

US EPA ARCHIVE DOCUMENT

**APPENDIX Q**

**WV DIVISION OF HIGHWAYS  
RULE  
WV 157 CSR 7  
EMERGENCY RULE**

WEST VIRGINIA  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #7

Filing Date

APR 12 2 15 PM '99

Effective Date

SECRET

**NOTICE OF AN EMERGENCY RULE**

AGENCY: Department of Transportation, Division of Highways TITLE NUMBER: 157

CITE AUTHORITY §22-18-7(a)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7

TITLE OF RULE BEING AMENDED: Transportation of Hazardous Wastes Upon the  
Roads and Highways

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

TITLE OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

**RECEIVED**

APR 12 1999

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42<sup>ND</sup> DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

**Legislative Rule Making  
Review Committee**

This filing is necessary to comply with time limitations established by changes to federal statute, 40 CFR and 49 CFR. Subsequently, 33 CSR 20, Hazardous Wastes, was changed with the passage of House Bill #2533 which the Governor signed on April 2, 1999. The effective date is July 1, 1999.

Non-compliance with the aforementioned code will jeopardize full federal funding of West Virginia's hazardous waste program, which could impact the public health and safety.

Use additional sheets if necessary

*Samuel H. Beverage*

Signature



**WEST VIRGINIA  
DEPARTMENT OF TRANSPORTATION**

Cecil H. Underwood  
Governor

1900 Kanawha Boulevard East • Building Five • Room 109  
Charleston, West Virginia 25305-0440 • 304/558-0444

Samuel G. Bonasso, P. E.  
Secretary

April 9, 1999

Honorable Ken Hechler  
Secretary of State  
State Capitol Building  
Charleston, West Virginia 25305

Dear Secretary Hechler:

Notice of an Emergency Rule  
Division of Highways, Series 7

The attached information is being submitted by the Commissioner of Highways with my consent and agreement in accordance with the provisions of Chapter 5G, Article 1 of the State Code.

This emergency amendment of an existing legislative rule is being filed to update the W. Va. Code authority and to update the incorporation references to federal as well as state code and rules due to the recent enactment of statute.

Yours truly,

A handwritten signature in black ink, appearing to read "S. Bonasso", written over a horizontal line.

Samuel G. Bonasso, P.E.  
Secretary

SGB:Mc  
Attachments

Division of Highways, Series 7  
Transportation of Hazardous Wastes  
Upon the Roads and Highways  
Emergency Amendments to a Legislative Rule

SUMMARY OF PROPOSED RULE:

Series 7 provides general rules for the transportation of hazardous waste by vehicle upon the roads and highways of West Virginia. These rules are applicable if the transportation requires a manifest under Section 6 of the rules of the West Virginia Division of Environmental Protection implementing the Hazardous Waste Management Act.

STATEMENT OF CIRCUMSTANCES:

This emergency rule filing is necessary to comply with time limitations established by changes to federal statute, 40 CFR and 49 CFR. Subsequently, 33 CSR 20, Hazardous Wastes, was changed with the passage of House Bill #2533 which the Governor signed on April 2, 1999. The effective date is July 1, 1999.

Non-compliance with the aforementioned code will jeopardize full federal funding of West Virginia's hazardous waste program, which could impact the public health and safety.

The U.S. Environmental Protection Agency reviewed 157CSR7 and commented as follows. "The Division of Highways (DOH) regulates the transportation of hazardous waste on West Virginia's roads and highways." "The DOH regulations reference obsolete versions of the hazardous waste management statutes and regulations." "The Federal transportation provisions are **largely Base Program Requirements**; therefore, if the problems identified in the OCR review are not corrected, the State's Base Program authorization will be jeopardized."

Finally, this filing includes editorial revisions requested April 6, 1999 by Rita Pauley, of the Senate, Judiciary Committee.

