



STATE OF WEST VIRGINIA  
DEPARTMENT OF AGRICULTURE  
CHARLESTON  
25305

Gus R. Douglass  
Commissioner

FILED  
1986 APR -8 PM 4:05  
OFFICE OF THE  
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON PROPOSED REGULATION

AGENCY: West Virginia Department of Agriculture

RULE TYPE: Legislative

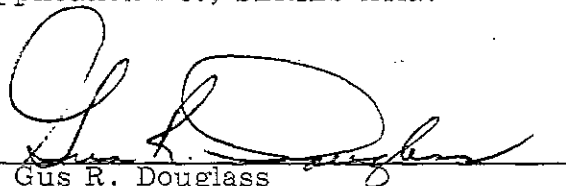
RULE TITLE: West Virginia Pesticide Use & Application Act

A public hearing on Section 13 of the above proposed rule will be held at 1:30 P.M., Thursday, May 22, 1986, in the John T. Johnson Auditorium, Building 2, Guthrie Agricultural Complex, Charleston, WV 25312. For information on the location call 304-348-2212. Oral or written comments will be accepted.

Written comments should be mailed to Plant Pest Control Division, West Virginia Department of Agriculture, Capitol Building, Charleston, WV 25305.

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

The issues to be heard shall be limited to Section 13 of the West Virginia Pesticide Use and Application Act, SERIES XIIIa.

  
Gus R. Douglass  
Agriculture Commissioner

FILED

BRIEF SUMMARY OF CONTENT OF OLD REGULATIONS

1995 JUN 13 PM 2:48

These Legislative regulations establish general operating rules and procedures for the enforcement of the West Virginia Pesticide Use & Application Act (Article 16B) including, but not limited to, the certification of users of restricted use pesticides, the licensing of firms applying pesticides for hire, restricted use pesticides and the dealers in restricted use pesticides, record keeping and standards for certification and licensing.

OFFICE OF THE SECRETARY OF STATE



Gus R. Douglass  
Commissioner

# NEWS RELEASE

West Virginia Department of Agriculture  
Information Division  
Charleston, WV 25305  
Phone: 348-3708

For Immediate Release

April 9, 1986

## HEARING SET ON PESTICIDE REGULATIONS

Agriculture Commissioner Gus R. Douglass today announced that he will conduct a public hearing at 1:30 P.M., Thursday, May 22, 1986, in the John T. Johnson Auditorium, Building 3, Guthrie Agricultural Complex, Charleston, West Virginia 25312, to discuss proposed changes of the regulations dealing with the West Virginia Pesticides Use and Application Act in Section 13.

Douglass says Section 13 deals with the liability insurance or other proof of financial responsibility as a requirement for being licensed to apply pesticides and is needed in order to reflect the current trends of insurance availability.

Persons wishing to obtain copies of the proposed changes or further information on the hearing location may do so by calling (304) 348-2212. Written comments should be mailed to the Plant Pest Control Division, West Virginia Department of Agriculture, Capitol Building, Charleston, WV 25305. Persons making oral presentations at the hearing are requested to also submit written comments at that time in order to facilitate their review. Only regulations dealing with Section 13 of the West Virginia Pesticide Use and Application Act will be on the agenda.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Pesticide Use and Application Act

Type of Rule:  Legislative  Interpretive  Procedural

Agency: W. Va. Dept. of Agriculture (Address Guthrie Agricultural Center, Charleston, WV 25305)

1. Effect of Proposed Rule:	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ None	\$ None	\$ None	\$None	\$ None
Personal Services					
Current Expense					
Repairs and Alterations:					
Equipment					
Other					

2. Explanation of above estimates:

The proposed change will not affect current procedures.

3. Objectives of these rules:

The amendment of Section 13 will reflect the current trends of insurance available to Licensed Pesticide Application Businesses. The current requirements are no longer available to many segments of the industry.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Governments.

None

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

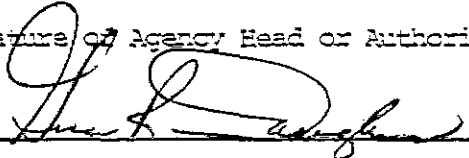
These rules will enable many pesticide application businesses to remain in business. Without the changes, some companies will be freed to close and their services will no longer be available.

C. Economic Impact on Citizens/Public at Large.

None

Date: April 11, 1986

Signature of Agency Head or Authorized Representative

  
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NEWS RELEASE

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WEST VIRGINIA LEGISLATIVE REGULATIONS  
STATE DEPARTMENT OF AGRICULTURE  
Chapter 19-16B  
SERIES XIIIa

FILED  
1986 APR -8 PM 4:05  
OFFICE OF THE COMMISSIONER  
DEPARTMENT OF STATE

TITLE: West Virginia Pesticide Use and Application Act

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Section 1. General

1.1 Scope - These Legislative Regulations amend and promulgate Section 1 through 21 of the Regulations and establish general operating rules and procedures for the enforcement of the West Virginia Pesticide Use and Application Act as Amended 1981 (Article 16B) including, but not limited to, the certification of users of restricted use pesticides, the licensing of firms applying pesticides for hire, restricted use pesticides and the dealers in restricted use pesticides, record keeping and standards for certification and licensing.

1.2 Authority - W. Va. Code 19-16B-4

1.3 Filing Date - October 7, 1981

1.4 Effective Date - January 1, 1982

Section 2. Declaration of Policy

Article 16B, Chapter 19, Code of West Virginia places the enforcement of the West Virginia Pesticide Use and Application Act with the Commissioner and empowers him to promulgate rules and regulations for regulation in the public interest of the use and application of pesticides in West Virginia.

