

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

Form #7

Do Not Mark In this Box

FILED  
1990 DEC 20 AM 9:48  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AN EMERGENCY RULE**

AGENCY: Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: WV Code 19-16A

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

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


TITLE OF RULE BEING FILED AS AN EMERGENCY: Wood Destroying Insect  
Treatment Standards

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

This rule protects the public safety and welfare by regulating the application of pesticides to termites and other wood destroying insects. This rule is required to protect the safety of the groundwater, humans and animals in the area of the treatment. There are currently no regulations in effect due to repeal of WV Code 19-16B.

Use Additional Sheets If Necessary.



APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Wood Destroying Insect Treatment Standards

Type of Rule: X Legislative            Interpretive            Procedural

Agency Department of Agriculture Address Guthrie Center  
Charleston, WV 25305

FILED  
 1990 DEC 20 AM 9:48  
 OFFICE OF WEST VIRGINIA  
 SECRETARY OF STATE

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

The rule does not change the fiscal needs of the current program. The rule re-establishes the termite standards under the old repealed law (19 - 16B) and adds further classification and regulation to other areas of current regulatory activities.

3. Objectives of these rules:

This rule promotes the safe and effective use of pesticides for wood destroying insects. The rule plans regulatory requirements to protect the consumer from fraudulent practice and to protect private wells and groundwater.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

No economic impact is expected on state government as ongoing regulatory activities exist for pesticide enforcement.

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

A small portion of the pest control industry will need to upgrade their termiticide application equipment. The impact should be minimal as the costs would be approximately equal to the price of 1 or 2 termite treatments.

C. Economic Impact on Citizens/Public at Large.

It is believed the rule will have a positive economic impact on the citizens and public at large. Unnecessary, expensive treatments for wood destroying insects will be eliminated or minimized thus savings citizens money.

Date: 12-20-90

Signature of Agency Head or Authorized Representative



FILED

DATE: December 18, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

1990 DEC 20 AM 9:48

FROM: Robert E. Frame, Director, Pesticide Division, WV Dept of Agriculture

OFFICE OF WEST VIRGINIA  
SECRETARY OF AGRICULTURE

EMERGENCY RULE TITLE: Wood Destroying Insect Treatment Standards

1. Date of filing: December 20, 1990
2. Statutory authority for promulgating the emergency rule: State Code 19 - 16A
3. Date of filing of proposed legislative rule: 12-20-90
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?  
The rule repeals legislative rule WV61 12C adopted under repealed State Code 19 - 16B and adopts new language.
5. Has the same or similar emergency rule previously been filed and expired?  
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.  
The rule reinstates regulations adopted under repealed state code 19 -16B and adds further languages to provide protection to groundwater from pesticide and protect the consumer from the fraudulent and improper treatment of termites and wood destroying beetles.

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

Not applicable

---

---

---

---

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

Treatments for termites and wood destroying beetles are often made  
in a fraudulent and improper manner. The lack of data gathered at the time  
of termite treatments to homes with wells often results in the contamination  
of groundwater. Due to repeal of 19-16B, there are currently  
no regulations in effect for wood destroying insect treatments.

SUMMARY OF LEGISLATIVE RULE 61 - 12C

These regulations establish minimum standards for the treatment of termites and wood destroying beetles. They provide for the protection of private water wells and groundwater by requiring the gathering of information necessary to evaluate proper termite treatment techniques. Types of application equipment are specified to eliminate antiquated equipment. The regulations provide for protection of the consumer and the environment.

FILED

1990 DEC 20 AM 9:48

OFFICE OF THE SECRETARY OF STATE  
SECRETARY OF STATE

FILED

1990 DEC 20 AM 9:48

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

TITLE 61  
DEPARTMENT OF AGRICULTURE  
WEST VIRGINIA LEGISLATIVE RULE  
Chapter 19-16A  
SERIES XIIC

Title: Wood Destroying Insect Treatment Standards

---

**61-12C-1. General**

1.1 Scope. These Legislative Regulations establish the minimum requirements for structural pest control work on existing structures and on new construction.