DATE: April 12, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Division of Highways

1900 Kanawha Boulevard East, Building Five, Room A-949

Charleston, WV 25305-0430 James Youngblood 304/558-3111

EMERGENCY RULE TITLE: Transportation of Hazardous Wastes Upon  
the Roads and Highways

1. Date of Filing April 12, 1999
2. Statutory Authority for promulgating emergency rule:  
§22-18-7(a)
3. Date of filing of proposed legislative rule: October 6, 1998
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?  
Language is being amended.
5. Has the same or similar emergency rule previously been filed and expired?  
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, site the Code provision, federal statute or regulation and time limit established therein.

This emergency rule filing is necessary to comply with  
time limitations established by changes to 40CFR and  
49CFR. Subsequently, 33CSR20, Hazardous Wastes, was  
changed with the passage of House Bill #2533 which was  
signed by the Governor on April 2, 1999. The effective  
date is July 1, 1999.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Non-compliance with the aforementioned code will  
jeopardize full federal funding of West Virginia's  
hazardous waste program, which could impact the public  
health and safety.

The U.S. Environmental Protection Agency reviewed  
157CSR7 and commented as follows. "The Division of  
Highways (DOH) regulates the transportation of  
hazardous waste on West Virginia's roads and highways."

"The DOH regulations reference obsolete versions of the  
hazardous waste management statutes and regulations."

"The Federal transportation provisions are largely Base  
Program Requirements; therefore, if the problems  
identified in the OCR review are not corrected, the  
State's Base Program authorization will be  
jeopardized."

FISCAL NOTE FOR PROPOSED RULES  
July 21, 1998

Rule Title: Series 7, Transportation of Hazardous Wastes  
Upon the Roads and Highways

Type of Rule: X Legislative      Interpretive      Procedural

Agency Division of Highways  
Address Building 5, 1900 Kanawha Boulevard, East,  
Charleston, West Virginia 25305-0430

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Personal Services	0.00	0.00			
Current Expense	0.00	0.00			
Repairs & Alterations	0.00	0.00			
Equipment	0.00	0.00			
Other	0.00	0.00			
Estimated Total Cost	0.00	0.00	0.00	0.00	0.00

2. Explanation of above estimates:

These rule changes do not impact any annual or fiscal year costs.

3. Objectives of this rule:

This amendment of an existing legislative rule is being filed to update the W. Va. Code authority and to update the incorporation references to federal as well as state code and rules due to the recent enactment of statute.



4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government

No economic impact.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens:

No economic impact.

C. Economic Impact on Citizens/Public at Large.

No economic impact.

5. Contact Person and Telephone Number.

Mr. C. Cameron Lewis  
Phone - 558-6266

July 21, 1998

Samuel H. Beverage

Samuel H. Beverage, P.E.  
Commissioner of Highways

Division of Highways, Series 7  
Transportation of Hazardous Wastes Upon the Roads and Highways  
Emergency Amendments to a Legislative Rule

SUMMARY OF PUBLIC COMMENTS and RESPONSE:

The public comment period was advertised in the State Register, published July 24, 1998. Two letters of comments were received. A summary of the comments along with the action taken follows.

**West Virginia Manufacturers Association**  
Submitted by: Michael P. McThomas, Counsel

In a letter dated August 24, 1998, the respondent noted the following:

1. The responsibility of each agency over hazardous waste management to incorporate the same federal regulations to ensure consistency is extremely important. The WV Manufacturers Association supports the DOH rule changes and requests that the LRMRC consider them for inclusion with the 1999 Regular Session of the Legislature along with DEP'S Hazardous Waste Management Rules.
2. The address of the Office of Waste Management is misstated in Section 6.3.2. Also, the phone number to report discharges should be confirmed.

**Response:**

1. No response is required.
2. The address of the Office of Waste Management was corrected and the phone number was confirmed.

