

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY 19-16A-4

AMENDMENT TO AN EXISTING RULE: YES NO

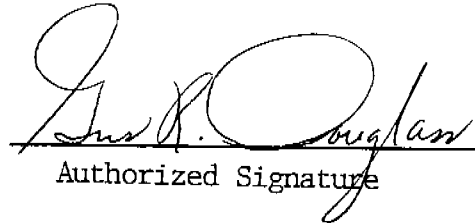
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 12

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

\$10.00



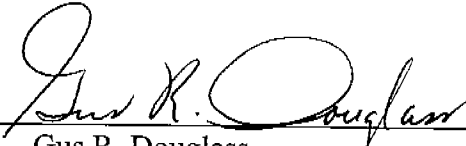
State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

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*. Following a public hearing and written comment period, no changes were made to the rule as originally filed.



Gus R. Douglass,
Commissioner of Agriculture

7/30/98

Date

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 30, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Agriculture

1900 Kanawha Blvd., East, Charleston, WV 25305 304-558-2201

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

1. Authorizing statute(s) citation State Code 19-16 A-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
May 21, 1998

b. What other notice, including advertising, did you give of the hearing?
1). Class I advertisement in Charleston Daily Mail
2). General News Release
3). Letters were sent to interested parties.

c. Date of Public Hearing(s) or Public Comment Period ended:
July 6, 1998

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 30, 1998

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

David E. Miller, Deputy Commissioner 304-558-2201 fax 304-558-2203

West Virginia Department of Agriculture

1900 Kanawha Blvd., East

Charleston, WV 25305-0170

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Robert E. Frame, Assistant Director 304-558-2209 fax 304-558-2228

West Virginia Department of Agriculture

1900 Kanawha Blvd., East

Charleston, WV 25305-0190

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

NOT APPLICABLE

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached



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 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 \$75.00 per product. All other fees associated with the rule remain the same with no increase.



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

David E. Miller
Deputy Commissioner

Janet L. Fisher
Assistant Commissioner

STATEMENT OF CIRCUMSTANCE

The Title 61 Series 12 rule titled *Fee Structure for the Pesticide Control Act of 1990* is being amended to increase the revenue to the Department of Agriculture in order to provide better services to the citizens of the State. Due to increased demands upon the regulatory programs operated by the Department, and increase in staffing and an upgrade of salaries is warranted. Staff in the Department's Pesticide Regulatory Programs Unit are leaving due to a lack of competitiveness in salaries, both in state government and private industry. Some staff members of the Unit are even able to qualify for food stamps under the State's welfare system. Subsequently, measures must be taken to keep experienced staff and attract qualified staff. Further deterioration of the programs can affect the immediate preservation of the public health, safety or welfare.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: X **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 | \$ 360,000 | \$ | \$ 360,000 | \$ 360,000 | \$ 360,000 |
| PERSONAL SERVICES | 286,463 | | 286,463 | 286,463 | 286,463 |
| CURRENT EXPENSE | 60,037 | | 60,037 | 70,037 | 70,037 |
| REPAIRS & ALTERNATIONS | | | | | |
| EQUIPMENT | 20,000 | | 20,000 | 10,000 | 10,000 |
| OTHER | | | | | |

2. Explanation of above estimates:

The above estimate reflects the planned expenditure of the increased revenue. Included is funding for six 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: May 5, 1998

Signature of Agency Head or Authorized Representative



FILED

JUL 30 1 55 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 61

WEST VIRGINIA LEGISLATIVE 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 WV61GRS12 "West Virginia Pesticide Law" effective May 19, 1961.~~

§61-12A-2 Definitions

2.1. 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 be 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 - 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 make 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 - an annual fee of \$50.00 shall be assessed 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 - an annual fee of \$10.00 shall be assessed 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.

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

4.1. Commercial applicator - an annual fee of \$10.00 shall be assessed of 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 - 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 - an annual fee of \$10.00 shall be assessed of each person qualifying as a registered technician.

§61-12A-5 Product Registration

5.1. An annual registration fee of \$ 275.00 per product shall be assessed of 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 be registered but shall be exempt from annual registration fee, provided such 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.



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

David E. Miller
Deputy Commissioner

Janet L. Fisher
Assistant Commissioner

Record Of The Public Hearing To Consider The Proposed Amendment
To Legislative Rule Title 61 Series 12

Fee Structure for the Pesticide Control Act of 1990

A public hearing was scheduled 10:00 am at the Guthrie Agricultural Center, John T. Johnson Conference Room, 4720 Brenda Lane, Charleston, West Virginia, 25312. Notice of the public hearing was made via the State Register Volume XV Issue 21, a class 1 legal advertisement in the Charleston Daily Mail newspaper and letters sent to associations of parties affected by the rule.

The meeting room was opened at 9:30 a.m. to accommodate any early arrivals. At the 10:00 a.m. scheduled hearing time, no one had arrived at the hearing room or called for directions to the hearing. The hearing was officially called to order and open for comments. As no one was present, the hearing was left open until 10:30 a.m. At that time, as no one had arrived or contacted the office concerning the hearing, the proceedings were closed. In order to accommodate a request from the American Pet Products Manufacturers Association, the hearing was left open for written comments until July 6, 1998. A total of six written comments were received and are attached.

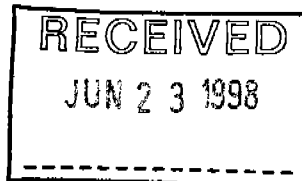
APPMA



American Pet Products Manufacturers Association, Inc.

June 18, 1998

Robert Frame
West Virginia Department of Agriculture
Plant Industries Division, PRP
1900 Kanawha Blvd., East
Charleston, WV 25305-0150



Re: West Virginia Department of Agriculture Proposed Fee Structure for the Pesticide Control Act of 1990.

Dear Mr. Frame:

The American Pet Products Manufacturers Association, Inc. (APPMA) is a trade association representing over 550 pet product manufacturers. Approximately 40% of our members are small manufacturers, i.e., with gross annual sales of less than \$500,000 nationally. Additionally, we represent many larger manufacturers. Our industry employs more than 250,000 individuals in the manufacturing, distribution and marketing of pet products, including products essential to the health and well being of animals, such as flea and tick products. A recent national survey showed that there are approximately 256 million pets in the United States and that 58% of American households have a least one pet.

APPMA strongly opposes the proposed increase in the pesticide registration fee in your state to the extent that it TRIPLES the current pesticide registration from \$25 per product to \$75 per product. This increase constitutes an undue burden on pet product manufacturers because the severity of the increase does not justify the sales in the state.