1.2 Authority. W. Va. Code 19-16A

1.3 Filing Date.

1.4 Effective Date.

1.5 Repeal of former rule. This legislative rule repeals and replaces WV 61 CRS 12C "West Virginia Pesticide Use and Application Act of 1975 - Termite Regulations" effective July 11, 1977.

**61-12C-2. Definitions**

2.1 For the purpose of these regulations, the definitions shall be the same as those appearing in the West Virginia Pesticide Control Act (19-16A-3), with the following additions:

2.1.A. The term "agreement" as used in these regulations means any written or verbal contract, accepted proposal, work order, guarantee, warranty, or combination of these.

2.1.B. The term "basement" as used in these regulations means the floor below the principle floor and may be wholly or partially below grade and may be earthen or covered.

2.1.C. The term "crawl space" means an area under a structure between the wood portion above and the soil below, which cannot be considered as a floor.

2.1.D. The term "existing structure" means any building or part thereof, whether vacant or occupied, in all stages of construction.

2.1.E. The term "footer" or "footing" means the base or lower course upon which a foundation, pillar, pier, chimney, or other structure rests and may be below the surface of the ground or on the ground.

2.1.F. The term "inside treatment" as used in these regulations means the application of pesticides for termite control to the soil in the areas under a structure in a basement or crawl space, or in the case of slab-on-ground construction, it may mean any area inside a structure where a pesticide is applied through or under the slab.

2.1.G. The term "outside treatment" as used in these regulations means the application of pesticides for termite control to the soil adjacent to the foundation, including porches, entry platforms, breezeways, etc., attached to the structure and underground as far as the footer.

2.1.H. The term "new construction" as used in these regulations means any building or part thereof which is under construction and has not yet been occupied.

2.1.I. The terms "rodding" and "injection" mean the insertion of pesticides into the soil by means of a pipe or hollow rod through which a pesticide is forced under pressure or when used in conjunction with a shallow trench. "Rodding" may be the creation of holes made with a bar or rod in the soil.

2.1.J. The term "slab-on-ground construction" means the erection of a structure, usually on the poured concrete floor, which may or may not have a foundation and footer and under which there is no open space. A brick, tile, or gravel floor will be treated either as slab-on-ground or as exposed ground construction.

2.1.K. The term "termite shelter tube" means the mud tube constructed upon walls, pipes, or other surfaces, or freestanding from the ground to the wood above, by subterranean termites.

2.1.L. The term "trenching" as used in these regulations means the removal of the soil in contact with foundation, pillar, pier, chimney, etc.

2.1.M. The term "unit masonry foundation" as used in these regulations means foundation construction using concrete, cinder, or other blocks with voids, hollow tile blocks, brick with space between tiers, etc.

2.1.N. The term "use dilution" as used in these regulations means the concentration of a mixed pesticide prepared for application (to control or abate pests) according to its registered label.

**61-12C-3. Minimum Requirements for Termite Control of Structures in West Virginia.**

**3.1 Pesticides.**

3.1.A No person shall apply any pesticide to control termites in structures unless such pesticides are registered for termite control by the United States Environmental Protection Agency and by the West Virginia Department of Agriculture.

3.1.B Pesticides used to control termites must be mixed and used according to the directions of the registered label.

