharge area). Any discharges shall be primarily the responsibility of the rail carriers.

5.2. If a discharge of hazardous waste occurs during rail transportation, and an official (State or Federal Agency) acting within the scope of his official responsibilities determines that the immediate removal of the waste is necessary to protect human health or the environment, that official may authorize removal of the waste by transporters who do not have EPA identification numbers and without the preparation of a manifest.

5.3.

5.3.1. At the earliest practical moment, a A rail transporter must give notice of a discharge to:

a. The Railroad Safety Division of the Public Service Commission of West Virginia, 201 Brooks Street, Post Office Box 812, Charleston, West Virginia, 25323; Telephone (304)340-0474.

b. The West Virginia Department of Natural Resources, Division of Water Resources Division of Environmental Protection, Environmental Enforcement at 1-800-642-3074.

c. The National Response Center, ~~800-424-3802~~ 1-800-424-8802 or 1-202-426-2675, but only if:

A. A person is killed; or

B. A person receives injuries requiring hospitalization; or

C. Total property damage from the discharge exceeds fifty thousand dollars (\$50,000); or

D. The discharge involves radioactive waste and/or materials; or

E. The discharge involves shipment of etiologic agents; or

F. An evacuation of the general public occurs lasting one or more hours; or

G. One or more major transportation arteries or facilities are closed or shut down for one hour or more; or

H. The operational flight pattern or routine of an aircraft is altered; or

I. Fire breakage, spillage or suspected radioactive contamination occurs involving shipment of radioactive material; or

J. Fire breakage, spillage or suspected contamination occurs involving shipment of etiologic agents; or

K. There has been a release of a marine pollutant in a quantity exceeding 450 L (119 gallons) for liquids or 400 Kg (882 pounds) for solids; or

L.F. The situation, in the judgment of the carrier, should be reported. (e.g., a continuing danger to life exists at the scene of the incident).

5.3.2. The notice shall contain the following information:

- a. Name of reporter;
- b. Name and address of transporter;
- c. Phone number where reporter can be reached;
- d. Date, time and location of discharge;
- e. Extent of injuries, if any;
- f. Type and quantity of hazardous waste involved, if available; and
- g. Description of incident and whether a continuing danger to life exists at the scene.

5.4. ~~5.4.1.~~ ~~Within fifteen (15) thirty (30) calendar days of the date of discovery to of the discharge of any quantity of hazardous waste, the rail transporter shall file a written report, as specified in 49 CFR 171.16 (as of October 2, 1981), with the Railroad Safety Division of the Public Service Commission of West Virginia, the Department of Natural Resources and the United States Department of Transportation.~~

~~5.4.2. The report shall contain the following information:~~

- ~~a. All information required by Rule 5.3.2.;~~
- ~~b. The location of the discharge in relation to surface water, public water supplies, groundwater, wildlife inhabitants and agricultural production;~~

~~c. The quantity and description of the hazardous waste removed and the disposition of that material;~~

~~d. The disposition, quantity, and description of the unremoved hazardous waste; and~~

~~e. A copy of the hazardous waste manifest shall be attached to the report.~~

5.5. A rail 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 so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

§150-11-6. Revisions to Regulations.

6.1. For the purpose of assuring that:

6.1.1. these regulations are consistent with the regulations of the United States Environmental Protection Agency adopted pursuant to the federal Solid Waste Disposal Act, as amended;

6.1.2. the State Hazardous Waste Management Program is equivalent to and consistent with the federal Hazardous Waste Management Program adopted pursuant to Subtitle C of the federal Solid Waste Disposal Act, as amended;

6.1.3. changes in the regulations of the United States Environmental Protection Agency which have been adopted by reference in these regulations are properly placed into effect under State law; and

6.1.4. the requirements of the state Hazardous Waste Management Act are otherwise satisfied, the Commission shall revise these regulations in accordance with the procedures set forth in Section 6.2., as necessary.

6.2. Whenever there shall be an amendment of the federal Solid Waste Disposal Act, as amended, or the adoption or revision of rules and regulations required to be promulgated by the federal Solid Waste Disposal Act, as amended, or amendments to the rules and regulations of other State agencies promulgated pursuant to the provisions of the state Hazardous Waste Management Act, which amendments create a need for the revision of these regulations consistent with the discussion set forth in Section 6.1 of these regulations, the Commission shall within 30 days of the effective date of such amendment initiate such action as may be necessary under the provisions

of Chapter 24, Article 1, and Chapter ~~20~~ 22, Article ~~SE~~ 18 of the West Virginia Code, to amend these regulations at the earliest practicable date.

6.3. Persons desiring to call to the attention of the Commission amendments to the federal Solid Waste Disposal Act, as amended, regulations promulgated pursuant thereto, or amendments to the rules and regulations of other State agencies promulgated pursuant to the provisions of the state Hazardous Waste Management Act, may do so by filing a notice with the Commission identifying the amendment which has been made to the federal Solid Waste Disposal Act, as amended, regulations promulgated pursuant thereto, or rules and regulations of other State agencies pursuant to the state Hazardous Waste Management Act, and identifying the provisions of these regulations which such person believes should be amended.

§150-11-7. Variances.

7.1. The Commission may grant a variance from one or more of the specific provisions of these regulations upon written application from any person who is subject to these regulations.

7.2. An application for a variance must: identify specific provisions of these regulations from which a variance is sought; and demonstrate that suspension or modification of the identified provision will, on the basis of conditions unique and peculiar to the applicant's particular situation, have no significant adverse impact on public health or the new environment.

7.3. The Commission may not grant any variance which would result in requirements which are any less strict than the applicable federal law or regulations.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900



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STATE OF WEST VIRGINIA
PUBLIC SERVICE COMM.
LEGAL DIVISION
SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SEP 30 9 36 AM '97

FILED

TO: RICHARD E HITT

AGENCY: PUBLIC SERVICE COMM.

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: September 22, 1997

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 11 TITLE: 150 PUBLIC SERVICE COMM

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Richard E Hitt

TITLE OF PERSON SIGNING: General Counsel

DATE: September 26, 1997

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.