**U.S. Environmental Protection Agency**  
Submitted by: John J. Humphries, III, Chief State Programs Branch

In a letter dated August 20, 1998, the respondent noted the following:

1. Add the following requirement as section 3.4.4:  
3.4.4 - Give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

**Response:**

1. The requested addition was made.

MICHAEL P. McTHOMAS  
DIRECT DIAL NO. (304) 347-8338  
E-MAIL: mpm@ramlaw.com

LAW OFFICES  
**ROBINSON & McELWEE LLP**

P. O. BOX 1791  
CHARLESTON, WEST VIRGINIA 25326

TELEPHONE (304) 344-8800  
TELEFAX (304) 344-8866

800 UNITED CENTER  
800 VIRGINIA STREET, EAST  
CHARLESTON, WEST VIRGINIA 25301

CLARKSBURG OFFICE  
P.O. BOX 128  
CLARKSBURG, WEST VIRGINIA 26302  
TELEPHONE (304) 622-8022  
TELEFAX (304) 622-8068

August 24, 1998

C. Cameron Lewis  
WV Division of Highways  
710 Central Avenue  
Charleston, WV 25302

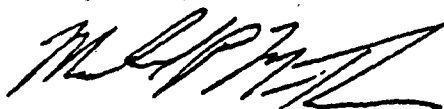
Re: Proposed Legislative Rules  
Transportation of Hazardous Wastes Upon the  
Roads and Highways, 157 CSR 7

Dear Mr. Lewis:

Please accept for filing and due consideration the comments of the West Virginia Manufacturers Association to the above referenced rules proposed for promulgation by the Department of Transportation, Division of Highways. The WVMA is pleased to offer assistance to ensure that the rules are considered and approved during the 1999 Regular Session of the Legislature.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Michael P. McThomas  
Counsel, West Virginia Manufacturers Association

c: Karen Price, President  
West Virginia Manufacturers Association  
Brenda Harper  
Ahmad Talebi

**COMMENTS OF THE  
WEST VIRGINIA MANUFACTURERS ASSOCIATION  
TO THE  
DEPARTMENT OF TRANSPORTATION  
DIVISION OF HIGHWAYS  
TRANSPORTATION OF HAZARDOUS WASTES  
UPON THE ROADS AND HIGHWAYS**

**157 CSR 7**

**August 24, 1998**

**COMMENTS OF THE  
WEST VIRGINIA MANUFACTURERS ASSOCIATION  
TO THE  
DEPARTMENT OF TRANSPORTATION  
DIVISION OF HIGHWAYS  
TRANSPORTATION OF HAZARDOUS WASTES  
UPON THE ROADS AND HIGHWAYS**

**157 CSR 7**

**I. INTRODUCTION**

On July 22, 1998, the West Virginia Department of Transportation, Division of Highways (DOH), filed proposed changes to the legislative rule, Transportation of Hazardous Wastes Upon the Roads and Highways, 157 CSR 7, with the Secretary of State for public comment. Written comments on the proposed revisions are being accepted on or before August 24, 1998.

The West Virginia Manufacturers Association is a statewide organization comprised of over 200 member companies operating in West Virginia. The WVMA has been involved in the development of hazardous waste management regulations since their inception. The WVMA has significant experience in hazardous waste management and offers these comments in developing and refining reasonable and workable rules while serving the goal of environmental protection.

**II. GENERAL COMMENTS**

The WVMA believes it is imperative that each of the agencies with authority over hazardous waste management ensure its regulations are consistent with the rules of the other agencies within

state government with regulatory authority over hazardous waste. In this particular case, the WVMA supports the incorporation date of the federal regulations as July 1, 1997. It is extremely important that each agency with responsibility over hazardous waste management incorporate the same federal regulations to ensure consistency in the application and enforcement of the regulations. The WVMA thoroughly supports passage and approval of the proposed rule since it contains the same incorporation date as the Hazardous Waste Management Rules proposed for promulgation by the Division of Environmental Protection, Office of Waste Management.

