US EPA ARCHIVE DOCUMENT

SECTION X
APPENDICES

J. PSC'S LEGISLATIVE RULE: RULES GOVERNING THE TRANSPORTATION OF HAZARDOUS WASTE BY RAIL (150 C.S.R. 11)

TITLE 150
LEGISLATIVE RULES
PUBLIC SERVICE COMMISSION

SERIES 11
RULES GOVERNING THE TRANSPORTATION OF HAZARDOUS WASTE BY RAIL

§150-11-1. General.

1.1. Scope. -- These rules apply to all rail transporters who transport hazardous waste, universal waste, or used oil within or through the State of West Virginia.

1.2. Authority. -- W. Va. Code §22-18-7(b).

1.3. Filing date. -- October 23, 2002.

1.4. Effective date -- December 24, 2002.

1.5. The definition of terms used in these rules shall have the meaning ascribed to them in the rules of the Department of Environmental Protection's Division of Waste Management implementing the Hazardous Waste Management Act, 33 CSR 20.

1.6. These rules 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 5 of the rules of the West Virginia Department of Environmental Protection (DEP) implementing the Hazardous Waste Management Act. Title 33 of the Legislative Rules, Division of Environmental Protection, Division of Waste Management, Series 20.

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 the Department of Environmental Protection and obtain an EPA Identification Number from the State before they accept hazardous waste for transport.

1.11. A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of Section 5 of 33 CSR 20 at a transfer facility as defined in Section 2 of 33 CSR 20 for a period of ten days or less is not subject to regulation under Sections 7, 8, 10 and 11 of 33 CSR 20 with respect to storage of those wastes.

1.12. Transportation of universal waste shipments shall comply with Section 8 of these rules.

1.13. Transportation of used oil shall comply with Section 9 of these rules.
1.14.

1.14.a. These regulations do not apply to transportation during an explosives or munitions emergency response, conducted in

accordance with 40 CFR 264.1(g)(8)(i)(D) or (iv), as incorporated by reference in Section 7, or 40 CFR 265.1(c)(11)(i)(D) or (iv), as incorporated by reference in Section 8, and 40 CFR 270.1(c)(3)(i)(D) or (iii), as incorporated by reference in Section 11 of 33 CSR 20.

1.14.b. Section 10 of these rules identifies how the requirements of Sections 1 through 7 of these rules apply to military munitions classified as solid waste under 40 CFR 266.202, as incorporated by reference in Section 9 of 33 CSR 20.

§150-11-2. The Manifest System.

2.1.

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 33 CSR 20.

2.1.b. 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.a. Sign and date the manifest acknowledging acceptance of the hazardous waste.

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

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

1. The next non-rail transporter, if any; or

2. The designated facility, if the shipment is to be delivered to that facility by rail; or

3. The last rail carrier to handle the waste in the United States.

2.2.d. 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.a. 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.b. 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.a. Obtain the date of delivery and the handwritten signature of the non-rail transporter on the manifest; and

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

2.6.

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

1. The designated facility listed on the manifest; or

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

3. The next designated transporter.

4. The place outside the United States designated by the generator.

2.6.b. If the hazardous waste cannot be delivered in accordance with paragraph 2.6.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.a. Indicate on the manifest the date the hazardous waste left the United States;

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

2.7.c. Return a signed copy of the manifest to the generator; and

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

2.8. A transporter transporting hazardous waste from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month need not comply with the requirements of 2.1. through 2.5. and 2.7. of this Section or those of §150-11-3 provided that:

2.8.a. The waste is being transported pursuant to a reclamation agreement as provided in 40 CFR 262.20(e) as incorporated by reference in Section 5 of 33 CSR 20.

2.8.b. The transporter records, on a log or shipping paper, the following information for each shipment:

1. The name, address, and U.S. EPA Identification Number of the generator of the waste;

2. The quantity of waste accepted;

3. All DOT-required shipping information;

4. The date the waste is accepted.

2.8.c. The transporter carries this record when transporting waste to the reclamation facility.

2.8.d. The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

§150-11-3. Record keeping.