**3.2 Treatment Specifications and Records.**

3.2.A All termite treatments shall be documented by treatment graphs and specifications to be completed by a commercial applicator certified in structural pest control. Such graphs and specifications shall include, but not be limited to:

3.2.A.a the address or location of the structure treated;

3.2.A.b the name (and address if different than 1) of the owner, manager, tenant or other person ordering the structural pest control work;

3.2.A.c the name of the certified commercial applicator supervising the use of pesticides;

3.2.A.d the pest or pests against which the pesticide(s) are applied;

3.2.A.e the pesticide(s) used, including the product name and quantity of each pesticide used;

3.2.A.f a diagram of the structure to be treated showing the sites at which pesticides are to be applied, hazard sites, such as wells, the location(s) of actual pest infestations if any exist and any other information pertinent to the application of pesticides at the particular site;

3.2.A.g special precaution orders for the applicator's safety, such as the use of protective clothing respirators or other safety gear;

3.2.A.h the name(s) of the persons making the pesticide applications;

3.2.A.i the date(s) pesticides are applied.

### 3.3 Application Equipment.

3.3.A All termiticide application equipment or application apparatus shall be kept in sound working condition.

3.3.B All termiticide distribution systems, including pumps, hoses, nozzles and fittings, etc., shall be maintained in a leak-proof manner.

3.3.C All pumps used with termiticide distribution systems shall be capable of sufficient pressure to assure a uniform and adequate rate of discharge. The pressure and rate of discharge shall be maintained by pressure gauges, flow meters or other means capable of demonstration.

3.3.D All vehicle or trailer-mounted termiticide application systems shall be of a type requiring a pump to pull termiticide from a holding tank. The use of air compressor to pressurize holding tanks is prohibited.

3.3.E Licensed pesticide application businesses not in compliance of Section 3.3.D shall be allowed a 120-day time period from the effective date of these regulations to achieve compliance.

### 61-12C-4. Minimum Standards for Termite Control on Existing Structures in West Virginia.

4.1 Licensed pesticide application businesses engaged in termite control on existing structures shall, as a minimum measure

for termite treatment, make pesticide applications according to the following procedures:

4.1.A Structures with basements - Outside Treatment.

4.1.A.a Poured concrete foundations. For solid concrete foundations, the soil may be treated to a depth of at least one foot below grade completely around the structure by rodding and/or trenching. The rate of application must be according to the directions on the registered label for the pesticide being used. When a poured concrete foundation is cracked, the treatment used at the site of the crack and for at least 4 feet on either side of the crack shall be the same as that required for unit masonry foundations, which follows.

4.1.A.b Unit masonry foundations. Soil treatment shall extend to the top of the footing. The rate of application must be according to the registered label of the pesticide being used. Applications may be made by trenching, rodding or pressure injection or a combination of these methods. The pesticide must reach the footer and be evenly distributed to grade.

4.1.A.c The voids of unit masonry foundation walls must be treated at the minimum rate of 1 gallon of use dilution for each 5 linear feet around the entire structure, unless the directions on the registered label of the pesticide being used specifically states otherwise, in which case, the label directions must be followed.

4.1.A.d Attached porches, entrance platforms, utility entrances, patios, driveways, and similar structures where a solid slab abutting the foundation exists at ground level, shall be treated by drilling the slab at least every 18 inches at a point no greater than 18 inches from the adjacent foundation and injecting the pesticide at the rate provided on the registered label into the soil beneath. When the slab is above grade and filled below, the fill shall be similarly treated. When a crawl space exists under an attached structure the soil adjacent to the foundation shall be treated as in 4.1.A.c above. Piers, pillars, etc., shall be treated as masonry foundations and any voids in unit masonry piers should be treated as in 4.1.A.c above.

4.1.B Structures with basements - Inside Treatment

4.1.B.a The soil under the basement floor adjacent to the foundation, whether the foundation is unit masonry or poured, must be treated by drilling through the slab and injecting the pesticide at the rate of application specified on the

registered label for the pesticide being used. Drill holes shall be placed at intervals no greater than 18 inches apart and at a point no greater than 18 inches from the adjacent wall being protected.

4.1.B.b Voids in unit masonry foundation walls in the area of filled porches, entrances and other similar areas may have to be drilled and treated from the inside when outside treatment of the voids is impossible due to the attached structure.