In addition, the WVMA implores the state, both the DOH and the DEP and the Legislative Rule-Making Review Committee to consider these rules during the next Legislative Session so that all the rules are approved and passed to assure an implementation date that is compatible. The DOH rules were not filed with the LRMRC by the statutory deadline requiring the LRMRC to submit the rules to the Legislature during the 1999 Regular Session of the Legislature. The WVMA, however, respectfully requests that the LRMRC consider these rules along with the DEP's Hazardous Waste Management Rules. The DOH rules are straightforward and uncomplicated. Accordingly, the resources expended in ensuring prompt consideration should be minor.

### III. SPECIFIC COMMENTS

#### a. Section 6.3.2

The section misstates the address of the Office of Waste Management. The correct address

is:

West Virginia Division of Environmental Protection  
Office of Waste Management  
1356 Hansford Street  
Charleston, West Virginia 25301-1401

The WVMA requests that the addresses and phone numbers be reviewed and confirmed for accuracy.

#### **IV. Conclusion**

The WVMA appreciates the opportunity to provide comments on the proposed rules and stands ready to assist in the further refinement of the rules.

Respectfully submitted this 24th day of August, 1998

West Virginia Manufacturers Association

By Counsel:

Michael P. McThomas, Esq.  
Robinson & McElwee LLP  
Post Office Box 1791  
600 United Center  
Charleston, WV 25326  
Phone: (304) 347-8339  
Fax: (304) 344-9566  
E-mail: mpm@ramlaw.com



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

AUG 20 1998

Mr. Anthony Halkias, Director  
Legal Division  
WV Division of Highways  
State Capitol, Building # 5  
Room A 519  
Charleston, West Virginia 25305-0430

Dear Mr. Halkias:

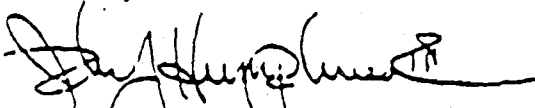
Enclosed are the comments of the U.S. Environmental Protection Agency (EPA) on the recently proposed revisions to the hazardous waste transportation regulations of the State of West Virginia.

We appreciate the efforts of the Division of Highways in amending the State's highway transportation regulations for the hazardous waste program. The changes that are being proposed will assist the State of West Virginia in its quest for authorization of the hazardous waste program.

Our review of the newly proposed regulations was conducted in the context of assisting West Virginia to adopt a set of hazardous waste regulations consistent with the Federal program. Upon our review we have found one additional regulatory citation that we would like added to your regulations prior to the final submission to the State Legislature.

Thank you for the opportunity to comment on the State's proposed hazardous waste regulations. We look forward to working with the State throughout the regulatory adoption and EPA authorization process.

Sincerely,

  
John J. Humphries, III, Chief  
State Programs Branch

Enclosures

cc Mr H Michael Dorsey, WV OWM



**EPA REGULATORY COMMENTS ON THE  
PROPOSED**

**WV DIVISION OF HIGHWAY REGULATIONS**

**August 20, 1998**

EPA appreciates the efforts of the WV Division of Highways in amending the State's highway transportation regulations for the hazardous waste program. The changes that are being proposed will assist the State of West Virginia in its quest for authorization of the hazardous waste program.

The following is offered for addition to the proposed Division of Highway regulations.