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.

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

1. 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.

2. The West Virginia Department of Environmental Protection, Environmental Enforcement at 1-800-642-3074.

3. The National Response Center, 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. 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.b. The notice shall contain the following information:

1. Name of reporter;

2. Name and address of transporter;

3. Phone number where reporter can be reached;

4. Date, time and location of discharge;

5. Extent of injuries, if any;

6. Type and quantity of hazardous waste involved, if available; and

7. Description of incident and whether a continuing danger to life exists at the scene.

5.4. Within thirty (30) calendar days of the date of discovery of the discharge of any quantity of hazardous waste, the rail transporter shall file a written report, as specified in 49 CFR 171.16 the United States Department of Transportation.

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.a. 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.b. 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.c. 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.d. 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 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 22, Article 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.

§150-11-8. Standards for Universal Waste Transporters.

8.1. Applicability. This Section applies to persons engaged in the off-site transportation by rail of universal waste (as defined in 40 CFR 273.6, as incorporated by reference in Section 13 of 33 CSR 20).

8.2. Prohibitions. A universal waste transporter is:

8.2.a. Prohibited from disposing of universal waste; and

8.2.b. Prohibited from diluting or treating universal waste, except by responding to releases as provided in 40 CFR 273.54, as incorporated by reference in Section 13 of 33 CSR 20.

8.3. Waste Management.

8.3.a. A universal waste transporter must comply with all applicable U.S. Department of Transportation regulations in 49 CFR Part 171 through 180 for transport of any universal waste that meets the definition of hazardous material in 49 CFR 171.8. For purposes of the Department of Transportation regulations, a material is considered a hazardous waste if it is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR Part 262. Because universal waste does not require a hazardous waste manifest, it is not considered a hazardous waste under the Department of Transportation regulations.

8.3.b. Some universal waste materials are regulated by the Department of Transportation as hazardous materials because they meet the criteria for one or more hazard classes specified in 49 CFR 173.2. As universal waste shipments do not require a manifest under 40 CFR 262, they may not be described by the DOT proper shipping name "hazardous waste, (l) or (s), n.o.s.," nor may the hazardous material's proper shipping name be modified by adding the word "waste."

8.4. Storage time limits.

8.4.a. A universal waste transporter may only store the universal waste at a universal waste transfer facility for ten days or less.

8.4.b. If a universal waste transporter stores universal waste for more than ten days, the transporter becomes a universal waste handler and must comply with the applicable requirements of 40 CFR Part 273, Subparts B and C, as incorporated by reference in Section 13 of 33 CSR 20 while storing the universal waste.

8.5. Response to releases.

8.5.a. A universal waste transporter must immediately contain all releases of universal wastes and other residues from universal wastes.

8.5.b. A universal waste transporter must determine whether any material resulting from the release is hazardous waste, and if so, it is subject to all applicable requirements of Sections 1 through 7 of these regulations and the West Virginia Department of Environmental Protection Rules implementing the Hazardous Waste Management Act (33 CSR 20). If the waste is determined to be a hazardous waste, the transporter is subject to Section 5 of 33 CSR 20.

8.6. Off-site shipments.

8.6.a. A universal waste transporter is prohibited from transporting the universal waste to a place other than a universal waste handler, a destination facility, or a foreign destination.

8.6.b. If the universal waste being shipped off-site meets the Department of Transportation's definition of hazardous materials under 49 CFR 171.8, the shipment must be properly described on a shipping paper in accordance with the applicable Department of Transportation regulations under 49 CFR Part 172.

8.7. Exports. A universal waste transporter transporting a shipment of universal waste to a foreign destination other than to those OECD countries specified in 40 CFR 262.58(a)(1) (in which case the transporter is subject to the requirements of 40 CFR Part 262, Subpart H) may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition

the transporter must ensure that:

8.7.a. A copy of the EPA Acknowledgment of Consent accompanies the shipment; and

8.7.b. The shipment is delivered to the facility designated by the person initiating the shipment.

§150-11-9 Standards for Used Oil Transporters.