By virtue of the authority vested in my as Commissioner of Agriculture by Article 16B, Chapter 19 of the Code of West Virginia, I, Gus R. Douglass, Commissioner of Agriculture, do hereby promulgate the following rules and regulations governing the use and application of pesticides in West Virginia.

Section 3. Definitions

3.1 For the purpose of these regulations, the definitions shall be the same as those appearing in the West Virginia Pesticide Use and Application Act (19-16B-3) with the following additions:

3.1.1 The term "accident" means an unexpected, undesirable event, resulting in the presence of a pesticide, that adversely effects man or the environment.

3.1.2 The term "Act" means the West Virginia Pesticide Use and Application Act (19-16B).

3.1.3 The term "consistent" means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and the associated responsibility.

3.1.4 The term "fumigant" means a gaseous or readily volatilizable chemical (as hydrogen cyanide or methyl bromide) used as a disinfectant or pesticide.

Section 13. Financial Security Required of Licensed Pesticide Application Businesses

13.1 Amounts - The commissioner shall not issue a licensed pesticide application business license until the applicant has filed evidence of financial security with the commissioner, which may consist of a surety ~~bene bond~~ or liability insurance policy or certification thereof from an insurance company licensed to do business in West Virginia. Such financial security shall be ~~for the amount and kind~~ in the amounts listed for each category of licensed ~~applicator as follows:~~ pesticide application business.

The type of insurance coverage shall be in the form of Comprehensive General Liability with a Broad Form General Liability Supplement. If the insurance coverage specifically excludes liability arising from the purposeful use or application of pesticides, an additional insurance rider or surety bond must be secured in a minimum amount of \$25,000 to provide such financial security.

13.1.1 Agriculture Plant Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) ~~for bodily injury or death for each occurrence, and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and property damage.

13.1.2 Animal Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) ~~for bodily injury or death for each occurrence, and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and property damage.

13.1.3 Forest Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) ~~for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and property damage.

13.1.4 Ornamental and Turf Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) ~~for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and property damage.

13.1.5 Seed Treatment - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) ~~for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and property damage.

13.1.6 Aquatic Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) ~~for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and property damage.

13.1.7 Right-of Way Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) ~~for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and property damage.

13.1.8 Industrial, Institutional, Structural and Health Related Pest Control - an applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) ~~for bodily or death for each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and property damage.

13.2 Aerial Applicators - Aerial Applicators in ~~any of~~ the above categories or sub-categories shall show evidence of financial security for public liability and chemical application in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) ~~for bodily injury or death for each occurrence and Two Hundred Thousand Dollars (\$200,000.00) One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~

13.3 Liability for Pesticide Use - Nothing in these regulations shall be construed in any way to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though such use conforms to the rules and regulations of the commissioner.



STATE OF WEST VIRGINIA  
DEPARTMENT OF AGRICULTURE  
CHARLESTON  
25305

Gus R. Douglass  
Commissioner

FILED  
1986 APR - 8 PM 4: 05  
STATE OF WEST VIRGINIA  
SECRETARY OF TREASURY

NOTICE OF PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE

PUBLIC HEARING

AGENCY: West Virginia Department of Agriculture

RULE TYPE: Legislative

RULE TITLE: West Virginia Pesticide Use and Application Act - Amendments to Section 13, Financial Responsibility of Licensed Pesticide Application Businesses

A PUBLIC HEARING ON THE ABOVE PROPOSED RULE WILL BE HELD AT 1:30 p.m. ON May 22, 1986 AT the John T. Johnson Conference Room, Guthrie Center, Charleston, West Virginia -- For information on location call 348-2212.

COMMENTS ARE LIMITED TO: ORAL  WRITTEN  BOTH

COMMENTS MAY ALSO BE MAILED TO: West Virginia Department of Agriculture, Plant Pest Control Division, Charleston, West Virginia 25305.

THE DEPARTMENT REQUESTS THAT PERSONS WISHING TO MAKE COMMENTS AT THE HEARING MAKE AN EFFORT TO SUBMIT WRITTEN COMMENTS IN ORDER TO FACILITATE A REVIEW OF THESE COMMENTS.

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.

  
Gus R. Douglass  
Agriculture Commissioner

TRANSCRIPT OF  
HEARING HELD MAY 22, 1986  
ON  
FINANCIAL SECURITY OF REQUIRED  
LICENSED PESTICIDE APPLICATION BUSINESSES

This hearing was held at 1:30 p.m., on this date in the John T. Johnson Auditorium, Guthrie Agricultural Complex, Charleston, West Virginia 25312.

Attending were:

<u>Name/Representing</u>	<u>Address</u>
Mary K. Cliff C & C Pest Control	701 Westview Avenue Huntington, WV
Gladys Vance Jan Pest Control	Box 53 Davin, WV
David O. Quinn West Virginia University	408 Brooks Hall P. O. Box 6057 Morgantown, WV
Robert C. Hampton Orkin Exterminating	3031 Dixie Highway Edgewood, KY 41017
Cecil Taylor Bruce Terminix	1111 Quarrier Street Charleston, WV
Tandy Ratcliff SSI Industries, Inc.	P. O. Box 9276 Huntington, WV
JoAnn Kelly Dodson Brothers Exterminating	5611 MacCorkle Avenue So. Charleston, WV
Dexter Owsley House Doctor	5401 MacCorkle Avenue, S.E. Charleston, WV
Johnny Raschella Ace Exterminating	711 Berkeley Pike Belington, WV
Gus R. Douglass Agriculture Commissioner	
Dr. Charles C. Coffman Plant Pest Control Division (WVDA)	
Robert E. Frame Plant Pest Control Division (WVDA)	
Veronica Jenkins Plant Pest Control Division (WVDA)	
Jerri Eberbaugh Plant Pest Control Division (WVDA)	
Charlie West West Virginia Department of Agriculture	

COMMISSIONER DOUGLASS: At this time, I will call to order a public hearing relative to amendments to the West Virginia Pesticide Use and Application Act. Let the record indicate that the notice of this hearing was filed with the Secretary of State's Office on April 8, 1986, and that news releases of general circulation and announcements to the industry in West Virginia that might be affected was also placed in circulation at least thirty days prior to this hearing. Let the record indicate that this hearing does meet all the requirements of the State of West Virginia in reference to the holding of hearings by the Department of Agriculture or any Division of government of the State of West Virginia. We have circulated to you copies of these amendments here. I have requested a register of those that are desirous to speak, which I have before me. Also, I will introduce into the record any written comments that might have been sent to this Department at this time. Dr. Coffman, do you have any written comments?

