

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

Form #7

Do not mark in this box
Filing Date

FILED

SEP 15 3 06 PM '00

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: 19-16A-4

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 12

TITLE OF RULE BEING AMENDED: Fee structure for the Pesticide Control Act of 1990.

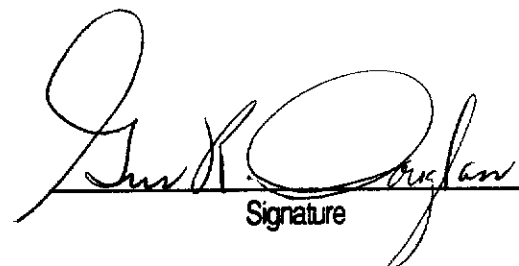
IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: _____

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

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

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Use additional sheets if necessary


Signature

3.80

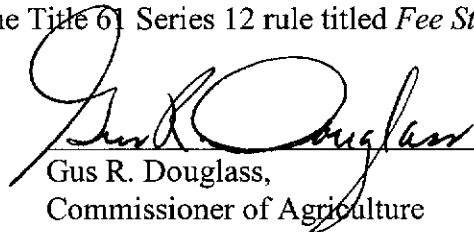
State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

David E. Miller
Deputy Commissioner

Janet L. Fisher
Assistant Commissioner

AGENCY APPROVAL OF FILING

The West Virginia Department of Agriculture approves the filing of the Emergency Rule to amend the Title 61 Series 12 rule titled *Fee Structure for the Pesticide Control Act of 1990*.

 _____ 9/15/00
Gus R. Douglass, Commissioner of Agriculture Date

DATE: September 15, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:

EMERGENCY RULE TITLE: Fee Structure for the Pesticide Control Act

1. Date of Filing September 15, 2000

2. Statutory authority for promulgating emergency rule:

State Code 19-16A-4

3. Date of filing of proposed legislative rule: August 8, 2000

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?

The emergency rule amends a current legislative rule, Title 61, Series 12,

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.

The loss of revenue without the approval of the emergency rule will result in the
loss of personnel, operating funds and programs to support the pesticide regulatory
programs available to the citizens of the state.

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

State Code 19-16A-5(c) specifies the registration period for pesticide products
is January 1 through December 31 each year. The fees collected support the next
fiscal year's budget. If the fee is not increased prior to the January 1 renewal
period, the FY2002 budget will have a deficit.

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

Failure to increase revenue from this fee increase will result in the loss of
personnel, operating funds, and programs to the citizens of the state. Specifically
a loss response to incidents of pesticide misuse, supporting laboratory analysis,
waste pesticide disposal, pesticide container recycling and pesticide safety and
outreach to schools and the general public.

State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

David E. Miller
Deputy Commissioner

Janet L. Fisher
Assistant Commissioner

SUMMARY OF PROPOSED RULE

The West Virginia Department of Agriculture is filing an emergency rule to amend the Title 61 Series 12 rule titled *Fee Structure for the Pesticide Control Act of 1990* by increasing the fee for pesticide product registration and correcting an error created the last time the rule was amended. The amount of the increase is from the current fee of \$50.00 per product to \$100.00 per product. The fee for a pesticide dealer license was erroneously increased during the last rule making legislation. That fee is being returned to the original amount of \$10.00 per dealer establishment. All other fees associated with the rule remain the same with no change.

CIRCUMSTANCES CONSTITUTING THE EMERGENCY

The basic program general revenue dollars available to support the Pesticide Regulatory Programs has not increased since 1990. The Federal Grant dollars available to the program have not increased since 1994. Due to the increased responsibilities and demands upon the legislative mandated pesticide regulatory programs operated by the Department, this increase in funding is needed to cover the rising inflationary costs associated with the program.

The rule is being filed an emergency rule because the fees collected under this rule expire at the end of each calendar year. As such, the bulk of the money to support the upcoming fiscal year's budget is collected from November through February of each year. If the fee increase is delayed until after the next legislative session, there will be a deficit in the FY-2002 budget that will result in the reduction of services to the citizens of the state. The loss of personnel, current expense operating money and programs will have an adverse effect on the health, safety and welfare of the state.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Fee Structure for the Pesticide Control Act of 1990

Type of Rule: Legislative Interpretive Procedural

Agency Department of Agriculture

Address 1900 Kanawha Boulevard East

Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 350,000	\$	\$ 350,000	\$ 350,000	\$ 350,000
PERSONAL SERVICES	185,000		185,000	185,000	185,000
CURRENT EXPENSES	95,000		95,000	95,000	95,000
REPAIRS & ALTERATIONS	20,000		20,000	20,000	20,000
EQUIPMENT	50,000		50,000	50,000	50,000
OTHER					

2. Explanation of above estimates:

The estimates include actual costs of personnel, laboratory expenses, travel and other operational costs for the enforcement of the Pesticide Control Act of 1990.