9.1. Applicability.

9.1.a. General. Except as provided in paragraphs 9.1.a.1. through 9.1.a.4., this section applies to all used oil rail transporters.

1. This section does not apply to on-site transportation.

2. This section does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil collection center as specified in 40 CFR 279.24(a), as incorporated by reference at Section 14 of 33 CSR 20.

3. This section does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as specified in 40 CFR 279.24(b), as incorporated by reference in Section 14 of 33 CSR 20.

4. This section does not apply to transportation of used oil from household do-it-yourselfers to a regulated used oil generator, collection center, aggregation point, processor/re-refiner, or burner subject to the requirements of Section 14 of 33 CSR 20. Except as provided in paragraphs 9.1.a.1. through 9.1.a.3., this section does, however, apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.

9.2. Imports and exports. Transporters who import used oil from abroad or export used oil outside of the United States are subject to the requirements of this section from the time the used oil enters and until the time it exits the United States.

9.3. Other applicable provisions. Used oil transporters who conduct the following activities are also subject to applicable provisions of Section 14 of 33 CSR 20 as indicated in rules 9.3.a. through 9.3.e. below:

9.3.a. Transporters who generate used oil must also comply with 40 CFR Part 279, Subpart C, as incorporated by reference in Section 14 of 33 CSR 20.

9.3.b. Transporters who process or re-refine used oil, except as provided in Section 9.4., must also comply with 40 CFR Part 279, Subpart F, as incorporated by reference in Section 14 of 33 CSR 20.

9.3.c. Transporters who burn off-specification used oil for energy recovery must also comply with 40 CFR Part 279, Subpart G, as incorporated by reference in Section 14 of 33 CSR 20.

9.3.d. Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in 40 CFR 279.11, as incorporated by reference in Section 14 of 33 CSR must also comply with 40 CFR Part 279, Subpart H, as incorporated by reference in Section 14 of 33 CSR 20.

9.3.e. Transporters who dispose of used oil, including the use of used oil as a dust suppressant must also comply with 40 CFR Part 279, Subpart I, as incorporated by reference in Section 14 of 33 CSR 20.

9.4. Restrictions on transporters who are not also processors or re-refiners.

9.4.a. Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in Rule 9.4.b., used oil transporters may not process used oil unless they also

comply with the requirements for processors/re-refiners in 40 CFR Part 279, Subpart F, as incorporated by reference in Section 14 of 33 CSR 20.

9.4.b. Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (e.g., settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products unless they also comply with the processor/re-refiner requirements in 40 CFR Part 279, Subpart F, as incorporated by reference in Section 14 of 33 CSR 20.

9.4.c. Transporters of used oil that is removed from oil bearing electrical transformers and turbines and filtered by the transporter prior to being returned to its original use are not subject to the processor/re-refiner requirements in 40 CFR Part 279, Subpart F, as incorporated by reference in Section 14 or 33 CSR 20.

9.5. Notification.

9.5.a. Identification numbers. Used oil transporters who have not previously complied with the notification requirements of Section 4 of 33 CSR 20 must comply with those requirements and obtain an EPA identification number.

9.5.b. Mechanics of notification. A used oil transporter who has not received an EPA identification number may obtain one by notifying the Director of the Division of Waste Management of their used oil activity by submitting either:

1. A completed EPA Form 8700-12 (To obtain ordering information for EPA Form 8700-12 call RCRA/Superfund Hotline at 1-800-424-9346 or 703-920-9810); or

2. A letter requesting an EPA identification number. The letter should include the following information:

A. Transporter company name;

B. Owner of the transporter company;

C. Mailing address for the transporter;

D. Name and telephone number for the transporter point of contact;

E. Type of transport activity (i.e., transport only, transport and transfer facility, transfer facility only);

F. Location of all transfer facilities at which used oil is stored;

G. Name and telephone number for a contact at each transfer facility.

9.6. Used oil transportation.

9.6.a. Deliveries. A used oil transporter must deliver all used oil received to:

1. Another used oil transporter, provided that the transporter has obtained an EPA identification number;

2. A used oil processing/re-refiner facility who has obtained an EPA identification number;

3. An off-specification used oil burner facility who has obtained an EPA identification number; or

4. An on-specification used oil burner facility.

9.6.b. DOT Requirements. Used oil transporters must comply with all applicable requirements under the U.S. Department of Transportation regulations in 49 CFR Parts 171 through 180. Persons transporting used oil that meets the definition of a hazardous material in 49 CFR 171.8 must comply with all applicable regulations in 49 CFR Parts 171 through 180.