DR. COFFMAN: We have not received any.

COMMISSIONER DOUGLASS: Let the record indicate that to this point we have not received any written documents relative to these proposed amendments. This is an official hearing, but at the same time I am not requiring that you be sworn. Any testimony that any may desire to make in reference to these amendments may be given. Those that desire to speak, are they on the record as desiring to speak? Any person that does desire to address this hearing in reference to the regulations may do so. My normal procedure is to ask members of the staff to go through the proposed amendments, read them, and we will hear any comments. We will take them section at a time and at that time if you desire to inquire, we will be more than happy to hear your comments in reference to them.

Amendments attached and marked Exhibit #1

If there is a person who has a written statement that they wish to make, I will welcome that statement at this time, prior to opening up the hearing from staff. Is there a statement to be filed at this time? If not, I will ask Dr. Charles Coffman to go to those areas wherein amendments are proposed within these regulations. Where changes are made there are strike throughs or they are underlined. Those are the only areas that we are amending in the regulations. The regulations remain the same on the first page and we go to the second page where the amendments start. Dr. Coffman do you have any opening comments, or your staff, before we do get underway?

DR. COFFMAN: I have a statement that Bob has prepared, Commissioner, as sort of a background, sort of an introduction, prior to reading the regulations.

COMMISSIONER DOUGLASS: Proceed with your introductory statement and then you may proceed with Section 13 of the regulations.

DR. COFFMAN: This is a statement made by the Plant Pest Control Division on the insurance regulations that are being presented today at this public hearing.  
(Dr. Coffman then read the attached statement marked Exhibit No. 2.)

COMMISSIONER DOUGLASS: For the benefit of the visitors who have just arrived, we are going to take up the proposed regulations section by section and we will welcome your comments, pro or con. We will ask that you identify yourself before you speak. Put your hand up so that we can keep it orderly and I will give each of you an opportunity to speak on these regulations or proposed amendments. I might add that these regulations are in force and effect now as emergency regulations, and so really this will determine whether they stay in force and become permanent regulations.  
Dr. Coffman.

DR. COFFMAN: Section 13 of the West Virginia Pesticide Use and Application Act - Financial Security Required of Licensed Pesticide Application Businesses, etc. (Dr. Coffman read Section 13 of said regulations, herein attached and marked Exhibit No. 1.)

COMMISSIONER DOUGLASS: Are there any questions or comments. If so, please state your name and proceed.

CECIL TAYLOR: My name is Cecil Taylor with Bruce Terminix. If I am not mistaken, my policy excludes the contamination except where it was accidental. I took this to mean that if we are applying insecticides and they are overly applied in some manner as to cause contamination, then it would be accidental, it wouldn't be on purpose. Can you give me some answers on this?

ROBERT E. FRAME: In checking with the insurance companies and dealing with the different ones, the pollution exclusions usually say that they will not cover unless it is a sudden and accidental loss, which means that if you were in a home spraying and a hose burst on a tank and there was a sudden and accidental loss of the chemical, they would cover you. But the purposeful application for the job that you are trying to do, to apply the pesticides to control termites or roaches or whatever, if a claim should arise from that, they do not necessarily have to cover you because the application of that chemical was not sudden or accidental.

COMMISSIONER DOUGLASS: I might further elaborate on that. The new changes in the law dealing with pesticides in Congress is addressing this clearly, with almost identical language to what he says.

MR. TAYLOR: If we were treating a house and the chemical got into a well, even though that well was 50 feet from the house, then that would not be considered accidental?

MR. FRAME: In that case it probably would be. However, if a person living in that house that you sprayed for fleas or whatever, became ill, then the company does have an out that they can back out of the coverage.

MR. TAYLOR: Even though you are using the chemicals legally, according to the labels?

MR. FRAME: Right.

MR. TAYLOR: In other words we don't have any coverage if they want to back out?

MR. FRAME: That's right, if they want to back out. That has been a thing that has occurred in the last two or three years, with all the concern about chemicals. It depends, really, on the insurance company. I have some letters from some companies that state that although there is a pollution and contamination exclusion within the policy, they regard that as being for a major catastrophe and they state in the letter that they would cover for the normal use and application of pesticides if the problem arises such as a person becoming ill, a cat dying, shrubbery being killed, or whatever. However, there are other companies that say that if there is any problem that arises from the use of pesticide, then that is a contamination problem and we don't cover it.

MR. TAYLOR: Then what are we going to do if we can't get insurance?

MR. FRAME: That was the reason that we chose the word purposeful or purposeful use and application of pesticides and tried to stay away from some of the more negative terms such as pollution and contamination. This insurance is to cover you if you apply pesticides in a home and a problem should arise. It would probably still go with the Department certificate that the insurance company is certifying that they know what they are covering for, because some agents don't. I might add that the Department certificate that we are requiring now, there was a case that was tried in the Kanawha County Circuit Court. Just recently a decision was rendered there and the company had an exclusion in the policy and they tried to back out of coverage and because of the certificate that we required (that was different from the standard accord form) that specified just what the insurance was for, Judge Hey recently ruled that the company did have to pay off, even though they had an exclusion saying that they did not have to. That protects you all.