#### 4.1.C Slab-On-Ground Construction - Outside Treatment

4.1.C.a A treatment shall be made along the outside of the foundation walls and the outside walls of the attached porches, entry ways, etc. Trench or rod to the top of the footer but no deeper than 30 inches. Pesticide treatments shall be made in a manner as prescribed for structures with basements. Voids in unit masonry foundation walls should be treated as in structures with basements.

#### 4.1.D Slab-On-Ground Construction - Inside Treatment

4.1.D.a The soil under the slab adjacent to the foundation shall be treated with a pesticide at the rate of application provided for on the registered label of the pesticide being used. In some instances this may be done by drilling completely through the foundation wall from the outside and in other instances the slab will need to be drilled from the inside. The soil under porches or entry floors, whether filled or with a crawl space, shall be treated as structures with basements as in 4.1.B above. The soil under patios, driveways, walks, and other places where they abut the foundation shall be treated as structures with basements as in 4.1.B above. The soil under expansion joints, cracks in the slab, and other openings in the slab shall be treated by drilling and injection at the rate prescribed on the registered label of the pesticide being used. Care must be exercised to avoid damage to underground utilities. Building plans should be consulted prior to drilling if possible.

4.1.D.b Voids in unit masonry foundation walls in the area of filled porches, entrances, and other similar units may have to be drilled and treated from the inside when outside treatment of the voids is impossible due to the attached structure.

#### 4.1.E Crawl Space Construction - Outside Treatment

4.1.E.a Treatment around the perimeter of crawl space construction structures shall be identical to that prescribed for structures with basements 4.1.B above.

#### 4.1.F Crawl Space Construction - Inside Treatment

4.1.F.a Treatments shall be made according to the direction on the registered label for that pesticide for termite control.

4.1.F.b All wood scraps and other materials containing cellulose large enough to be picked up or raked up with a common garden rake shall be removed from under the structure. All termite shelter tubes shall be removed prior to application of the pesticide. If termite shelter tubes have been built away from the foundation, pillars, or piers, the infested area of ground shall be treated according to directions on the registered label.

4.1.G Porches or Entrance Platforms - Treatment around piers, foundations, or pillars shall be done in the same manner as treatments under the structure, or if these are above grade and filled, treat as in structures with basements as in 4.1.A above.

#### 4.2 Partial Treatment.

4.2.A The procedures detailed in the previous Sections 4.1.A and 4.1.B - Structures with Basements; 4.1.C and 4.1.D - Slab-on-Ground Construction; and 4.1.E and 4.1.F - Crawl Space Construction shall be the minimum treatment procedures for termite control in West Virginia when a guarantee or warranty is issued indicating or implying that complete termite control has been performed. The treatments made by an procedure not meeting these requirements shall be termed PARTIAL TREATMENTS in any written or verbal agreement whether or not a guarantee of termite control is issued.

#### 61-12C-5. Termite Control for New Construction (Pre-Treat).

5.1 Licensed Pesticide Application Businesses engaged in the business of applying pesticides for termite control on new structures (pre-treat) before or during construction must meet all of the minimum requirements given for existing structures. The areas where a slab is to be poured shall be additionally treated with a pesticide at the rate prescribed on the registered label of the pesticide being used for termite control.

5.2 Any pre-treatment for termite control that does not meet these minimum requirements shall be referred to as PARTIAL-TREATMENT in any written or verbal agreements whether or not a guarantee or termite control is issued.

## 61-12C-6. Treatment Near Water Wells

6.1 All termiticide labels have statements of caution or prohibition against contamination of water. Treatment of houses with drilled or hand-dug wells must be performed with extreme caution. Contamination of domestic water wells and groundwater can result in label violations and liability claims from the owner of the property being treated and/or neighbors of adjoining property using domestic wells. The decision to treat or not treat a property or portions of a property containing wells ultimately rests with the pesticide application business.

