

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

Do not mark in this box
Filing Date

FILED

SEP 30 12 07 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: Chapter 19-16A-4

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 12

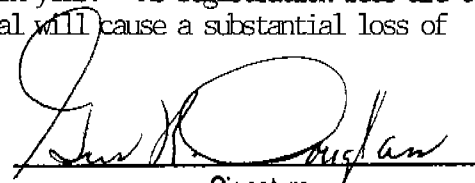
TITLE OF RULE BEING AMENDED: Fee Structure for the Pesticide Control Act of 1990

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: State code 19-16A-5 (c) stipulates the pesticide product registration period shall be from January 1 to December 31 of each year. As registration fees are to be paid on a calendar year basis legislative approval will cause a substantial loss of operational dollars for fiscal year 2000.


Signature

Use additional sheets if necessary

\$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 an amendment to Title 61 Series 12 rule titled *Fee Structure for the Pesticide Control Act of 1990*, as an Emergency Rule. This rule has gone through the Legislative Rule-Making Process, with a public comment period, and filing, review of and approval with modifications of the Legislative Rule-Making Review Committee.


Gus R. Douglass,
Commissioner of Agriculture

9/29/98
Date

DATE: September 30, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: David E. Miller, Deputy Commissioner of Agriculture

EMERGENCY RULE TITLE: Fee Structure for the Pesticide Control Act of 1990

1. Date of Filing September 30, 1998

2. Statutory authority for promulgating emergency rule:

Chapter 19-16A-4

3. Date of filing of proposed legislative rule: May 14, 1998

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

The rule amends a current legislative rule

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.

State code 19-16A-5 (c) stipulates the pesticide product registration period shall be from January 1 to December 31 each year. As registration fees are to be paid on a calender year basis legislative approval will cause a substantial loss of operational dollars for fiscal year 2000.

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) provides for a registration
period of January 1 through December 31 of each year.

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

The loss of operational dollars for fiscal year 2000
will hinder the Department in carrying out its statutory
responsibilities under the Pesticide Control Act of 1990.



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

David E. Miller
Deputy Commissioner

Janet L. Fisher
Assistant Commissioner

SUMMARY OF EMERGENCY RULE

The West Virginia Department of Agriculture proposes 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. The amount of the increase is from the current fee of \$25.00 per product to \$50.00 per product. All other fees associated with the rule remain the same with no increase.

By statute the registration of pesticide products are required on an annual calendar year. This rule is also being filed as a legislative rule and has received Legislative Rule-Making Review Committee approval. However the vast majority of the pesticide product fees for calendar year 1999 and the beginning of the fiscal budget year 2000 are collected in the months of December, January and February. If the fee increase is enacted following the 1999 Legislative Session, the increased revenue will not be available for use until fiscal year 2001.

The reason for the increase is to provide a basis of stability for the increased regulatory demands on the program for investigation of pesticide use and environmental impact. If the use of the funding is delayed for an additional 18 months, the preservation of the public safety and welfare could be at risk.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Fee Structure for the Pesticide Control Act 1990

Type of Rule: **Legislative** **Interpretive** **Procedural**

Agency West Virginia Department of Agriculture

Address David Miller Telephone 558-2201
1900 Kanawha Blvd., East
Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 180,000	\$	\$ 180,000	\$ 180,000	\$ 180,000
PERSONAL SERVICES	140,000		140,000	140,000	140,000
CURRENT EXPENSE	25,000		25,000	25,000	25,000
REPAIRS & ALTERNATIONS					
EQUIPMENT	15,000		15,000	15,000	15,000
OTHER					

2. Explanation of above estimates:

The above estimate reflects the planned expenditure of the increased revenue. Included is funding for two full time positions, support money and salary improvements for existing staff.

3. Objectives of these rules:

To raise funding to upgrade staff and improve services to the citizens of the state.

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

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There will be no economic impact on state government. The fees are paid by manufacturers of pesticide products. The Pesticide Control Act of 1990 exempts governmental agencies from all fees.

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

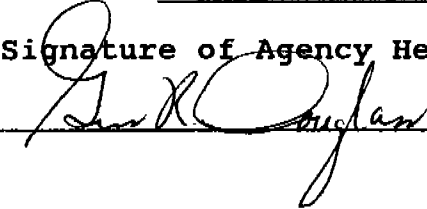
There will be no impact on political subdivisions as they are similarly exempt from fees as stated in A above. The State's industries and specific citizens groups will also not be impacted. The proposed increase in fee is well within the average charged by other states. No increase in the cost of product is anticipated.

C. Economic Impact on Citizens/Public at Large.

No increase in the cost of pesticide products is expected as this increased fee is well within the average charged by other states. As such the market places regulated the price of products and not registration fees.

Date: September 30, 1998

Signature of Agency Head or Authorized Representative



FILED

SEP 30 12 07 PM '98

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

TITLE 61

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

Title: Fee Structure for the Pesticide Control Act of 1990

§61-12A-1 General

1.1. Scope - This legislative 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 -

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.

§61-12A-2 General Examination Fee

2.1. Each person taking an examination for a license, certification or certificate shall pay 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 used to help defray the costs of training materials, postage and processing of licenses, certification and certificates.

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

3.1. Pesticide application business - each pesticide application business engaged in the business of applying pesticides upon the lands of another shall pay an annual fee of \$50.00. Pesticide application business making non solicited recommendations of

pesticide products, made in the course of normal business practices, are exempt from a pesticide consultant's license and fee.

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

3.3. Pesticide dealer - each person who sells, wholesales, distributes, offers or exposes for sale, exchanges or gives away any restricted use pesticide within or into this State shall pay an annual fee of \$50.00. Commercial delivery services are not considered distributors of pesticides.

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

4.1. Commercial applicator - 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 shall pay an annual fee of \$10.00.

4.2. Private applicator - a private applicator applying restricted use pesticides for the purpose of producing any agricultural commodity on property owned or rented by his 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 shall pay a fee of \$10.00 every three years.

4.3. Registered technician - each person qualifying as a registered technician shall pay an annual fee of \$10.00.

§61-12A-5 Product Registration

5.1. Manufacturers of pesticide products shall pay an annual registration fee of \$ 50.00 per product for each pesticide which is manufactured, distributed, sold or offered for sale, delivered for transportation or transported in intrastate commerce or 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 shall be registered but are exempt from the annual registration fee, provided the products are offered at no charge to cooperators and a copy of the experimental research permit is submitted for registration as an experimental use product with the State.