COMMISSIONER DOUGLASS: Other questions? Do you understand what we are saying? This is the reason we are trying to change this law and make it a little more understandable to the industry and what we are aware of that you are faced with.

MR. TAYLOR: I'm not sure I understand.

COMMISSIONER DOUGLASS: Well, if you follow directions your insurance will cover you, basically, but if you don't, if you spray once and you don't think you put enough on and you spray it the second time, then you are not following label directions and you may then be liable.

MR. TAYLOR: Yea, but right now, the way I read my insurance policy, they could get out of it unless it was as we said a while ago.

COMMISSIONER DOUGLASS: Well, I think you will be surprised when you look and the anniversary date of your policy and what they come back at you with. Yes?

DEXTER OWSLEY: I'm Dexter Owsley, House Doctor Exterminating Company. We are talking about accidental pollution and contamination, but the rumor is in the insurance industry that this will not be available at all next year, then what?

COMMISSIONER DOUGLASS: Since this is in the law, and I can only work within the boundaries of the law with the regulations---of course the law states that if you don't have insurance coverage, then you cannot operate, unless the Legislature comes back and hassels with them as they are doing downtown right at the moment. Its just a general across the board situation.

MR. FRAME: What we are facing here, I think, and we have tried to address in this, is in the State Act itself, which was passed by the Legislature, which says that the Commissioner shall not issue a license, a Pesticide Application Business license as required in Section 8 of the Article, until the applicant has filed evidence of financial security with the Commissioner, which is a surety bond, or whatever, in an amount not less than twenty-five thousand dollars, protecting persons who may suffer legal damages as a result of the operations of the applicant or the applicant's employees, and that's got to include your everyday application of products if a claim arises. Now what we have tried to do is to address that. If this type of insurance should be wiped out, then, unless the law is changed the Commissioner has to require at least twenty-five thousand dollars. That's why we put in that if it is not available, there has to be an additional rider or surety bond, we now have the twenty-five thousand dollars to cover that. Now if those things are just not available, period, then the Legislature is going to have to come back to rewrite the law.

MR. OWSLEY: Where does that leave us? You know a claim for contamination or pollution is probably a good lucrative spot for them to sue us on.

COMMISSIONER DOUGLASS: Unless you can get the coverage. And we are telling you what you are facing. Basically I am not requiring that coverage. I am giving you a loophole.

MR. OWSLEY: I Understand that, too.

COMMISSIONER DOUGLASS: You had better be aware of what is in those policies and how they are being written. Yes, Mr. Taylor?

MR. TAYLOR: If I read this correctly, if we could not obtain the proper insurance then we could put up a twenty-five thousand dollar bond and operate. Is this correct?

COMMISSIONER DOUGLASS: Right.

MR. FRAME: If it comes to that. There has to be a mechanism created to do that, but that is certainly a possibility.

COMMISSIONER DOUGLASS. Use the term "alternative in dire circumstances".

MR. TAYLOR: Just as long as we have some way to stay in business.

COMMISSIONER DOUGLASS: Are there other questions?

MR. OWSLEY: There might be a problem getting a twenty-five thousand dollar security bond.

COMMISSIONER DOUGLASS: That's your court of last resort, I'm sorry.

MR. TAYLOR: But those insurance companies are the ones that write those.

COMMISSIONER DOUGLASS: I know then we are in another situation and I have no latitude on that.

MR. FRAME: There was one individual this spring that was having difficulty and I talked with he and his agent quite a bit and they were looking at that time, about setting up a cash bond to cover claims. Because of the fact that an insurance company did come along and pick him up, details of that arrangement were never worked out, but that would be a possibility.

COMMISSIONER DOUGLASS: Are there other questions? There seems to be none. Let the record indicate that I hear no objections to the amendments in this Section. Proceed.

DR. COFFMAN: (Dr. Coffman then read Section 13.1.1 of the attached Exhibit I).

COMMISSIONER DOUGLASS: What we are doing here in this one applies to each of the others as we go through, so if you would like to address any of these through 13.1.8, feel free to do so, because they are the same.

JOHNNY RASCHELLA: I am Johnny Raschella, Ace Exterminator. I see that we had a little meeting here at the Department and there was something brought up that they were going to lower the limits to two-hundred fifty thousand dollars with a five-hundred thousand dollar aggregate. Was that not brought up, Bob?

BOB FRAME: That was discussed in trying to determine some level to set the insurance. In going back and talking with the insurance commissioner and agents, we were advised that three-hundred thousand dollars was about the bare minimum so we chose the three-hundred thousand dollars. These are the minimum amounts. If a person desires to have more than that, they can. In most insurance certificates that we see they are three-hundred thousand dollars each occurrence, one-million dollars aggregate or some combination thereof. This was at the advice of the insurance people that this probably was the bare minimum.

JOHNNY RASCHELLA: What I was getting at, and I just seen it in here, everybody knows that you need more than that to start with. My point in bringing it up is that it was discussed when the Association had a meeting with you all, and I didn't think I heard anything different on this. That's the reason I was bringing it up.

MR. FRAME: I think these would be the same ones that I passed around at the last meeting in March.

MR. RASCHELLA: I'll dig it out and be sure.

COMMISSIONER DOUGLASS: One further note here, and Bob, correct me if I am wrong, but one of the problems in writing this particular policy was that we struck the hundred-thousand dollar property damage clause.