1. At 157-7-3 We are requesting that the following text (in bold) be added to the regulations, as shown:

**157-7-3.4.3 Return a signed copy of the manifest to the generator, and,**

**157-7-3.4.4 Give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.**

LEGISLATIVE RULES  
DEPARTMENT OF TRANSPORTATION  
DIVISION OF HIGHWAYS

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157CSR7

TITLE 157  
LEGISLATIVE RULES  
DEPARTMENT OF TRANSPORTATION  
DIVISION OF HIGHWAYS

SERIES 7  
TRANSPORTATION OF HAZARDOUS WASTES UPON THE ROADS AND HIGHWAYS

**§157-7-1. General.**

- 1.1. Scope. ~~These~~ This legislative rules and regulations applyies to all persons offering and/or transporting hazardous waste by vehicle upon the roads and highways of this State if the transportation requires a manifest under ~~Section 6 of the regulations of 33 CSR 20~~ by the Division of Environmental Protection implementing the Hazardous Waste Management Act. ~~(West Virginia Administrative Regulations Title 33 of the Legislative Rules, Division of Environmental Protection, Office of Waste Management, Series 35-20, or by 40 CFR Parts 266, Subpart M; 273, "Universal Waste"; or 279, "Used Oil".)~~
- 1.2. Authority. W. Va. Code ~~§20-5E-7(a)~~ 22-18-7(a).
- 1.3. Filing Date.
- 1.4. Effective Date.
- 1.5. Enforcement. The Commissioner of Highways delegates the enforcement authority granted to him in the Hazardous Waste Management Act to ~~the Enforcement Division~~ Highways' State Safety Officer as identified in the above section.
- 1.6. Incorporation by Reference. Whenever federal statutes or regulations ~~or state statutes or regulations~~ are incorporated into ~~these regulations~~ this rule, the reference is to the statute or regulation in effect ~~on the date of enactment of the legislation authorizing these regulations.~~ as of July 1, 1997. Whenever state statutes or rules are incorporated into this rule, the reference is to the statute or rule in effect as of July 1, 1998.

**§157-7-2. Definitions.**

2.1. Terms. ~~Other than these~~ The terms used in this rule are defined as follows in the following section, the terms used in these regulations shall have the same meaning ascribed to them in the regulations promulgated by the Director of the Division of Environmental Protection pursuant to the State Hazardous Waste Management Act.

2.1.1. "Authorized" means any person and/or transport vehicle who has received an EPA Identification Number from the U.S. Environmental Protection Agency which enables that person to transport or offer hazardous waste for transportation by highway vehicle upon the roads and highways of the state of West Virginia.

2.1.2. "C.F.R." means Code of Federal Regulations.

2.1.3. "Hazardous Waste Management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.

2.1.4. "Highway Transporter" means a person engaged or authorized to engage in off-site transportation of hazardous waste by road and highway.

2.1.5. "Offer" means that moment when the shipper (generator) certifies the uniform hazardous waste manifest.

2.1.6. "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.

2.1.7. "Shipper" means any person transporting, and/or offering hazardous waste for off-site management by highway transporter.

2.1.8. "Transport Vehicle" means includes an automobile, van, tractor, trailer or semitrailer, portable tank, cargo tank, or any combination thereof, propelled or drawn by mechanical power and used upon the roads and highways for the transportation of hazardous waste or authorized to transport hazardous waste.

2.1.9. "Transporter" means any person accepting hazardous waste for transportation on the roads and highways of this state.

2.1.10. "Uniform Hazardous Waste Manifest" means the shipping document EPA form 8700-22 and, if necessary, EPA form 8700-22A, originated and signed by the generator in accordance with the instructions included in the Appendix to 40 C.F.R. Part 262-20(a).

2.1.11. "Vehicle Inspection" means inspection by a Division of Highways representative working in his official capacity, including inspection of the uniform hazardous waste manifest, driver requirements, vehicle safety requirements, and/or cargo packaging requirements.

### **§157-7-3. Uniform Hazardous Waste Manifest System.**

#### **3.1. General Requirements.**

3.1.1. Any person who offers or transports hazardous waste for off-site treatment, storage, or disposal must prepare a Manifest OMB control number 2050-0039 on EPA form 8700-22, and EPA form 8700-22A in accordance with ~~Sections 6 5 and 10 6 of the regulations of the Division of Environmental Protection implementing the State Hazardous Waste Management Act~~ 33 CSR 20-5 and 20-6 or 40 CFR 262, and 263, as amended.

3.1.2. Before transporting the hazardous waste, the highway transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the shipper (generator). The highway transporter must return a signed copy to the generator before leaving the generator's property.