Any regulation of pesticides should reflect the vast difference between the use of pesticides for agricultural and nonagricultural purposes. It is simply neither fair nor reasonable to treat both uses in the same manner and collect the same registration fees from both. Whereas agricultural use of pesticides may involve thousands of pounds or gallons of a pesticide, pesticide use in pet products is very small and limited. The majority of problems and issues of concern stem from the agricultural use of pesticides – the highest concentration of pesticide use.

255 Glenville Rd. • Greenwich, CT 06831 • Phone (203) 532-0000 or (800) 452-1225 • Fax (203) 532-0551

Page 2

A fair registration fee schedule will distinguish between agricultural and nonagricultural products and assess product registration fees based upon the potential impact of the product. In fact, several other states categorize specialty pesticides which are used within the home including, for example, Illinois, Maine, Michigan, Minnesota, Nebraska, New Hampshire, Vermont, Washington, and Wisconsin.

Pet product sales are not sufficient for the small manufacturer to justify the production and marketing of a product when the registration fees become such a great burden. This proposed fee increase could result in the loss of valuable products and choices for the West Virginia consumer. If manufacturers decide to discontinue marketing a product in West Virginia, consumers are relegated to buying the product from mail order catalogs or out-of-state retailers. This scenario not only burdens consumers but also denies the state a valuable sales tax resource. Thus, pet products should not be included in the fee scheme at all.

We respectfully request that consideration be given to two classes of pesticides including an agricultural use pesticide category and a specialty pesticide category for household or consumer product pesticides used, for example, in flea and tick products.

In order to better understand the great benefits specialty pesticides render to the consumer, please review the enclosed information packet which details the pet industry's commitment to consumer protection and enhancement of pet life. We appreciate the opportunity to present our views.

Sincerely yours,

A handwritten signature in cursive script that reads "Gina Valeri".

Gina Valeri
Director of Legislative & Legal Affairs

enc.

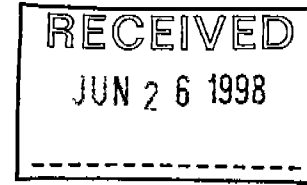
Combe
incorporated

CLARK R. ALLEN
Vice President
New Business Development

1101 WESTCHESTER AVENUE
WHITE PLAINS N Y 10604-3597

TELEPHONE: 914-694-5454
FAX: 914-694-6855

June 23, 1998



Mr. Robert Frame
West Virginia Department of Agriculture
Plant Industries Division, PRP
1900 Kanawha Blvd., East
Charleston, WV 25305-0190

Dear Mr. Frame:

COMBE Incorporated manufactures and distributes SCRATCHEX flea & tick control products. These products are sold in food, drug, discount and pet stores throughout West Virginia.

This letter is to oppose the proposed action by your Department that would triple registration fees for pesticides used for the health and comfort of West Virginia's pets.

Ultimately, West Virginia's pet-owning citizens will be required to pay the cost of registration fee increases. I hope you will agree that asking your constituents to bear the burden of a fee increase is unfair and unwise.

Beyond the burden this proposed fee increase would place upon the pet owners of West Virginia, we ask for your consideration of equity between low volume manufacturers of products for use on pets and manufacturers of much higher volume agricultural pesticides. We urge you to distinguish, in levying registration fees, between low volume pet pesticides, with little or no environmental impact, and high volume agricultural pesticides.

June 23, 1998

Page 2

In this era of relatively slow economic growth, it is difficult to understand why the great State of West Virginia would propose such a fee increase. It is inconsistent with not only the realities of the nation's economy, it is inconsistent with pesticide registration fee actions of the 49 other states. The vast majority of the remaining states have held, and are holding, fees at existing levels during this period of economic stability. The one or two states which have increased fees over the last two years have done so in a far more reasonable manner, in terms of percentage increase, than is contemplated in the West Virginia proposed change.

The imposition of expanded fees upon specialty pesticide products will drive up consumer costs and/or squeeze the profit levels of West Virginia retailers. Many of those affected will be small, independent pet stores – the majority of which are family businesses. It is conceivable, because specialty pesticides provide a high percentage of pet store sales, that some independent family – operated pet stores could experience business loss of sufficient dimension to question the viability of continued operation.

We urge, therefore, that the proposed fee increase be substantially reduced to be more in line, on a percentage basis, with U.S. growth indicators.

Thank you for the opportunity to register our views.

Cordially,

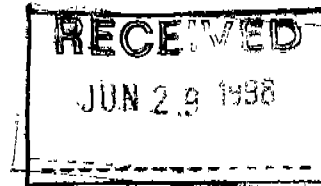


Clark R. Allen
CRA:ib



Four Paws[®]
Products Ltd.

50 Wireless Blvd. • Hauppauge, N.Y. 11788-3918 • (516) 434-1100
Fax No. (516) 434-1183



June 23, 1998

Representative Robert Frame
West Virginia Department of Agriculture
Plant Industries Division, PRP
1900 Kanawha Blvd., East
Charleston, WV 25305-0190

RE: West Virginia Department of Agriculture Proposed Fee Structure for the Pesticide Control Act of 1990

Dear Representative Frame:

It has come to our attention that the West Virginia Legislature is planning to increase the fee for pesticides used, sold and distributed in the state of West Virginia to \$75.00 for each pesticide registered annually.

I believe this increase will only have a negative impact on our industry. It will adversely affect our ability to market our products in West Virginia and remain profitable. The proposed fee hike is unfair in that it favors large manufacturers who can amortize the cost through large volume distribution while impacting severely on small manufacturers who cannot.

The proposed fee hike will negatively affect the ability of the small manufacturer of specialty pesticide products to maintain registrations in the state, potentially affecting the ability of the pet stores and other small retailers to offer a full selection of necessary products for the proper maintenance of domestic pets. This in turn will impact upon the ability of these small retailers to compete and remain in business.

We urge the Board to distinguish on a registration fee basis, between large volume agricultural and household pesticides and low volume specialty use pesticides, such as pet products. Registrations should be based on volume so that all manufacturers and retailers are capable of amortizing the costs of registration allowing fair competition and the ability to maintain registrations for these necessary products with the Commonwealth.

We respectfully request that this bill not be passed. We appreciate the opportunity to present our views.

Sincerely yours,

FOUR PAWS PRODUCTS LTD.

A handwritten signature in cursive script that reads "Allen Simon".

Allen Simon
President

AS:bmt

AQUARIUM PHARMACEUTICALS INC.