MR. FRAME: Correct. The certificates that we get in most cases are combined single limits and in order to get the three-hundred thousand dollars each occurrence and the property damage, some people were, in essence, having to purchase two policies. We also had a lot of difficulty in when there were combined single limits that would include the property damage, getting the people to get enough insurance. This was a simplified way to make a combined single limit. Some people feel that this is a reduction coverage and in one sense of the word it is and in another sense it is an increase. In the past ten years, all of the claims that I am aware of have been in the area of property damage. So while this is a decrease in the overall amount of insurance required, it is actually increasing the insurance that we have seen the activity in. I think that it better covers the people of the state and the company.

COMMISSIONER DOUGLASS: Further questions? Comments? Now is your chance. Feel free to comment or ask questions. Are you in agreement or should there be amendments to the changes 1 through 8? Let the record indicate I hear no objection to these amendments that I propose. O.K. Proceed.

DR. COFFMAN: (Dr. Coffman read Section 13-2 of the West Virginia Pesticide Use and Application Act, which is attached hereto and marked Exhibit No. 1)

COMMISSIONER DOUGLASS: Questions? Comments on the aerial applicators?

JOHNNY RASCHELLA: I was just wondering why the aerial applicators have the same requirements as the pest control operators do when they stand a greater risk of contaminating, yet it is still the same amount of liability and property damage.

MR. FRAME: The only change we have made there is to decrease the property damage from the two-hundred thousand dollar level to the one-hundred thousand dollar level for the simple reason that that is all that is out there. There is nothing else available to them.

COMMISSIONER DOUGLASS: Do you understand that is the minimum amount

that companies will insure an aircraft. Of course, there is more danger of an aircraft falling than there is of your truck damaging something out here in the performance of your work activities.

MR. RASCHELLA: That was why I asked the question. There is more danger of an aircraft causing a bigger problem than PCO does and still they have the same minimum standards.

MR. FRAME: Their insurance in essence, is a little bit greater than yours but again that is all that is available to them. In fact we have some people that if you were to currently require the two-hundred thousand dollars, they would be out of business. It's just not there.

COMMISSIONER DOUGLASS: Other questions? Comments? Are there objections to this section in its form? Let the record indicate I hear none. Dr. Coffman, do you have further amendments.

DR. COFFMAN: No. Thirteen-three is the same.

COMMISSIONER DOUGLASS: Thirteen-three - Liability for Pesticide Use is the same, without change. And again, the only changes are those strike throughs or under-lines in the regulations. Are there any general comments at this time that anyone desires to make before I close this hearing? Let the record indicate that I hear none. A transcript of this hearing will be made by the Department and become a part of the record. If you are in favor of the amendments to these regulations, it is to your advantage to write a letter stating so. You should have letters of support in the record. If you do not agree there should also be written comments to that effect. The procedure is that after all the information is gathered, I will be making recommendations to the Legislative Rule Making Review Committee and then they make their recommendation to the Legislature, who in turn enact them into law.

If there are no further comments, and nothing further relative to this record, let the record indicate that at approximately 2:10 p.m., I have adjourned this hearing.

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Gus R. Douglass  
Agriculture Commissioner

EXHIBIT 1

Dept. of Agri.  
Leg. Regs., 19-16B  
SERIES XIIa, Sec. 13

Section 13. Financial Security Required of Licensed Pesticide Application Businesses

13.1 Amounts - The commissioner shall not issue a licensed pesticide application business license until the applicant has filed evidence of financial security with the commissioner, which may consist of a surety ~~bene~~ bond or liability insurance policy or certification thereof from an insurance company licensed to do business in West Virginia. Such financial security shall be ~~for the amount and kind~~ in the amounts listed for each category of licensed ~~applicator as follows:~~ pesticide application business.

The type of insurance coverage shall be in the form of Comprehensive General Liability with a Broad Form General Liability Supplement. If the insurance coverage specifically excludes liability arising from the purposeful use or application of pesticides, an additional insurance rider or surety bond must be secured in a minimum amount of \$25,000 to provide such financial security.

13.1.1 Agriculture Plant Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) ~~for bodily injury or death for each occurrence, and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and property damage.

13.1.2 Animal Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) ~~for bodily injury or death for each occurrence, and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and property damage.

13.1.3 Forest Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) ~~for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and property damage.

13.1.4 Ornamental and Turf Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) ~~for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and property damage.

13.1.5 Seed Treatment - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) ~~for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and property damage.

13.1.6 Aquatic Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) ~~for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and property damage.

13.1.7 Right-of Way Pest Control - An applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) ~~for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and property damage.

13.1.8 Industrial, Institutional, Structural and Health Related Pest Control - an applicant for license in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) ~~for bodily or death for each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage resulting from the use or misuse of pesticides.~~ combined single limit for bodily injury or death and property damage.

13.2 Aerial Applicators - Aerial Applicators in ~~any of~~ the above categories or sub-categories shall show evidence of financial security for public liability and chemical application in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) ~~for bodily injury or death for each occurrence and Two Hundred Thousand Dollars (\$200,000.00) for property damage resulting from the use or misuse of pesticides.~~ One Hundred Thousand Dollars (\$100,000.00) for property damage.

13.3 Liability for Pesticide Use - Nothing in these regulations shall be construed in any way to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though such use conforms to the rules and regulations of the commissioner.

