

US EPA ARCHIVE DOCUMENT

APPENDIX C

**WV DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT/
PUBLIC SERVICE COMMISSION**

MEMORANDUM OF UNDERSTANDING

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION
AND
WEST VIRGINIA PUBLIC SERVICE COMMISSION
YEAR 1999**

THIS MEMORANDUM OF UNDERSTANDING, ("MOU"), made by and between the WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION, ("DEP") and the WEST VIRGINIA PUBLIC SERVICE COMMISSION, ("PSC"), is effective December 1, 1999 and shall remain in effect until superseded or amended in writing.

WHEREAS, pursuant to the West Virginia Hazardous Waste Management Act, ("HWMA"), W. Va. Code §§22-18-1 to -25, DEP is the lead agency for implementing and coordinating the West Virginia Hazardous Waste Management Program ("HWMP"). Pursuant to W. Va. Code § 22-1-3(c), West Virginia has adopted the Federal regulations by reference in West Virginia Hazardous Waste Management Rule ("HWMR"), Rule 33 CSR 20. Pursuant to W. Va. Code §§22-18-5(a) and 22-18-7(a)-(c), West Virginia has the authority to promulgate rules for transporters. DEP has incorporated by reference 40 C.F.R. part 263 effective July 1, 1997, regulating hazardous waste transportation by air and water, including the Federal provision at 40 C.F.R. § 263.20(h). Hazardous Waste Management Rule §33-20-6.2 references PSC Rule 150 CSR 11, the "Rules and Regulations Governing the Transportation of Hazardous Waste by Rail", effective November 8, 1999. Public Service Commission Rule 150 CSR 11 regulates the transportation of hazardous waste by rail in the State, authorizing PSC to perform inspections, promulgate and enforce rules and program requirements.

NOW THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the mutual promises and understanding set forth hereafter, the parties hereto agree to share and establish their mutual responsibilities regarding implementation of the HWMA and its Federal counterpart, the Resource Conservation and Recovery Act, ("RCRA"), Subtitle C, as follows:

1. PSC will perform rail carrier safety inspections, promulgate and enforce rules and other program requirements under the HWMA and RCRA. Specifically, PSC Inspectors will enforce 40 C.F.R. part 263 as follows:
 - a. **Hazardous Waste 40 C.F.R. Part 263, Subpart A:**
 - (1) 40 C.F.R. § 263.11 EPA Identification Number - PSC Inspectors will determine if a rail transporter has an EPA Identification Number.
 - (2) 40 C.F.R. § 263.12 Transfer Facility - PSC Inspectors will consult with the DEP's Office of Waste Management at 304-558-5989 to verify a rail transporter's claim that it is a transfer facility.
 - b. **40 C.F.R. Part 263, Subpart B:**
 - (1) 40 C.F.R. § 263.20 - PSC Inspectors will check rail transporters for required copies of hazardous waste manifests and EPA Acknowledgment of Consent forms pursuant to 40 C.F.R. §§ 263.20(e)(2)&(f)(2).

Both documents must accompany the waste en route. The transporter is required to deliver a copy of the manifest to a U.S. Customs Official at the point where the waste leaves the U.S. Moreover, the transporter must refuse a waste for export if the waste does not conform to the Acknowledgment of Consent.

- (2) 40 C.F.R. § 262.84 (a)(2) - PSC Inspectors verify that a tracking document accompanies manifest.
- (3) 40 C.F.R. § 263.21 - PSC Inspectors will ensure transporters meet requirements for hazardous waste delivery.
- (4) 40 C.F.R. § 263.22(2) - PSC Inspectors will ensure that a transporter retains manifest copies for 3 years.

c. **40 C.F.R. part 263, part 266, part 273, and part 279:**

- (1) 40 C.F.R. § 263.30 - PSC Inspectors will ensure that a rail transporter takes immediate action after a release of hazardous waste, Used Oil, Universal Waste and Military Munitions.
- (2) 40 C.F.R. part 266 **Military Munitions** - PSC Inspectors will ensure that rail transporters of Military Munitions comply with 40 C.F.R. part 266, subpart M, including the use of a Government Bill of Lading.
- (3) 40 C.F.R. part 273 **Universal Waste** - PSC Inspectors will ensure that rail transporters of Universal Waste comply with this part and with HWMR Rule 33 CSR 20.
- (4) 40 C.F.R. part 279 **Used Oil** - PSC Inspectors will ensure that rail transporters of Used Oil comply with this part.

- 2. The DEP regulates releases of hazardous waste/material transported under 40 C.F.R. part 263. The DEP provides emergency response actions to protect human health and the environment, and oversees site remediation resulting from rail transportation releases. After a hazardous release from a rail car is reported, the PSC contacts the OWM. OWM's Environmental Inspectors/Emergency Response personnel respond to hazardous releases, perform emergency response coordination activities, conduct release investigations, and site remediation activities. The PSC and DEP coordinate efforts following hazardous release events.

The following are State reporting requirements for transporters:

- (a) Pursuant to PSC Rules CSR §§150-11-5.3.1 and 2, rail transporters must notify the Railroad Safety Division of the PSC and the DEP's Environmental Enforcement Office to report releases.
- (b) PSC Rule CSR §150-11-5.3.2 details the information that must be provided in the notice.
- 3. DEP investigates and may take enforcement actions in response to hazardous releases from rail cars.
- 4. PSC regulates transportation of hazardous waste/materials by rail within West Virginia. PSC inspectors evaluate compliance of rail transporters with all areas of hazardous waste management. PSC Rule CSR §150-11-2 has transporter manifest requirements that are equivalent to the Federal regulations at 40 C.F.R. §§ 263.20 and 263.21. Hazardous waste rail transporters must comply with the State's notification requirements at HWMR §33-20-4 and must obtain EPA Identification Numbers. PSC Rule §150-11-1.8 requires transporters to comply with applicable hazardous waste standards for generators contained in HWMR §33-20-5.
- 5. PSC will keep records in performing HWMP responsibilities. PSC will make a copy of those records available

to the DEP to review upon written request. The DEP's Chief of the OWM or his/her designee will cooperate and coordinate with the PSC's Manager for Railway Safety. The PSC and DEP will cooperate and coordinate to ensure HWMP information covered by 33 CSR.20 and 150 CSR.11 is shared.

6. PSC will comply with the U.S. Office of Management and Budget audit requirements to enable the United States Environmental Protection Agency (EPA), and DEP to inspect PSC records.
7. DEP and PSC will cooperate in implementing the HWMP, and will work to ensure that the State retains HWMP authorization. The DEP and PSC will update state rules to maintain consistency and to retain HWMP authorization from EPA. Each agency is committed to mutual support and assistance.
8. DEP and PSC may, by mutual written agreement in letter form, amend this MOU as necessary to effectuate and coordinate their respective legal responsibilities or they may supercede it with a new MOU.

IN WITNESS WHEREOF, the parties hereto cause their names to be signed by the proper officials duly authorized to execute this MOU.

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

By Michael C. Castle 12/01/99
Michael Castle, Director

WEST VIRGINIA PUBLIC SERVICE COMMISSION

By Otis D. Casto 12/15/00
Commissioner

By John S. Regan II
Commissioner

By Charles H. Rans
Commissioner *Chairman*