P.O. Box 218 • 50 East Hamilton Street • Chalfont, PA 18914-0218 • 215-822-8181 • <http://www.aquariumpharm.com>
FAX Numbers: • Domestic Sales 215-997-1290 • Foreign Sales 1-215-822-1257 • Advertising & Research 215-822-1497 • General Office 215-822-1906

Mr. Robert Frame
WV Department of Agriculture
Plant Industries Division, PRP
1900 Kanawha Blvd., East
Charleston, WV 25305-0190

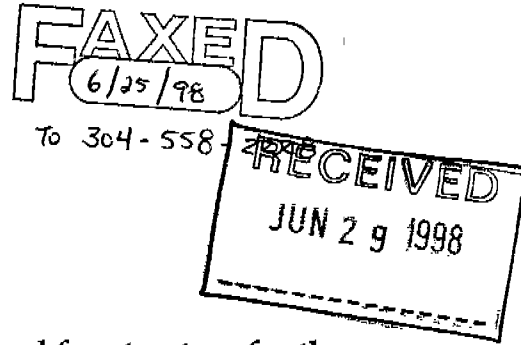
25 June, 1998

RE: **West Virginia Department of Agriculture proposed fee structure for the
Pesticide Control Act of 1990**

Dear Mr. Frame,

Aquarium Pharmaceuticals, Inc. is a manufacturer of aquarium maintenance products, including products that are registered pesticides. These products are for the control of Algae, which is the biggest problem to combat as an aquarium hobbyist.

I write in regards to WV's proposed tripling of the pesticide registration fee from \$25.00 to \$75.00 dollars. Although it is appreciated that administrative costs continue to climb and in order to maintain an effective pesticide regulatory program it is necessary to increase fees. As a manufacturer many times smaller than large corporations who produce pesticides, we must oppose any regulatory proposal which does not differentiate fee structures based upon sales. It is obvious that the percentage of sales which get applied to registration is much smaller for company's who sell large volumes of their product. This makes it very difficult for small manufacturers to justify production of a product when such a disproportionate amount of sales must be applied to registration fees. This could potentially eliminate extremely important products for the pet owners who need them. Recent surveys indicate that over 40 million households have an aquarium. It is also not fair to hold small, specialty pesticides accountable for the same impacts that "commercial" pesticides have on public health and the environment.



page (1)

Subsidiaries:
Aquarium Pharmaceuticals
World Sales, LTD
Veterinary & Research
Division API

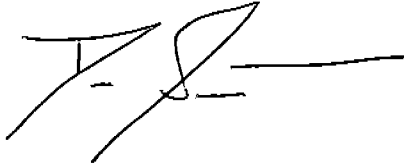


AQUARIUM PHARMACEUTICALS INC.

P.O. Box 218 • 50 East Hamilton Street • Chalfont, PA 18914-0218 • 215-822-8181 • <http://www.aquariumpharm.com>
FAX Numbers: • Domestic Sales 215-997-1290 • Foreign Sales 1-215-822-1257 • Advertising & Research 215-822-1497 • General Office 215-822-1906

Aquarium Pharmaceuticals would like to take this opportunity to voice our opposition to this proposed regulatory change in fee structure. We strongly urge the state of West Virginia to reconsider this proposal and to create policy which is more balanced for all parties involved. We would also like to take this time to thank you for allowing us to provide our opinion and feedback. If there should be any questions or comments, please feel free to contact me at any time.

Sincerely yours,



Paul Sauter
Director
Regulatory Affairs

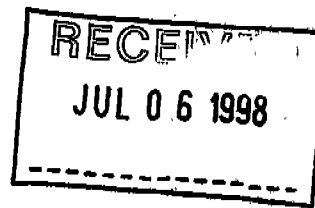
Subsidiaries:
Aquarium Pharmaceuticals
World Sales, LTD
Veterinary & Research
Division API





FARNAM COMPANIES, INC.
301 West Osborn/Phoenix, Arizona 85013-3928
PO Box 34820/Zip Code 85067-4820
Phone (602) 285-1660
FAX 602-285-1803

June 30, 1998



Mr. Robert Frame
West Virginia Department of Agriculture
Plant Industries Division, PRP
1900 Kanawha Blvd., East
Charleston, WV 25305-0190

~~Re: West Virginia Department of Agriculture Proposed Fee Structure for the Pesticide Control Act of 1990.~~

Dear Mr. Frame:

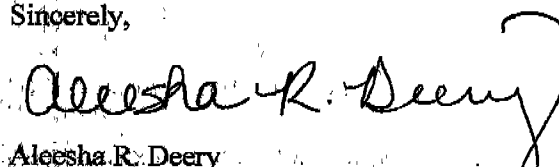
We write regarding the above-mentioned proposed rule which would **TRIPLE** the current pesticide registration fee of \$25.00 per product to \$75.00 per product across the board without regard to the type of pesticide registered. We urge consideration of a rule which provides for two separate classes of pesticide distinguishing between agricultural and specialty pesticides used, for example, in flea and tick products.

Any regulatory scheme should be based upon the volume of pesticides put into the stream of commerce by the regulated entity. The majority of problems and issues of concern stem from the agricultural use of pesticides - the highest concentration of pesticide use. Rationality and fairness require that the states distinguish between product categories such as flea and tick products containing minuscule amounts of pesticide and an agricultural pesticide product which is sold in volumes of hundreds of pounds or tons.

This proposed increase, which does not assess fees based upon the potential impact of the product, could result in the loss of valuable products available to the West Virginia consumer. ~~Pet product sales are not sufficient for the small manufacturer to justify the production and marketing of a product when the registration fees become such a large burden.~~

We respectfully request that this rule be changed to add categories of pesticides and a fee schedule which more accurately reflects the volume of pesticides used and the purpose of the rule which is ultimately to protect the environment.

Sincerely,


Aleesha R. Deery
Regulatory Assistant
Farnam Companies, Inc.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107-4431

JUN 0 4 1998

Mr. Robert E. Frame, Assistant Director
Pesticide Regulatory Programs
Plant Industries Division
West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0190

Dear Mr. Frame:

Over the past ten years or more, I have observed the West Virginia pesticide regulatory and management program evolve from a struggling, resource limited program to a solid, well run operation, poised to move West Virginia's pesticide management program into the next millenium. Much of this successful turn-around has been due to your personal dedication and commitment with significant support from your department's adminstrative leadership and the state's legislature. Establishing and maintaining such a successful program, however, is predicated upon the ability to adequately staff the program with highly competent professional staff to coordinate and implement your programs.

Attracting and keeping quality staff becomes a very significant concern, especially in this program area. Pesticide program staff are a special group of employees with unique and complex skill mixes and responsibilities. These people need to have a solid scientific background in a pesticide related academic area, yet need to be knowledgable in just about every occupation and industry. Additionally, the pesticide regulatory program has become increasingly complex, requiring an unprecedented breadth of knowledge from the staff. I strongly believe that there are no other inspectors or regulatory program staff who, as a matter of routine, have to be functionally knowledgable in so many arenas. For example, pesticide inspectors must have expertise in virtually all areas of production agriculture, including agronomic and fruit crop production as well as livestock and poultry production. In addition, they need to be knowledgable in all aspects of household and structural pest control as well as landscape, aquatic and public health pest control. They need to understand the chemistry of over 600 pesticide active ingredients and be knowledgable of the environmental impacts of pesticide use. In conducting inspections and related regulatory activities, pesticide inspectors need to be able to draw upon established knowledge about environmental science, entomology, horticulture, agronomy, plant pathology, wildlife biology, silvaculture, floraculture, nematology, and so on.....