## EXHIBIT 2

### PLANT PEST CONTROL DIVISION STATEMENT ON INSURANCE REGULATIONS PRESENTED AT PUBLIC HEARING - MAY 22, 1986

The 190 companies affected by the requirements for insurance to operate a licensed pesticide application business provide many services essential to the health, welfare and safety of the citizens of the state. The services performed which are often overlooked and taken for granted include:

- \* Weed control, on highways and railways, to assure readable signs and safe transportation of people, goods and services;
- \* Brush control on utility rights-of-way to provide uninterrupted power, fuel and communication;
- \* The protection of homes and other structures from wood destroying insects;
- \* Pest control services in hospitals, restaurants, warehouses, and public buildings to help maintain the public health by assuring a pest free environment for leisure, work and food storage and preparation; and
- \* The protection of agricultural crops and forests, thereby providing food and raw building materials necessary to the economy and well being of the state.

The problems concerning types of insurance coverage and exclusions in policies first appeared about 1980. Advice was sought from the Insurance Commission. At that time, we were advised to prepare an insurance certificate specific to our regulatory requirements. A representative of the Insurance Commission designed a certificate for our use. The certificate specific to the requirements was adequate until the beginning of the liability insurance crisis that most professions are experiencing. First, insurance premiums increased drastically. Then, insurance for persons using pesticides became increasingly difficult to find and coverages were being reduced. Finally, beginning this year, some companies reported that they would be unable to meet our requirements at renewal due to increased stipulations in policies regarding amounts and pollution coverages.

Representatives of the Department of Agriculture met with members of the Insurance Commission, representatives of various insurance companies and industry groups. The regulations for which we are soliciting comments appear to us to be adequate to provide protection for the people of the state, protection for the regulated industry, comply with the types of insurance available today, comply with the statutory requirements of the West Virginia Pesticide Use and Application Act, and, at the same time, assure the continuance of the vital services of the pesticide application industries.



STATE OF WEST VIRGINIA  
DEPARTMENT OF AGRICULTURE  
CHARLESTON  
25305

Gus R. Douglass  
Commissioner

LEGISLATIVE UPDATE TO  
LICENSED PESTICIDE APPLICATION BUSINESSES

The West Virginia Legislature passed House Bill 1685 on March 8, 1986, to become effective 90 days after passage. The bill was signed into law by Governor Moore on March 26, 1986. The bill provided amendments to the West Virginia Pesticide Use and Application Act in the following areas.

- 1) Provides that municipalities or counties cannot enact laws or ordinances regarding the regulation of pesticide use or application (19-16B-2).
- 2) Provides for out-of-state firms to file with the Secretary of State rather than the State Auditor (19-16B-8-6).
- 3) Requires the state tax number to be placed on the business application (19-16B-8-8).
- 4) Provides that a license, permit or certification may be renewed by the first day of April without reexamination, provided that no person holding an expired license, permit or certification shall engage in any activity for which the license, permit or certification is required until such license, permit or certification has been renewed (19-16B-12).
- 5) Prohibits advertising as proof of professionalism in securing business that the licensee is certified or licensed by the Department of Agriculture or the Commissioner of Agriculture (19-16B-14-16).
- 6) Increases the level of civil penalty that may be assessed from \$200 to \$500 (19-16B-22-C).
- 7) Provides authority for the Commissioner to promulgate and adopt regulations which permit consent agreements or negotiated settlements for civil penalties assessed as a result of violations of the Act (19-16B-22-D).

These changes become effective on June 6, 1986. Many companies renewing telephone book ads in 1986 will need to make changes in their advertising to comply with amendment #5. Persons soliciting business and distributing business cards or other literature after June 6, bearing the Department of Agriculture's or Commissioner of Agriculture's name, will be in violation and subject to the penalties of the Act.

Liability insurance has been of great concern to many applicators. In an effort to make insurance coverage more available to applicators, provide protection for the applicator and the public at large and comply with the statutory restraints

of the Pesticide Use and Application Act, the insurance requirements are being changed. The proposed new requirements are as follows.

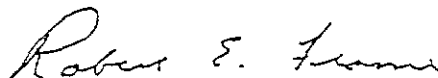
A Licensed Pesticide Application Business must show financial responsibility in the form of a Comprehensive General Liability Insurance Policy with a Broad Form General Liability supplement in a minimum amount of \$300,000 combined single limit for bodily injury or death and property damage. If the policy specifically excludes liability for the purposeful use of pesticides, an insurance rider or surety bond in a minimum amount of \$25,000 shall be secured to provide such coverage.

This level of insurance is to be secured for all types of Licensed Pesticide Application Businesses except aerial applicators. The proposed new limits for aerial applicators are public and chemical liability in a minimum amount of \$300,000 for bodily injury or death and \$100,000 for property damage.

These amounts and types of insurance were established after consultation with many insurance consultants and various industry companies. I suggest you consult your individual agents as to their effect on your particular business. A public hearing is scheduled for May 22, 1986 to hear any comments, good or bad, on these proposed regulations. A copy of the news release regarding the hearing is enclosed.

If you have any questions, please call me at (304) 348-2212.

Sincerely,



Robert E. Frame, Program Leader  
Pesticide Use and Application  
Plant Pest Control Division

REF/ss

Enclosure



Gus R. Douglass  
Commissioner

# NEWS RELEASE

West Virginia Department of Agriculture  
Information Division  
Charleston, WV 25305  
Phone: 348-3708

For Immediate Release

April 9, 1986

## HEARING SET ON PESTICIDE REGULATIONS

Agriculture Commissioner Gus R. Douglass today announced that he will conduct a public hearing at 1:30 P.M., Thursday, May 22, 1986, in the John T. Johnson Auditorium, Building 3, Guthrie Agricultural Complex, Charleston, West Virginia 25312, to discuss proposed changes of the regulations dealing with the West Virginia Pesticides Use and Application Act in Section 13.

Douglass says Section 13 deals with the liability insurance or other proof of financial responsibility as a requirement for being licensed to apply pesticides and is needed in order to reflect the current trends of insurance availability.

