

US EPA ARCHIVE DOCUMENT

APPENDIX D

**WV DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT/
WV DIVISION OF HIGHWAYS**

MEMORANDUM OF UNDERSTANDING

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION
AND
WEST VIRGINIA DIVISION OF HIGHWAYS
YEAR 1999**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") made by and between the WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION, ("DEP") and the WEST VIRGINIA DIVISION OF HIGHWAYS ("DOH"), is effective December 1, 1999 and shall remain in effect until superseded or amended in writing.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"), Chapter 22, Article 18 §§1 to -25, DEP is the lead agency to implement the West Virginia Hazardous Waste Management Program ("HWMP") and is therefore responsible for coordinating the HWMP. Pursuant to the HWMA at W. Va. Code §22-1-3(c), West Virginia has adopted the Federal regulations by reference in "Hazardous Waste Management Rule" ("HWMR"), 33 CSR 20; and

WHEREAS, under the HWMA, DOH is responsible for the regulation of the transportation of hazardous waste by vehicle over the roads and highways of the State, including the responsibility to perform inspections, promulgate and enforce rules and program requirements. Pursuant to HWMR §§33-20-1.6 and 33-20-6.1, West Virginia has incorporated by reference 40 C.F.R. Part 263 effective July 1, 1997 governing hazardous waste transportation by air and water. On April 28, 1999, "The Transportation of Hazardous Waste by Roads or Highways", DOH Rule 157 CSR 7, became effective, and applies to all persons transporting hazardous waste by any vehicle subject to the Federal DOT requirements, set forth in 49 C.F.R. Parts 171 through 173, 177 through 179, 387 and 390 through 397. Pursuant to §§ 157-7-1.6 and 157-7-5.1, hazardous waste transporters are subject to 40 C.F.R. parts 262 and 263, effective July 1, 1997. The DOH also incorporates the Federal regulations by reference at §157-7-3, subjecting transporters to the manifest requirements at 40 C.F.R. §§ 263.20 and 263.21. Hazardous waste transporters are required to obtain EPA identification numbers and must comply with the State's notification requirements at §33-20-4;

NOW THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the mutual promises and understanding set forth hereafter, the parties 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. DOH will perform motor carrier safety inspections, promulgate and enforce rules and other program requirements under the HWMA and RCRA.
2. DOH will keep records of costs incurred in performing services and will submit documentation to the DEP's Office of Waste Management ("OWM").
3. DOH will comply with the U.S. Office of Management and Budget audit requirements and will preserve records for inspection by the United States Environmental Protection Agency (EPA) and DEP. The DOH and DEP will share HWMP information for the enforcement of 33 CSR 20 and 157 CSR 7.

4. DOH will submit a quarterly report on motor carrier safety inspections to OWM.
5. DEP and DOH will cooperate in implementing the HWMP; and will work to ensure that the State retains HWMP authorization. The DEP and DOH will update state rules to maintain consistency and to retain HWMP authorization from EPA. Each agency is committed to mutual support and assistance.
6. DEP agrees to regulate releases of hazardous waste/material to the environment. DEP Environmental Inspectors/Emergency Response personnel respond to hazardous waste releases, perform emergency response coordination activities, conduct release investigations and site hazardous waste remediation activities. The DEP and the DOH have equal authority to investigate and take enforcement action regarding sudden and non-sudden hazardous waste releases on roads or highways. The DEP and DOH agree that, during an emergency response action, one agency will assume control of the emergency, on a case specific basis.
7. DEP and DOH 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.

The State's current reporting requirements for transporters regulated by DOH are outlined below:

- (1) DOH Rule §§157-7-6.3.1 & 6.3.2 details procedures that highway transporters must follow for spill notification and reporting of hazardous waste releases on roads or highways.
- (2) DOH has included some of the language of 49 C.F.R. §171.15 to clarify when transporters are required to notify the National Response Center. The DOH details the information that must be provided in the notice pursuant to DOH Rule §157-7-6.3.4. (3) The DOH requires that a transporter submit a report, within 15 calendar days of the date of discovery of the discharge, to the DOH, the DEP and the U. S. DOT pursuant to DOH Rule §157-7-6.4.1.
- (4) DOH Rule §157-7-6.4.2 specifies the information to be included in the report.

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
Michael Castle, Director

WEST VIRGINIA DIVISION OF HIGHWAYS

By Samuel H Beverage
Samuel H. Beverage, Commissioner

APPROVED AS TO FORM THIS
6th DAY OF Dec 1988
[Signature]
ATTORNEY LEGAL DIVISION
WEST VIRGINIA DEPARTMENT
OF TRANSPORTATION
DIVISION OF HIGHWAYS