As one could guess, employees with these credentials are not easy to come by and even harder to retain. Because of that, I feel it is extremely important that state pesticide programs structure their recruiting and compensation packages to properly reflect the expertise of the staff

Customer Service Hotline: 1-800-438-2474

needed to properly implement the program. Over the years, I have observed significant turnover of personnel in the West Virginia pesticide program, more so than any other state in Region III. Although always able to bounce back and find replacements, there is no doubt that the state's program has been hindered by this turnover. I, myself, have seen several West Virginia pesticide staff apply for positions in my program office. In those cases, the reason for seeking employment was a need to improve personal income. Accordingly, I would encourage West Virginia to review their salary structure for the pesticide staff to consider possible modifications which might help alleviate the current turnover rate and staff concerns over earnings potential.

EPA Region III has also done numerous reviews of the West Virginia pesticide program grants. Although usually very pleased with the activities and accomplishments of the program, we have often recognized the increasing complexities and workload demands facing the program and have recommended that additional staff support be provided. With the outlook for pesticide regulations looking even more complex than ever, thanks to the enactment of the Food Quality Protection Act, it is likely that the need for quality staff will be stronger than ever. Accordingly, it seems that the timing might be very appropriate for all states to more closely examine their staffing needs and take this opportunity to address those needs.

In that light, I'd like to support the idea of raising state pesticide product registration fees as a mechanism for raising funds to support staff compensation and increase staffing. In reviewing other state programs, West Virginia's current registration fee program is very modest and could easily be increased another \$50.00 per product without adversely impacting the state's user community. Additionally, if West Virginia could set these funds apart into a dedicated fund to support the pesticide regulatory program like many surrounding states do, the program would be almost self-sufficient, requiring very little funding support from state tax dollars. The benefits would be significant and long lasting. EPA strongly endorses such a proposal and would consider it a strong statement of commitment on the part of West Virginia to maintain a strong and viable pesticide regulatory program for the long term.

I hope you find these comments useful as you deliberate on the appropriate course of action concerning the future direction and support of the state's pesticide program. Should you have any questions, please feel free to contact me (215) 566-2041.

Sincerely,



Donald J. Lott, Chief
Pesticide/Asbestos Programs and
Enforcement Branch

DOCUMENTS NOTIFYING OF THE HEARING FOR
FEE STRUCTURE FOR THE PESTICIDE CONTROL ACT OF 1990

LEGISLATIVE

*WV Register, Vol. XV,
Issue 21, May 22, 1998*

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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JUN 15 11 19 AM '98

OFFICE OF THE SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

RULE TYPE: Legislative; CITE AUTHORITY 19-16A-4

AMENDMENT TO AN EXISTING RULE: YES X 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 NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: June 25, 1998 TIME: 10:00 am

LOCATION OF PUBLIC HEARING: West Virginia Department of Agriculture

Bldg. 2, John T. Johnson Conference Room

4720 Brenda Lane

Charleston, WV 25312

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Department of Agriculture

Plant Industries Division, PRP

1900 Kanawha Blvd., East

Charleston, WV 25305-0190

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

Authorized Signature

849

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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FILED

JUN 15 10 35 AM '98

OFFICE OF THE SECRETARY OF STATE

Form 46

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 23A

TITLE OF RULE BEING AMENDED: West Virginia Fish Processing Rules

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB329

SECTION 64-9-1(a), PASSED ON March 14, 1998

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE FOLLOWING DATE: June 15, 1998

[Signature]
Authorized Signature

849



NEWS RELEASE

Gus R. Douglass, Commissioner

David E. Miller, Deputy Commissioner

Janet L. Fisher, Assistant Commissioner

For Immediate Release

June 2, 1998

AGRICULTURE COMMISSIONER FILES AMENDMENT TO PESTICIDE CONTROL ACT FEE STRUCTURE RULES

CHARLESTON, W.VA. — Agriculture Commissioner Gus R. Douglass filed an amendment to the rules establishing the fee structure for the Pesticide Control Act. The amendment being proposed will increase the fee for pesticide products registered in the State. The proposed increase will raise the registration fee from the current level of \$25 per product name to \$75 per product name. This fee is paid by the manufacturers of pesticides shipping their products into the state for use or storage. The companies paying the registration fees are out-of-state firms.

“The proposed fee increase is needed to meet the increasing demands placed upon the West Virginia Department of Agriculture’s (WVDA) Plant Industries Division, Pesticide Regulatory Programs Unit,” said Douglass. “The Department’s pesticide regulatory activities involve pesticide business licensing, pesticide applicator’s restricted-use pesticide certification and training, pesticide-use complaint investigations, pesticide application company inspections, worker protection program for pesticide-exposed agricultural workers, groundwater protection, disposing of excess and waste pesticide materials, recycling agricultural pesticide containers and pesticide enforcement activities with the U. S. Environmental Protection Agency.”

Plant Industries Division Assistant Director for Pesticide Regulatory Programs Robert Frame stated the proposed fee increase will have no impact on the availability of pesticides for consumers and no increase in the price paid for pesticide products. The increased fee is competitive with fees paid in other states. The price and availability of pesticide products is set by market demands and not by state registration fees. “For instance, pesticides in West Virginia are not cheaper than in Virginia because our current registration fee is one-sixth that of Virginia. Likewise, increasing our fee on a product brand basis will not have an impact on the purchase price of products used by West Virginians,” Frame said.

For more information on the proposed fee change or the WVDA’s pesticide programs, contact the Plant Industries Division, Pesticide Regulatory Programs Unit, 304/558-2209.

— 30 —



P.O. Box 2993
 Charleston, West Virginia 25330
 Billing 348-4898
 Classified 348-4848
 1-800-WVA-NEWS
 FEIN 55-0676079

| | |
|--------------|-----------|
| INVOICE DATE | 06/12/98 |
| ACCOUNT NBR | 068962003 |
| SALES REP ID | 0016 |
| INVOICE NBR | 541279001 |

NOTICE OF PUBLIC HEARING
 The Commissioner of Agriculture has scheduled a public hearing for a proposed

amendment to rules affecting the Pesticide Control Act. The proposed amendment will increase the fee charged of manufacturers of pesticide products that are registered for use and distribution in the state. The fee is primarily paid by firms operating outside of the West Virginia borders.