9.6.c. Used oil discharges.

1. In the event of a discharge of used oil during transportation, the transporter must take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge area).

2. If a discharge of used oil occurs during transportation and an official (State or local government or a Federal Agency) acting within the scope of official responsibilities determines that immediate removal of the used oil is necessary to protect human health or the environment, that official may authorize the removal of the used oil by transporters who do not have EPA identification numbers.

3. A rail transporter who has discharged used oil must:

A. Give notice, if required by 49 CFR 171.15 to the National Response Center (800-424-8802 or 202-426-2675); and

B. Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590.

4. A transporter must clean up any used oil discharge that occurs during transportation or take such action as may be required or approved by federal, state, or local officials so that the used oil discharge no longer presents a hazard to human health or the environment.

9.7. Rebuttable presumption for used oil.

9.7.a. To ensure that used oil is not a hazardous waste under the rebuttable presumption of 40 CFR 279.10(b)(1)(ii), as incorporated by reference in Section 14 of 33 CSR 20, the used oil transporter must determine whether the total halogen content of used oil being transported is above or below 1,000 ppm.

9.7.b. The transporter must make this determination by:

1. Testing the used oil; or

2. Applying knowledge of the halogen content of the used oil in light of the materials or processes used.

9.7.c. If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR Part 261, Subpart D, as incorporated by reference in Section 3 of 33 CSR 20. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of 49 CFR Part 261, as incorporated by reference in Section 3 of 33 CSR 20). EPA Publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. (202)512-1800 (document number 955-001-00000-1).

1. The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in 40 CFR 279.24(c), as incorporated by reference in Section 14 of 33 CSR 20, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

2. The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the CFC care destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

9.7.d. Record retention. Records of analyses conducted or information used to comply with Rules 9.7.a., 9.7.b., and 9.7.c. must be maintained by the transporter for at least 3 years.

9.8. Tracking.

9.8.a. Acceptance. Used oil transporters must keep a record of each used oil shipment accepted for transport. Records for each shipment must include:

1. The name and address of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

2. The EPA identification number (if applicable) of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

3. The quantity of used oil accepted;

4. The date of acceptance; and

5.

A. Except as provided in paragraph 9.8.a.5.B., the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor/re-refiner who provided the used oil for transport.

B. Intermediate rail transporters are not required to sign the record of acceptance.

9.8.b. Deliveries. Used oil transporters must keep a record of each shipment of used oil that is delivered to another used oil transporter, or to a used oil burner, processor/re-refiner, or disposal facility. Records of each delivery must include:

1. The name and address of the receiving facility or transporter;

2. The EPA identification number of the receiving facility or transporter;

3. The quantity of used oil delivered;

4. The date of delivery;

5. A. Except as provided in paragraph 9.8.b.5.B, the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

B. Intermediate rail transporters are not required to sign the record of delivery.

9.8.c. Exports of used oil. Used oil transporters must maintain the records described in paragraphs 9.8.b.1. through 9.8.b.4. for each shipment of used oil exported to any foreign country.

9.9.d. Record retention. The records described in Rules 9.8.a., 9.8.b., and 9.8.c. must be maintained for at least three years.

9.9. Management of residues. Transporters who generate residues from the storage or transport of used oil must manage the residues as specified in 40 CFR 279.10(e), as incorporated by reference in Section 14 or 33 CSR 20.

§150-11-10 Standards applicable to the transportation of solid waste military munitions.

10.1. Unless otherwise specified in this section, all applicable requirements in Sections 1 through 7 of these regulations and the West Virginia Department of Environmental Protection's Rules implementing the Hazardous Waste Management Act (33 CSR 20) apply to waste military munitions.