Persons wishing to obtain copies of the proposed changes or further information on the hearing location may do so by calling (304) 348-2212. Written comments should be mailed to the Plant Pest Control Division, West Virginia Department of Agriculture, Capitol Building, Charleston, WV 25305. Persons making oral presentations at the hearing are requested to also submit written comments at that time in order to facilitate their review. Only regulations dealing with Section 13 of the West Virginia Pesticide Use and Application Act will be on the agenda.

Clipping Division  
**West Virginia Press  
Services, Inc.**

1033 Quarrier St. Suite 203  
Charleston, WV 25301

APR 25 1986

The Oceana Sun  
Oceana, WV

Circulation: 11,100

## Public Hearing

Agriculture Commissioner Gus R. Douglass today announced that he will conduct a public hearing at 1:30 p.m., Thursday, May 22, 1986, in the John T. Johnson Auditorium, Building 3, Guthrie Agricultural Complex, Charleston, West Virginia 25312, to discuss proposed changes of the regulations dealing with the West Virginia Pesticides Use and Application Act in Section 13.

Douglass says Section 13 deals with the liability insurance or other proof of financial responsibility as a requirement for being licensed to apply pesticides and is needed in order to reflect the current trends of insurance availability.

Persons wishing to obtain copies of the proposed changes or further information on the hearing location may do so by calling (304) 348-2212. Written comments should be mailed to the Plant Pest Control Division, West Virginia Department of Agriculture, Capitol Building, Charleston, WV 25305. Persons making oral presentations at the hearing are requested to also submit written comments at that time in order to facilitate their review. Only regulations dealing with Section 13 of the West Virginia Pesticide Use and Application Act will be on the agenda.

West Virginia  
Press Services, Inc  
1033 Quarrier St.  
Suite 203  
Charleston, WV

MAY 1 1986

JEFFERSON ADVOCATE  
CHARLES TOWN, WV

## Hearing Set On Pesticide Rules

Agriculture Commissioner Gus R. Douglass has announced that he will conduct a public hearing at 1:30 p.m., Thursday, May 22, in the John T. Johnson Auditorium, Building 3, Guthrie Agricultural Complex, Charleston, WV 25312, to discuss proposed changes of the regulations dealing with the West Virginia Pesticides Use and Application Act in Section 13.

Douglass says Section 13 deals with the liability insurance or other proof of financial responsibility as a requirement for being licensed to apply pesticides and is needed in order to reflect the current trends of insurance availability.

Persons wishing to obtain copies of the proposed changes or further information on the hearing location may do so by calling 304-348-2212. Written comments should be mailed to the Plant Pest Control Division, West Virginia Department of Agriculture, Capitol Building, Charleston, WV 25305. Persons making oral presentations at the hearing are requested to also submit written comments at that time in order to facilitate their review. Only regulations dealing with Section 13 of the West Virginia Pesticide Use and Application Act will be on the agenda.

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Press Services, Inc.  
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Charleston, WV

MAY 3 1986

EVENING JOURNAL  
MARTINSBURG, WV

## Pesticide Hearing Planned

Agriculture Commissioner Gus R. Douglass will conduct a public hearing at 1:30 p.m., May 22 in the John T. Johnson Auditorium, Building 3, Guthrie Agricultural Complex, Charleston, to discuss proposed changes of the regulations dealing with the West Virginia Pesticides Use and Application Act in Section 13.

The section deals with the liability insurance or other proof of financial responsibility as a requirement for being licensed to apply pesticides and is needed in order to reflect the current trends of insurance availability, Douglass said.

Persons wishing to obtain co-

pies of the proposed changes or further information on the hearing location may do so by calling 348-2212. Written comments should be mailed to the Plant Pest Control Division, West Virginia Department of Agriculture, Capitol Building, Charleston, W. Va. 25305.

Persons making oral presentations at the hearing also are requested to submit written comments at that time in order to facilitate their review. Only regulations dealing with Section 13 of the West Virginia Pesticide Use and Application Act will be on the agenda.

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MAY 1 1986  
Putnam Democrat  
Winfield, WV  
Circulation: 2,000

## Pesticide Regulations

Agriculture Commissioner Gus R. Douglass today (Apr. 9) announced that he will conduct a public hearing at 1:30 p.m. on Thursday, May 22, 1986, in the John T. Johnson Auditorium, Building 3, Guthrie Agricultural Complex, Charleston, West Virginia 25312, to discuss proposed changes in the regulations dealing with the West Virginia Pesticides Use and Application Act in Section 13.

Douglass says Section 13 deals with the liability insurance or other proof of financial responsibility as a requirement for being licensed to apply pesticides and is needed in order to reflect the current trends of insurance availability.

Persons wishing to obtain copies of the proposed changes or further information on the hearing location may do so by calling (304) 348-2212. Written comments should be mailed to the Plant Pest Control Division, West Virginia Department of Agriculture, Capitol Building, Charleston, WV 25305. Persons making oral presentations at the hearing are requested to also submit written comments at that time in order to facilitate their review. Only regulations dealing with Section 13 of the West Virginia Pesticide Use and Application Act will be on the agenda.

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West Virginia Press  
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APR 12 1986  
Telegram  
Clarksburg, WV  
Circulation: 18,621

## Hearing Scheduled On Pesticide Use

West Virginia Agriculture Commissioner ~~Gus R. Douglass~~ announced that he will conduct a public hearing at 1:30 p.m. Thursday, May 22, in the John T. Johnson Auditorium, Building 3, Guthrie Agricultural Complex, Charleston, to discuss proposed changes in regulations dealing with Section 13 of the West Virginia Pesticides Use and Application Act.

Douglass says Section 13 deals with the liability insurance or other proof of financial responsibility as a requirement for being licensed to apply pesticides and is needed in order to reflect the current trends of insurance availability.