3. Objectives of these rules:

This rule is being amended to provide needed funding to continue offering regulatory oversight and services to the citizens of the state. The primary funding of costs to this point have been paid from federal dollars received from the EPA through grants. The grant dollars have not increased since 1994 and reserve resources have been exhausted. Additional funding needs to be obtained in order to maintain the current program services.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Approval of the fee increase will have no adverse impact on the State. The fees paid by pesticide registrants are paid to all states and West Virginia's fees are below the average fee paid in the nation. The fee increase will raise the West Virginia fee to the average paid by registrants. If the rule is not approved, then the State will not be in a position to continue the operation of the Pesticide Regulatory Programs Unit at the current level. The resulting loss of positions and current expense dollars will impact the EPA grants and possibly result in the loss of federal dollars to the State. If that occurs, the State will not be in a position to meet the mandate of the Pesticide Control Act of 1990.

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

Approval of the rule amendment will have no adverse impact on Political Subdivisions. The fee is paid to all states by the pesticide registrants and our fee is well below the average fee paid. Increasing the fee will bring our state near the average fee paid and is not expected to cause any increase in the cost of pesticide products to any political unit in the state.

C. Economic Impact on Citizens/Public at Large

No group of citizens is expected to be impacted by the approval of the fee increase. The amount people pay for pesticides is dependent on marketing factors and not registration fees. For instance, the state of Virginia charges \$150.00 per product, but in a survey of homeowner products, it was found that they were cheaper in Winchester, Virginia than in Martinsburg, West Virginia. These two cities are comparable in size and are approximately 30 miles apart. At that time the West Virginia registration fee was \$25.00, six times less than the Virginia registration fee. If the money to support pesticide programs cannot be gotten from the fee increase, then general revenue dollars would need to be appropriated, thereby causing a larger demand on state tax dollars.

The only industry this fee increase will impact is the pesticide manufacturers. The fee should not adversely impact West Virginia businesses. Eleven pesticide manufacturers operate 15 manufacturing sites in the state. Those manufacturers have to pay registration fees to all states, regardless of state in which their manufacturing plant is located. Only one of these manufacturers is a West Virginia based company. That company would see a total increased cost of \$100.00 to register their 2 products.

Date: 6/9/00

Signature of Agency Head or Authorized Representative

Dampier Miller

FILED

TITLE 61

SEP 15 3 06 PM '00

WEST VIRGINIA EMERGENCY RULE
WEST VIRGINIA DEPARTMENT OF AGRICULTURE
CHAPTER 19-16A
SERIES XII

OFFICE OF THE CLERK OF THE VIRGINIA
SECRETARY OF STATE

Title: Fee Structure for the Pesticide Control Act of 1990

§61-12-1 General

1.1. Scope - This emergency rule establishes the fee structure to be used under the Pesticide Control Act of 1990.

1.2. Authority - West Virginia Code 19-16A-4

1.3. Filing Date - September 15, 2000

1.4. Effective Date -

~~1.5. Repeal of Former rule - This legislative rule repeals and replaces WV61CRS12 "Fee Structure For The Pesticide Control Act of 1990" effective December 20, 1990 June 1, 1999.~~

§61-12-2 Definitions Examinations

2.1. The Commissioner shall assess each person taking an examination for a license, certification or certificate ~~shall be assessed~~ a fee of \$10.00 per examination session. This fee is for one or more examinations taken at the same time. This examination fee ~~is to~~shall be used to help defray the costs of training materials, postage and processing of licenses, certifications and certificates.

§61-12-3 Classification and Fees of Pesticide Business Licenses

3.1. Pesticide application business - The Commissioner shall assess an annual fee of \$50.00 ~~shall be assessed~~ for each pesticide application business engaged in the business of applying pesticides upon the lands of another. Pesticide application business making non solicited recommendations of pesticide products, made in the course of normal business practices, shall be exempt from a consultant license and fee.

3.2. Pesticide consultant -The Commissioner shall assess an annual fee of \$50.00 ~~shall be assessed~~ for each pesticide application business engaged in the business of soliciting or offering services for hire to recommend the use of pesticide on the lands of others.

3.3. Pesticide dealer - The Commissioner shall assess an annual fee of \$~~5~~10.00 ~~shall be~~

assessed for each person who sells, wholesales, distributes, offers or exposes for sale, exchanges or gives away any restricted use pesticide within or into this State. Commercial delivery services shall not be deemed as distributors of pesticides.

§61-12-4 Classification and Fees of Applicator Certificates

4.1. Commercial applicator - The Commissioner shall assess an annual fee of \$10.00 ~~shall be assessed of~~ for each person who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as a private applicator.

4.2. Private applicator - The Commissioner shall assess a fee of \$10.00 ~~shall be assessed~~ every three years to maintain certification as a private applicator to apply restricted use pesticides for the purpose of producing any agricultural commodity on property owned or rented by him or her employer or is applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.

4.3. Registered technician - The Commissioner shall assess an annual fee of \$10.00 ~~shall be assessed of~~ for each person qualifying as a registered technician.

§61-12-5 Product Registration

5.1. The Commissioner shall assess an annual registration fee of \$~~5~~100.00 per product ~~shall be assessed of~~ for each pesticide which is manufactured, distributed, sold or offered for sale, delivered for transportation or transported in intrastate commerce of between points within this State through any point outside this State

5.2. Pesticide products used or offered for use within the State under a bonafide experimental research permit issued by the United States environmental protection agency must shall be registered but ~~shall be~~ are exempt from the annual registration fee, provided such the products are offered at no charge to cooperators and a copy of the experimental research permit is submitted with registration as an experimental use product with the State.