Both written and oral comments will be accepted at the hearings. Written comments will also be accepted by mail until July 1, 1998 and should be addressed to Robert E. Frame, Plant Industries Division, WV Department of Agriculture, 1900 Kanawha Blvd., E., Charleston, WV 25305-0190.

The public hearing for the rule will be held at the J.T. Johnson Conference Room, Building 2, Guhrle Agriculture Center, Charleston, WV. Persons needing directions to the Guhrle Center or desiring further information should call 304/558-2209. (409097)

| ISSUE DATE | AD TYPE | PUB | DESCRIPTION | | AD NUMBER | AD SIZE | | RATE | GROSS AMOUNT | NET AMOUNT |
|------------|---------|-----|----------------------|------------------|-----------|-----------|--|------|--------------|------------|
| | | | REFERENCE NBR | PURCHASE ORDER # | | TOTAL RUN | | | | |
| 06/11 | LEGR | DM | LEGAL DISCOUNT 25% | | | 1X0313 | | 6.19 | 4.85- | 14.53 |
| | | | PUBLIC HEARING | | | 3.13 | | | 19.38 | |
| | | | 541279007 | | | | | | 4.85- | 14.53 |
| | | | LEGAL DISCOUNT 25% | | | | | | | |
| | | | TOTAL INVOICE AMOUNT | | | | | | | 106.56 |

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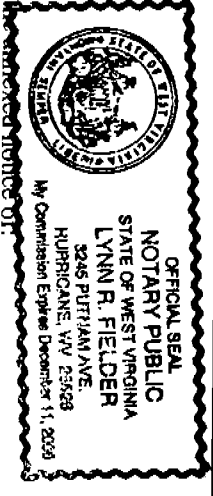
AFFIDAVIT OF PUBLICATION

State of West Virginia,
 I, Shirley Connelly of

THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER, published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that

PUBLIC HEARING was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County, West Virginia, on the 5TH day of JUNE 1998. Published during the following dates: 06/04/98-06/11/98
 Subscribed and sworn to before me this 15 day of June

Notary Public of Kanawha County, West Virginia
Shirley Connelly





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

David E. Miller
Deputy Commissioner

Janet L. Fisher
Assistant Commissioner

May 26, 1998

Mr. Johnny Rachella, President PCOA of WV
Ace Exterminators of Elkins
P.O. Box 877
Bellington, WV 26250

Dear Mr. Johnny,

The West Virginia Department of Agriculture recently filed a notice of public hearing for an amendment to the rules regarding the fee structure under the Pesticide Control Act. The hearing is scheduled for 10:00 a.m. on June 25, 1998 at the John T. Johnson Conference Room, Building 2, Guthrie Agriculture Center, Charleston, WV. I am sure that some people will react to the proposed amendment feeling the change in the fee structure will increase their licensing and certification fees. This proposal will not increase those fees. The only fee being proposed for change is the pesticide product registration fee for manufacturers of pesticide products. Our proposal is to increase that fee for the present level of \$25.00 per product to \$75.00 per product.

The increased fee is not viewed as being excessive by our Department in that we are currently charge among the lowest product registration fees in the country. The proposed fee increase will place us at a medium level when compared to other states. The fee increase will not have an impact on the price of pesticides purchased by your industry. The purchase price of products is set by market demands and not by state registration fees. For instance pesticides in West Virginia are not cheaper than Virginia because our current registration fee is one-sixth that of Virginia. Likewise, increasing our fee on a product brand basis will not have an impact on the purchase price of products used by your industry.

I am enclosing a copy of the proposed rule for your information. If you or members of your association wish to testify at the hearing, they are welcome. Written comments are also being accepted for those persons comment but not travel to Charleston. Any written comments should be sent the West Virginia Department of Agriculture, Pesticide Regulatory Programs, 1900 Kanawha Boulevard East, Charleston, West Virginia, 25305-0190. If there are any questions, I may be reached at (304) 558-2209.

Sincerely,

Robert E. Frame, Assistant Director
Pesticide Regulatory Programs
Plant Industries Division



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

David E. Miller
Deputy Commissioner

Janet L. Fisher
Assistant Commissioner

May 26, 1998

Mr. Steve Kellner
Chemical Specialties Manufacturing Association
1913 "Eye" Street
Washington, DC 20006-2106

Dear Mr. Kellner:

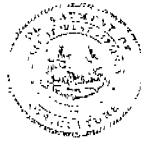
I am writing to the industry advisory representatives to the American Association Of Pesticide Control Officials to advise of plans to increase the registration fee for pesticide products registered in our state. The West Virginia Department of Agriculture has filed a proposed amendment to the fee structure for the Pesticide Control Act. The effect of the proposed amendment will be to increase the product registration fee from the current level of \$25.00 per product to \$75.00 per product. It is anticipated the increase will be in effect for registrations in the upcoming calendar year of 1999.

The Department felt it necessary to increase the product registration fee due to the increased demands placed upon the Pesticide Regulatory Programs and a need to upgrade staffing in that program. An opportunity to express opinions on the proposed fee change is being afforded to all persons concerned at a public hearing scheduled for 10:00 a.m. on June 25, 1998. The location of the hearing is the John T. Johnson Conference Room, Second Floor of Building 2, Guthrie Agriculture Center, 4720 Brenda Lane, Charleston, West Virginia. Persons desiring to attend the hearing and needing directions to the Guthrie Agriculture Center should call (304) 558-2209 for assistance.

It is not necessary to be in attendance at the hearing to express comments. All written comments received will be incorporated into the minutes of the hearing. Written comments should be sent to the West Virginia Department of Agriculture, Pesticide Regulatory Programs, 1900 Kanawha Boulevard East, Charleston, West Virginia, 25305-0190. If you or any members of your association have any questions, I may be reached at (304) 558-2209.

Sincerely,

Robert E. Frame, Assistant Director
Pesticide Regulatory Programs
Plant Industries Division



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

David E. Miller
Deputy Commissioner

Janet L. Fisher
Assistant Commissioner

May 26, 1998

Mr. Paul Kindinger, President and CEO
Agricultural Retailers Association
11701 Borman Drive, Suite 110
St. Louis, MO 63146-4193

Dear Mr. Kindinger:

I am writing to the industry advisory representatives to the American Association Of Pesticide Control Officials to advise of plans to increase the registration fee for pesticide products registered in our state. The West Virginia Department of Agriculture has filed a proposed amendment to the fee structure for the Pesticide Control Act. The effect of the proposed amendment will be to increase the product registration fee from the current level of \$25.00 per product to \$75.00 per product. It is anticipated the increase will be in effect for registrations in the upcoming calendar year of 1999.