3.1.3. The highway transporter must ensure that the manifest accompanies the hazardous waste.

3.1.4. Before accepting hazardous waste from a rail transporter, a highway transporter must sign and date the manifest and provide a copy to the rail transporter.

3.2. Number and Delivery of Copies. A highway transporter who delivers a hazardous waste to another transporter or to the designated facility must:

3.2.1. Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and,

3.2.2. Retain one copy of the manifest in accordance with Section 4; and,

3.2.3. Give the remaining copies of the manifest to the accepting transporter or designated facility.

3.3. Transporting Waste from Small Quantity Generators. 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 this section or those of CFR 40 263.22 provided that:

3.3.1. The waste is being transported pursuant to a reclamation agreement as provided for in CFR 40 262.20(e);

3.3.2. The transporter records, on a log or shipping paper, the following information for each shipment;

3.3.3. The name, address, and U.S. EPA identification Number of the generator of the waste;

3.3.4. The quantity of waste accepted;

3.3.5. All DOT required shipping information;

3.3.6. The date the waste is accepted; and

3.3.7. The transporter carries this record when transporting waste to the reclamation facility; and

3.3.8. The transporter retains these records for a period of at least three (3) years after termination or expiration of the agreement.

3.4. Transfers to Foreign Consignees - Required Information. Transporters who transport hazardous wastes out of the United States must:

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

3.4.2. Sign the manifest and retain one copy in accordance with Section 4 of these ~~regulations~~ rules; ~~and,~~

3.4.3. Return a signed copy of the manifest to the generator; and,

3.4.4. Give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

### 3.5. Destination.

3.5.1. The highway transporter must deliver the entire quantity of hazardous waste which he has accepted from a generator or a transporter to:

3.5.1.a The designated facility listed on the manifest; ~~or,~~

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

3.5.1.c The next designated transporter; or,

3.5.1.d The place outside the United States designated by the generator.

3.5.2. If the hazardous waste cannot be delivered in accordance with paragraph (a) of this section, the highway transporter must contact the generator for further direction and must revise the manifest according to the generator's instructions.

### §157-7-4. Recordkeeping.

4.1. Record Retention General Requirements. A highway transporter of hazardous waste must keep a copy of the manifest signed by the generator, himself, and the next designated transporter or the owner or the operator of the designated facility for a period of three (3) years from the date the hazardous waste was accepted by the initial transporter.

4.2. Record Retention Foreign Shipments Requirements. A transporter 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 (3) years from the date the hazardous waste was accepted by the initial transporter.



4.3. Automatic Periods of Retention. The periods of retention referred to in this Section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator of the U.S. Environmental Protection Agency and/or the West Virginia Division of Highways.

#### **\$157-7-5. Transportation Requirements.**

5.1. Regulations. No person will transport or offer to transport and no transporter will accept hazardous waste in this state except in accordance with: a) the requirements of ~~these regulations~~ this rule; b) 33 CSR 20 of the Division of Environmental Protection ~~regulations~~ implementing the Hazardous Waste Management Act; c) ~~all applicable regulations of the Federal Environment Protection Agency 40 C.F.R. 262, 263, 266 Subpart M, 273, "Universal Waste", and 279, "Used Oil" of the U.S. Environmental Protection Agency; and d) the Federal Highway Administration Department of Transportation as set forth in 49 C.F.R. Parts 171 through 173, 177 through 179, 49 C.F.R. 387 - Minimum levels of financial responsibilities for motor carriers, and 49 C.F.R. 390 through 397 of the Federal Highway Administration, Department of Transportation as amended.~~ All of these rules and regulations are incorporated by reference.

5.2. Out of Service. Every hazardous waste transporter or authorized hazardous waste transporter operating upon the roads and highways of this state must be in compliance with all applicable rules and regulations enforced by the West Virginia Division of Highways. If any of these Rules and Regulations are ~~in violation~~ violated by a highway transporter, the Division of Highways representative conducting vehicle inspections may deem the driver, vehicle and cargo out-of-service. ~~until a~~ All said violations ~~are~~ must be corrected and the driver, vehicle and/or cargo are ~~deemed found~~ to be in compliance ~~prior to permitting~~ before the vehicle is allowed to continue its journey.