Persons wishing to obtain copies of the proposed changes or further information on the hearing location may do so by calling the agriculture office.

Only regulations dealing with Section 13 will be on the agenda.

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APR 16 1986  
Lincoln Journal  
Hamlin, WV

## Pesticide topic of hearing

Agriculture Commissioner Gus R. Douglass recently announced he will conduct a public hearing at 1:30 p.m., Thursday, May 22, in the John T. Johnson Auditorium, Building 3, Guthrie Agricultural Complex, Charleston, to discuss proposed changes of the regulations dealing with the West Virginia Pesticides Use and Application Act in Section 13.

Douglass said Section 13 deals with the liability insurance or other proof of financial responsibility as a requirement for being licensed to apply pesticides and is needed in order to reflect the current trends of insurance availability.

Persons who wish to obtain copies of the proposed changes or further information on the hearing location may do so by calling (304) 348-2212.

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MAY 4 1986  
DOMINION POST  
MORGANTOWN, WV

### Pesticide hearing May 22

A public hearing will be conducted at 1:30 p.m. Thursday, May 22 in Charleston on regulations dealing with West Virginia pesticide use and application in Section 13.

The hearing, conducted by the state Department of Agriculture, will be in the John T. Johnson Auditorium, Building 3, Guthrie Agricultural Complex, in Charleston.

Copies of the proposed changes can be obtained by calling 1-304-348-2212. Written comments should be sent to: Plant Pest Control Division, W.Va. Dept. of Agriculture, Capitol Building, Charleston, W.Va. 25305.

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West Virginia Press  
Services, Inc.

1033 Quarrier St. Suite 203  
Charleston, WV 25301

APR 20 1986

Gazette-Mail  
Charleston, WV

Circulation: 107,903

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### Public hearing on pesticides May 22

Agriculture Commissioner Gus Douglass announced last week that a public hearing on use of pesticides will be held at 1:30 p.m. May 22 at Guthrie Agriculture Complex.

The hearing will be to discuss proposed changes in regulations dealing with use and application of pesticides in the state.

Persons wishing to obtain copies of the proposed changes or further information on the hearing location may call 348-2212. Writ-

ten comments should be mailed to the Plant Pest Control Division, West Virginia Department of Agriculture, Capitol Building, Charleston, W.Va. 25305.

Persons making oral presentations at the hearing are asked to submit written comments at that time in order to facilitate their review.

Only regulations dealing with Section 13 of the West Virginia Pesticide Use and Application Act will be on the agenda.

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APR 19 1986

Nicholas Citizen News  
Summersville, WV

## Pesticide Regulations Hearing Set

Agriculture Commissioner Gus R. Douglass today announced that he will conduct a public hearing at 1:30 p.m., Thursday, May 22, 1986 in the John T. Johnson Auditorium, Building 3, Guthrie Agricultural Complex, Charleston, West Virginia 25312, to discuss proposed changes of the regulations dealing with the West Virginia Pesticides Use and Application Act in Section 13.

Douglass says Section 13 deals with the liability insurance or other proof of financial responsibility as a requirement for being licensed to apply pesticides and is needed in order to reflect the current trends of insurance availability.

Persons wishing to obtain copies of the proposed changes or further information on the hearing location may do so by calling (304) 348-2212. Written comments should be mailed to the Plant Pest Control Division, West Virginia Department of Agriculture, Capitol Building, Charleston, WV 25305.

A NEWS CLIP FROM  
WEST VIRGINIA  
PRESS SERVICES, INC.  
LEVEL B, HOYER BLDG.  
CHARLESTON, WV

APR 23 1986  
EXAMINER  
MOOREFIELD, WV

## Pesticide Use And Application Act Hearing Scheduled

Agriculture Commissioner Gus R. Douglass today announced that he will conduct a public hearing at 1:30 p.m., Thursday, May 22, 1986, in the John T. Johnson Auditorium-Building 3, Guthrie Agricultural Complex, Charleston, West Virginia 25312, to discuss proposed changes of the regulations dealing with the West Virginia Pesticides Use and Application Act in Section 13. Douglass says Section 13 deals with the liability insurance or other proof of financial responsibility as a requirement for being licensed to apply pesticides.

Persons wishing to obtain copies of the proposed changes or further information on the hearing location may do so by calling (304)348-2212. Written comments should be mailed in the Plant Pest Control Division, West Virginia Department of Agriculture, Capitol Building, Charleston, WV 25305. Persons making oral presentations at that time in order to facilitate review. Only regulations dealing with Section 13 of West Virginia Pesticide Use and Application Act will be on the agenda.

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APR 24 1988  
Calhoun Chronicle/News  
Grantville, WV

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### HEARING SET ON PESTICIDE REGULATIONS

A public hearing to discuss pesticides and is needed in proposed changes of the regula- order to reflect the current tions dealing with the West Vir- trends of insurance availability, ginia Pesticides Use and Appli- Persons wishing to obtain cation Act in Section 13 will be copies of the proposed changes held on Thursday, May 22 in or further information on the the John I. Johnson Auditor hearing location may do so by rum, Building 3, Guthrie Agri- calling (304) 348-2212. Written rural Complex, Charleston comments should be mailed to Agriculture Commissioner the Plant Pest Control Division, Gus R. Douglass says Section West Virginia Department of 13 deals with the liability insur- Agriculture, Capitol Building, ance or other proof of financial Charleston, WV-25305. Persons responsibility as a requirement making oral presentations at the for being licensed to apply hearing are requested to also submit written comments at that time in order to facilitate their review. Only regulations dealing with Section 13 of the West Virginia Pesticide Use and Application Act will be on the agenda.