The Department felt it necessary to increase the product registration fee due to the increased demands placed upon the Pesticide Regulatory Programs and a need to upgrade staffing in that program. An opportunity to express opinions on the proposed fee change is being afforded to all persons concerned at a public hearing scheduled for 10:00 a.m. on June 25, 1998. The location of the hearing is the John T. Johnson Conference Room, Second Floor of Building 2, Guthrie Agriculture Center, 4720 Brenda Lane, Charleston, West Virginia. Persons desiring to attend the hearing and needing directions to the Guthrie Agriculture Center should call (304) 558-2209 for assistance.

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Sincerely,

Robert E. Frame, Assistant Director
Pesticide Regulatory Programs
Plant Industries Division



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

David E. Miller
Deputy Commissioner

Janet L. Fisher
Assistant Commissioner

May 26, 1998

Mr. Alan Noe, VP, State Affairs
American Crop Protection Association
Water & Biotechnology Programs
1156 - 15th Street NW, Suite 400
Washington, DC 20005

Dear Mr. Noe:

I am writing to the industry advisory representatives to the American Association Of Pesticide Control Officials to advise of plans to increase the registration fee for pesticide products registered in our state. The West Virginia Department of Agriculture has filed a proposed amendment to the fee structure for the Pesticide Control Act. The effect of the proposed amendment will be to increase the product registration fee from the current level of \$25.00 per product to \$75.00 per product. It is anticipated the increase will be in effect for registrations in the upcoming calendar year of 1999.

The Department felt it necessary to increase the product registration fee due to the increased demands placed upon the Pesticide Regulatory Programs and a need to upgrade staffing in that program. An opportunity to express opinions on the proposed fee change is being afforded to all persons concerned at a public hearing scheduled for 10:00 a.m. on June 25, 1998. The location of the hearing is the John T. Johnson Conference Room, Second Floor of Building 2, Guthrie Agriculture Center, 4720 Brenda Lane, Charleston, West Virginia. Persons desiring to attend the hearing and needing directions to the Guthrie Agriculture Center should call (304) 558-2209 for assistance.

It is not necessary to be in attendance at the hearing to express comments. All written comments received will be incorporated into the minutes of the hearing. Written comments should be sent to the West Virginia Department of Agriculture, Pesticide Regulatory Programs, 1900 Kanawha Boulevard East, Charleston, West Virginia, 25305-0190. If you or any members of your association have any questions, I may be reached at (304) 558-2209.

Sincerely,

Robert E. Frame, Assistant Director
Pesticide Regulatory Programs
Plant Industries Division

State Capitol • 1900 Kanawha Boulevard, East • Charleston, WV 25305-0170 • (304) 558-3550



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

David E. Miller
Deputy Commissioner

Janet L. Fisher
Assistant Commissioner

May 26, 1998

Mr. Ab Basu, Manager, State and Regional Affairs
American Crop Protection Association
1156 - 15th Street NW, Suite 400
Washington, DC 20005

Dear Mr. Basu:

I am writing to the industry advisory representatives to the American Association Of Pesticide Control Officials to advise of plans to increase the registration fee for pesticide products registered in our state. The West Virginia Department of Agriculture has filed a proposed amendment to the fee structure for the Pesticide Control Act. The effect of the proposed amendment will be to increase the product registration fee from the current level of \$25.00 per product to \$75.00 per product. It is anticipated the increase will be in effect for registrations in the upcoming calendar year of 1999.

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Sincerely,

Robert E. Frame, Assistant Director
Pesticide Regulatory Programs
Plant Industries Division



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

David E. Miller
Deputy Commissioner

Janet L. Fisher
Assistant Commissioner

SUMMARY OF COMMENTS
WEST VIRGINIA LEGISLATIVE RULE AMENDMENT
TITLE 61 SERIES 12

Fee Structure for the Pesticide Control Act of 1990

A letter informing pesticide producing and user associations of the proposed amendment for fee increase was sent to their president and/or government relations official. The letter advised the public hearing date and location and written comment period. Letters were sent to the Chemical Specialties Manufacturing Association, American Crop Protection Association, Agricultural Retailers Association and the Pest Control Operators Association of West Virginia. EPA Region III was also advised of our proposed amendment. The notice of public hearing was published in the West Virginia Register Volume XV, Issue 21 and in the Charleston Daily Mail for one week as a Class 1 Legal Advertisement. In addition, a general news release was made to all state news media concerning the proposed rule amendment.

Two telephone inquiries were made concerning the proposed rule amendment. The persons calling were Mr. Travis Brown of Monsanto and Ms. Gina Valeri of the American Pet Products Manufacturers Association. Monsanto is allied with the American Crop Protection Association and the American Pet Products Manufacturers Association is allied with the Chemical Specialties Manufacturing Association.

Mr. Travis Brown of the Monsanto Corporation stated he was the American Crop Protection Association Legislative Liaison for the Eastern states. His inquiry centered around the planned use of the monies to be derived from the fee increase. I explained the planned use of funds as stated in the fiscal note attached to the proposed rule amendment and answered some questions regarding our current staff situation. No written comments were received from Mr. Brown, the American Crop Protection Association or any of its members.

Ms. Gina Valeri, Director of Legislative and Legal Affairs of the American Pet Products Manufacturers Association, Inc., requested information on the proposed rule amendment. The information filed with the rule was faxed to her. Ms. Valerie also requested that additional time be allowed for her to make contact with her association members at their annual conference during the week of June 22-26, 1998. She was concerned her association members may not have ample time to comment between the end of the meeting and the July 1, 1998 written comment deadline. Based on her concern, I advised all comments received through July 6, 1998 would be considered.

A public hearing was conducted on June 25, 1998 in Charleston. No one appeared at the scheduled hearing location and time. The hearing room was maintained for 30 minutes in the event of late arrivals, but no one showed up for the meeting. All written comments submitted were received by July 6, 1998. Written comments were received from Gina Valeri of the American Pet Products Manufacturers Association Inc., Clark Allen of Combe Incorporated, Allen Simpson of Four Paws Products Ltd., Paul Sauter of Aquarium Pharmaceuticals, Inc., Aleesha Deery of Farnum Companies and Don Lott of the United States Environmental Protection Agency, Region III.

- OPPOSITION TO THE RULE AMENDMENT -

The five written comments received from the pet products manufacturers were in opposition to the increase from a \$25.00 to \$75.00 per product. Their individual comments are attached. A summary of their concerns is as follows.

American Pet Products Manufacturers Association - Gina Valeri

Ms. Valeri expressed opposition to the fee increase to the extent the proposed increase tripled the current fee without regard to the volume of product sold or used in the state, in particular agricultural products versus non-agricultural products. She expressed a desire to see a staggered fee that distinguished potential impact of the product on the environment. She felt the increase could cause a loss of product and choices for the consumer. She gave examples of the states of Illinois, Maine, Michigan, Minnesota, Nebraska, New Hampshire, Vermont, Washington and Wisconsin as being states having a staggered or differential fee structure to distinguish between pesticide impacts or use.