5.3. U.S. EPA Identification Number Required. A transporter must not transport hazardous wastes without having received an Environmental Protection Agency identification number from the Administrator of the U.S. Environmental Protection Agency, ~~if as~~ as required by the West Virginia Division of Environmental Protection. ~~rules implementing the Hazardous Waste Management Act.~~

5.4. U.S. EPA Identification Number Application ~~Procedure~~. A transporter who has not received an Environmental Protection Agency identification number may obtain one by applying to the

Administrator of the U.S. Environmental Protection Agency using EPA Form 8700-12. Upon receiving the request, the Administrator of the U.S. Environmental Protection Agency will assign an EPA identification number to the transporter.

#### §157-7-6. Discharges.

6.1. Immediate Procedures. In the event of a discharge of hazardous waste during transportation, the highway transporter must immediately take appropriate ~~immediate~~ action to protect human health and the environment (e.g., notify local authorities, dike the discharge area).

6.2. Emergency Measures for Removal of Waste ~~Emergency Measures~~. If a discharge of hazardous waste occurs during transportation and a government official, ~~(state, local government, or Federal agency)~~ acting within the scope of his official responsibilities ~~authority~~, determines that immediate removal of the waste is necessary to protect human health or the environment, that official may authorize the removal of the waste by transporters who do not have EPA identification numbers and without the preparation of a manifest.

6.3. Required Notices. A highway transporter who has discharged hazardous waste must give notice to:

6.3.1. The West Virginia Division of Highways  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305  
Telephone: (304) 558-3028; twenty-four hours a day;

6.3.2. The West Virginia Division of Environmental Protection  
Office of Waste Management  
~~1260 Greenbrier~~ 1356 Hansford Street  
Charleston, West Virginia ~~25311~~ 25301-1401  
Telephone: 800-642-3074

6.3.3. The National Response Center 1-800-424-8802 or (202) 426-2675, but only if:

6.3.3.a A person is killed; or,

6.3.3.b A person receives injuries requiring hospitalization; or,

6.3.3.c Total property damage from the spill exceeds \$50,000; or,

- 6.3.3.d The discharge involves radioactive waste and/or materials; or,
- 6.3.3.e The discharge involves shipment of etiologic agents; or,
- 6.3.3.f The situation, in the judgment of the carrier, should be reported.

6.3.4. The notice shall contain the following information:

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

#### 6.4. Written Report.

6.4.1. Within fifteen (15) calendar days of the date of discovery of the discharge of any quantity of hazardous waste, the highway transporter shall file a written report, as specified in 49 CFR 171.16, as amended, with the West Virginia Division of Highways, the West Virginia Division of Environmental Protection, and the United States Department of Transportation.

6.4.2. The report shall contain the following information:

- 6.4.2.a All information required by Section 6.3~~(d)~~.4;

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- 6.4.2.b The location of the discharge in relation to surface water, public water supplies, groundwater, wildlife inhabitants, and agricultural production;
- 6.4.2.c The quantity and description of the hazardous waste removed and the disposition of that material;
- 6.4.2.d The disposition, quantity and description of the unremoved hazardous waste;
- 6.4.2.e A copy of the hazardous waste manifest shall be attached to the report.

6.5. Clean Up. A highway 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 in consultation with the West Virginia Division of Highways or West Virginia Division of Environmental Protection charged with implementation of the West Virginia Hazardous Waste Management Act so that the hazardous waste discharge no longer presents a hazard to human health or the environment prior to releasing the transporter.

6.6. Obligation. Nothing in this section shall relieve a highway transporter of the obligation of complying with applicable sections of the Legislative rule "Special Regulations" of the Office of Water Resources.