10.2. Criteria for hazardous waste regulation of waste non-chemical military munitions in transportation.

10.2.a. Waste military munitions that are being transported and that exhibit a hazardous waste characteristic or are listed as hazardous waste under Section 3 of 33 CSR 20, are listed or identified as a hazardous waste (and thus are subject to regulation under Sections 1 through 7 of these regulations and West Virginia Department of Environmental Protection Rules implementing the Hazardous Management Act (33 CSR 20), unless all the following conditions are met:

1. The waste military munitions are not chemical agents or chemical munitions;

2. The waste military munitions must be transported in accordance with the Department of Defense shipping controls applicable to the transport of military munitions;

3. The waste military munitions must be transported from a military owned or

operated installation to a military owned or operated treatment, storage, or disposal facility; and

4. The transporter of the waste must provide oral notice to the Railroad Safety Section of the Public Service Commission of West Virginia within 24 hours from the time the transporter becomes aware of any loss or theft of the waste military munitions, or any failure to meet a condition of Rule 10.2.a. that may endanger health or the environment. In addition, a written submission describing the circumstances shall be provided within 5 days from the time the transporter becomes aware of any loss or theft of the waste military munitions or any failure to meet a condition of Rule 10.2.a.

10.2.b. If any waste military munitions shipped under Rule 10.2.a. are not received by the receiving facility within 45 days of the day the waste was shipped, the owner or operator of the receiving facility must report this non-receipt to the Director within 5 days.

10.2.c. The exemption in Rule 10.2.a. from regulation as hazardous waste shall apply only to the transportation of non-chemical waste military munitions. It does not affect the regulatory status of waste military munitions as hazardous wastes with regard to storage, treatment or disposal.

10.2.d. The conditional exemption in Rule 10.2.a. applies only so long as all of the conditions in Rule 10.2.a. are met.

10.3. Reinstatement of exemption. If any waste military munition loses its exemption under Rule 10.2.a., an application may be filed with the Railroad Safety Section of the Public Service Commission of West Virginia for reinstatement of the exemption from hazardous waste transportation regulation with respect to such munition as soon as the munition is returned to compliance with the conditions of Rule 10.2.a. If the Railroad Safety Section finds that reinstatement of the exemption is appropriate based on factors such as the transporter's provision of a satisfactory explanation of the circumstances of the violation, or a demonstration that the violations are not likely to recur, the Railroad Safety Section may reinstate the exemption under Rule 10.2.a. If the Railroad Safety Section does not take action on the reinstatement application within 60 days after receipt of the application, then reinstatement shall be deemed granted, retroactive to the date of the application. However, the Railroad Safety Section may terminate a conditional exemption reinstated by default in the preceding sentence if the Railroad Safety Section finds that reinstatement is inappropriate based on factors such as the transporter's failure to provide a satisfactory explanation of the circumstances of the violation, or failure to demonstrate that the violations are not likely to recur. In reinstating the exemption under Rule 10.2.a., the Railroad Safety Section may specify additional conditions as are necessary to ensure and document proper transportation to protect human health and the environment.

10.4. Amendment to DOD shipping controls. The Department of Defense shipping controls applicable to the transport of military munitions referenced in paragraph 10.2.a.2. are Government Bill of Lading (GBL) (GSA Standard Form 1109), requisition tracking form DD Form 1348, the Signature and Talley Record (DD Form 1907), Special Instructions for Motor Vehicle Drivers (DD Form 836), and the Motor Vehicle Inspection Report (DD Form 626) in effect on November 8, 1995, except as provided in the following sentence. Any amendments to the Department of Defense shipping controls shall become effective for purposes of Rule 10.2.a. on the date the Department of Defense publishes notice in the FEDERAL REGISTER that the shipping controls referenced in paragraph 10.2.a.2. have been amended.

10.5. Standards applicable to emergency responses. Explosives and munitions emergencies involving military munitions or explosives are subject to Rule 1.13.a. of these regulations.