Combe Incorporated - Clark Allen

Mr. Allen opposed the tripling of the current fee claiming increased consumer costs for the residents of the state. He expressed the desire for a fee based on environmental inputs of the pesticide products and that low volume manufacturers cannot compete with high volume manufacturers such as agricultural producers. He felt the increased cost may cause some family operated pet stores to cease operation.

Four Paws Products Ltd. - Allen Simpson

Mr. Simpson felt the increase would have a negative impact on the industry. He stated that small manufacturers are unable to compete with larger manufacturers, potentially affecting the ability of pet stores and small retailers to offer a full selection of pet products. He urged the consideration of differentiating between low volume specialty and low volume household products versus agricultural products.

Aquarium Pharmaceuticals, Inc. - Paul Sauter

Mr. Sauter opposes any fee increase that does not differentiate a fee structure based upon

sales. He states it is “unfair to hold small, speciality pesticides accountable for the same impacts that “commercial” pesticides have on public health and the environment.”

Farnum Companies - Aleesha Deery

Ms. Deery urges consideration of a registration fee based upon the use of the pesticide. She proposes two separate classes of pesticides, distinguishing between agricultural and speciality pesticides, such as used in flea and tick products. “Any regulatory scheme should be based upon the volume of pesticides put into the stream of commerce by the regulated entity.” She feels the increase could result in the loss of valuable products available to the West Virginia consumer.

- SUPPORT FOR THE RULE AMENDMENT -

Mr. Don Lott of the United States Environmental Protection Agency, Region III was the only person/agency submitting comments supporting the proposed rule change. Mr. Lott noted his observations of a high turnover in the Pesticide Regulatory Programs staff, “...more so than any other state in Region III.” In light of the turnover rate of employees, increasing complexities and workloads of pesticide program activities and past recommendations by his agency for increased staffing, Mr. Lott supports the idea of raising the pesticide product registration fees as a mechanism to support staff compensation and increased staffing. He commented the current fee is very modest when compared to other states and the increase should not adversely impact the state’s user community.

- ANALYSIS OF COMMENTS -

The objections voiced to the proposed fee increase center around three main areas:

1) The tripling of the fee is unfair to smaller manufacturers. The fee should be based on volume of sales/use or environmental inputs of the products. Several states were cited as examples to be reviewed for a tiered or differential fee structure based on product usage or impacts.

The Farm Chemical Handbook annually publishes a quick reference of state pesticide regulations. A listing of pesticide registration fees for all states is a part of that reference (copy attached.) In reviewing the registration fees charged by states, the proposed increase to \$75.00 per product is near the average of fees charged by other states. Currently 32 states charge fees or \$75.00 per product or higher, ranging up to \$3,060.00 per product. Only 17 states charge lower than \$75.00 per product, one state (Alaska) does not have a product registration fee. When all of the lowest registration fees are added up for a single product, the average fee for all 49 states is \$106.42 per product. The proposed fee increase is not out of line with those charged by other states. Even after the fee is increased, there will be 28 states charging a greater fee ranging from \$80.00 to \$325.00 for household/speciality products and 16 states charging a lower fee ranging from \$70.00 to \$10.00.

In reviewing the nine states cited as having differential fees, six still charge a greater fee for household/pet products than our proposed fee. The greater fees range from \$100.00 to \$265.00 per product. The remaining three states charge a fee of \$70.00, \$50.00 and \$20.00 respectively. For each of these three states, the fee charged is listed as a per product fee and does not indicate a difference for agricultural/industrial products versus household/pet products.

The state of West Virginia already recognizes the differences between agricultural/industrial products and household or speciality products in the application of the groundwater protection fee. If a manufacturer's pesticide product is a flea collar, flea dust, toilet bowl cleaner, disinfectant or similar product and the manufacturer requests a review of their product for applicability of the groundwater protection fee to their product line, an exemption from the groundwater protection fee can be made. To date virtually every request of a review for exemption has been granted to products of the types mentioned. In this respect pesticide products not likely to impact the environment are being given a break in fees charged by the state.

2) Agricultural or commercial pesticides have a greater impact and use than speciality, household or pet products.

In regards to a difference in the impact of the products on the environment, while pet or household products may be sold in smaller quantities, the active ingredients are often the same. The potential environmental impacts of a producer selling 250 two pound bags or 100 five pound bags of a pesticide active ingredient are the same as for a producer selling 10 fifty pound bags of the same active ingredient. Often the sale of the products to homeowners has a greater potential impact than to grower. The grower is trying to cut costs and normally only use a pesticide when needed. Frequently the homeowner, even when buying a smaller package, purchases more than he or she needs. As they have excess product they have a propensity to apply at more frequent intervals or use the old adage "if a little is good, a lot is better" and over apply the product. Disposal of the excess pesticide is also often a problem as the homeowner has more product than they can use. They don't know how to get rid of the material and sometimes just dump it out on the ground.

3) The increase in fees will result in the loss of product to the consumer or transfer the increased cost to the consumer.

The market place sets the price for a pesticide product, not the registration fee charged by a state entity. For example a chlorine bleach registered as a disinfectant will vary little in price in our state with a current registration fee of \$25.00 versus the price of the identical chlorine bleach in Wisconsin which has a differential registration fee of \$265.00 for household products. In looking closer to home and directly comparing pet products, which are the product manufacturers making the claims of loss of product or increased cost to consumer, a staff person stationed in the Eastern Panhandle went comparison shopping in Martinsburg, West Virginia and Winchester, Virginia.

The two cities lie about 20 miles apart and have similar economies. However, Virginia

has a pesticide registration fee of \$150.00 per product, six times higher than our current fee of \$25.00 per product. Using the claims of some of the pet products manufacturers, one would expect the price of pet products to be considerably higher in Virginia than West Virginia. Actual purchases (copy of findings attached) revealed the price differences to be generally minor, but with the Virginia prices being slightly lower even with the six fold increase in the pesticide product registration fee. This clearly demonstrates that local economy and the marketplace have a greater bearing on consumer price than state registration fees.

- DETERMINATION -

After carefully considering and researching all of the opposition comments and the needs of the Plant Industries Division, Pesticide Regulatory Programs Unit, a determination was made the proposed fee is fair and appropriate to the work being conducted by the Department of Agriculture. It is believed the fee will not be passed on to consumers nor cause a hardship to the independent pet shop operators in the state. This belief is based upon a direct price comparison with a neighboring state having a registration fee six times greater than our current fee and half that of the proposed fee. The fee is not oppressive when compared to other states. Even with the increase to \$75.00 per product, West Virginia will still be charging 70% of the average fee charged in the nation and 54% of the average fee of a majority of states with similar or higher fees. Manufacturers of pet, speciality or household products are already being considered when fees are assessed of pesticide products in that an exemption from the groundwater protection fee is allowed for these types of products. For these reasons, the Department of Agriculture did not make any changes in the proposal to increase the pesticide product registration fee to \$75.00 per product.

Quick Reference to State Pesticide Regulations

* States cited by American Pet Products Manufacturers Association with differential fees for pet/household products

| STATE | PESTICIDE REGISTRATION FEE \$ | PESTICIDE SPECIAL TAXES \$ | PESTICIDE COMMENTS |
|-------|---|--|---|
| AL | \$100/product | N | - |
| AK | N | N | - |
| AZ | \$100/product* | N/A | *\$75 to ADEQ groundwater program |
| AR | \$150 | N | - |
| CA | \$200/product/yr. | *Mill assessment rate will change | *0.009/\$ sales, July 1997 pending registration |
| CO | \$70/product application* | \$20/product application | *\$20 CO Groundwater |
| CT | \$100* | N/A | *Pesticide registration is multi-year |
| DE | \$25 | N | - |
| FL | \$225/brand, \$100 EUPs & SLNs | N/A | - |
| GA | \$10/product | N | - |
| HI | \$225/3 yrs. <i>\$75/yr</i> | N | - |
| ID | \$120/product | N | - |
| IL | * \$250/company, \$100/product | N/A | - |
| IN | \$75 | N* | *Discontinued pesticides require 2 years of terminal registration |
| IA | \$250-\$3000 maximum | \$.1% retail sales | - |
| KS | \$130/product/year* | N | *\$100 goes to State Water Plan |
| KY | \$125 | N | - |
| LA | \$300/product | N/A | - |
| ME | * \$105/product | N* | *Discontinued pesticides require 2 years of terminal registration |
| MD | \$60/product | - | *Required 2 year terminal registration on discontinued pesticides at same fee |
| MA | \$100 | N | - |
| MI | \$20/product | *Specialty-\$100; *Non-Specialty-.75% annual gross sales in MI | *Annual groundwater protection fee |
| MN | * .4% of one percent of annual gross sales in MN, \$250 minimum | 0.1% of one percent of annual gross sales in MN* | *Discontinued pesticides require 2 years of terminal registration |
| MS | \$100/product | N | - |
| MO | \$15/product | N/A | - |
| MT | \$70/product | \$80/product* | *Groundwater protection fee |
| NE | * \$100/product | N | - |
| NV | \$40/product | N | - |
| NH | * \$50/product | N | - |
| NJ | \$250/product | N | - |
| NM | \$35/product | N | - |
| NY | \$300/product* | N | *\$100/product when gross sales are less than \$3.5 mil. |
| NC | \$30/grade or brand/yr. | - | *\$50/brand if gross sales within state are greater than \$5000/yr., \$25/brand if gross sales within state are less than \$5000/yr. Pesticide environmental trust fund assessment. |
| ND | \$50/2 yr. <i>25/yr</i> | \$250/2 yr. | 2 yr. registration schedule beginning January 1, 1998. 50% penalty for late renewal or non-registration |
| OH | \$50/product | N | - |
| OK | \$50/product | N | - |
| OR | 1-10 prod. \$95 • 11-40 prod. \$85 • 41+ prod. \$75 <i>\$85 A.C.</i> | N | - |
| PA | \$100/product | N | - |
| RI | \$80/product/year | N | - |
| SC | \$100 | N | - |
| SD | \$75/product/yr. | N/A | - |
| TN | \$100/product* | \$250 24C | *1 yr. registration |
| TX | \$100/product | N | - |
| UT | \$60 | N | - |
| VT | * \$70/product | N | - |
| VA | \$150/product | N | - |
| WA | * 1-25th prod. \$111 • 26-100th prod. \$106 • <i>\$102 A.C.</i> 101-150th prod. \$81 • 151+ \$56; \$200 SLN* | \$10 surcharge for home and garden use | *Optional 2-year registration period |
| WV | \$25 | \$15/product* | *Groundwater protection fee |
| WI | * Household pesticides \$265 under \$25,000, \$750 \$25,000-\$74,999, \$1500 greater than \$75,000* | N | *Non household pesticides \$325 if under \$25,000, \$1060 if sales \$25,000-\$74,999, \$3060 + 1.3% of sales, if greater than \$75,000 |
| WY | \$75 | N | - |
| PR | \$30/product/yr.* | N/A | *Register each year in January |

Gus R. Douglass
Commissioner

AGRICULTURE

Our Bridge to the Future

David E. Miller, Deputy Commissioner • Janet L. Fisher, Assistant Commissioner

TO: Robert Frame
FROM: Wayne Casto *WC*
SUBJECT: Product price comparasions
DATE: 07-07-98

As per your instructions the following products were purchased at various retail locations in both Winchester, Va and Martinsburg, WV.

The items purchased are as close to identical as possible and the purchase locations were also compared as to size and market.

The first location was a Pet Store in Winchester, VA. Items purchased were "Four Paws" Flea & Tick Soap and "Zodiac" Flea and Tick Powder.

Comparison was a Pet Store in Martinsburg, WV. Items purchased were "Zodiac" Flea and Tick Powder. Price was obtained on the "Four Paws" Flea and Tick Soap, they were currently out of it.

| LOCATION | Four Paws Flea & Tick Soap | Zodiac Flea & Tick Powder |
|-----------------|----------------------------|---------------------------|
| Winchester, VA | \$ 3.46 ea. | \$ 6.56 ea. |
| Martinsburg, WV | \$ 3.59 ea. | \$ 6.09 ea.* |

*All shampoo items were 50¢ off at the register.

| | | |
|-----------------|----------------------------|-------------|
| Winchester, VA | Hartz 2 in 1 Flea soap was | \$ 1.69 ea. |
| Martinsburg, WV | Hartz 2 in 1 Flea soap was | \$ 1.79 ea. |

| | | |
|-----------------|----------------------------|-------------|
| Winchester, VA | Flea Stop (Major Retailer) | \$ 4.19 ea. |
| Martinsburg, WV | Flea Stop (Major Retailer) | \$ 4.99 ea. |

It would appear from this comparasion that it would be cheaper to shop for animal health products in Winchester, VA. rather than in Martinsburg, WV.

The major retailers were Quality Farm & Fleet, and K-Mart. in both Winchester, VA. and in Martinsburg, WV.

I hope that this information is of the nature that you requested and if I can be of further assistance in this matter please contact me as soon as possible.

West Virginia Department of Agriculture

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