6.2 Past problems leading to termiticide contamination of wells and groundwater usually involved pressure rodding near well casings, deteriorated and/or abandoned pipes leading to the well, poor well construction, shallow water table, etc. When treating property with existing domestic wells, the pesticide application business must obtain the following information on well location and construction. This information shall be a part of the treatment records of the property.

6.2.A The location and distance of all wells within 100 feet from the structure or structures being treated.

6.2.B Information on the construction of drilled wells, including but not limited to:

6.2.B.a overall depth of the well;

6.2.B.b type and depth of the well casing;

6.2.B.c presence or absence of grouting around the well casing;

6.2.B.d location and condition of any currently used or abandoned supply lines to the property being treated;

6.2.B.e integrity of the well casing where supply lines enter the well;

6.2.C Information on the construction of dug wells, including but not limited to:

6.2.C.a overall depth of the well;

6.2.C.b depth to the surface of water in the well;

6.2.C.c construction of the well, i.e., earth walls, laid stone or block, poured concrete, etc.;

6.2.C.d location and condition of any currently used or abandoned supply lines to the property being treated.

6.3 Evaluation of the information gathered in 6.2.A, 6.2.B and 6.2.C may reveal situations where conventional treatments detailed in Section 4 and 5 are risky or not applicable to the property in question. The following types of alternative treatment measures have been successful in the past and may be helpful in evaluating whether or not to perform a termiticide application near a well.

6.3.A Trench and apply the appropriate quantity of termiticide in 2 or more applications.

6.3.B Trench and apply a quantity of termiticide less than the amount specified by the product label.

6.3.C Remove the soil from the foundation, mix it with the appropriate amount of termiticide, spread and dry the soil on plastic and then return it to the foundation.

6.3.D Make structural repairs or changes to the property utilizing pressure treated wood or other materials.

6.4 When alternative methods of treatment are made, the property owner is to be informed as in Sections 4.2 and 8.2.

#### **61-12C-7 Requirements for the Treatment of Wood Destroying Beetles**

7.1 When Treatment Will Be Permitted - After it is determined that an active infestation exists, treatment will be permitted for the control or prevention of reinfestation of the families of beetles which are known to reinfest seasoned wood, i.e. Anobiidae, Lyctidae, Bostrichidae, Cerambycidae (old house borer and flat oak borer only) and Curculionidae. Preventative treatment in the absence of an infestation is prohibited without approval of the Pesticide Division. Treatment is expressly prohibited for the control or prevention of other beetles that may cause damage to seasoned wood structures such as Ambrosia beetles, Bark beetles, Flat headed borers, long-horned borers, Metallic wood borers, Pin worms, Round headed borers other than old house and flat oak borers, Timber beetles, and the Siricidae (woodwasps) or Marine borers except with prior approval of the Commissioner. When asking for an exception the organism involved will be specified.

## 7.2 Determining Active Infestations.

7.2.A Determining the activity of Anobiidae (anobiid powder-post) beetles in sub-structures, attached garages or other outbuildings, and stored lumber.

7.2.A.a The presence of frass the color of fresh cut wood will be acceptable as evidence of an active infestation of the Anobiidae.

7.2.A.b The presence of holes alone or holes and dull-colored frass will not be acceptable evidence of an active infestation of the Anobiidae except in such cases where live larvae and pupae are found in wood members.

7.2.A.c Where numerous holes alone and/or dull-colored frass are found in wood members, the licensee or his representative(s) should check the upper living areas for infestation and to check the property during the optimum time for frass production May 15 to September 1. Anobiidae beetles usually infest products older than 10 years and most infestations are confined to softwoods such as pine, whereas the Lyctidae usually confine themselves to recently processed hardwoods such as domestic oak and pecan or foreign woods such as banak, meranti and obeche.

7.2.A.d Numerous other beetles may cause damage in the products that the Anobiidae and Lyctidae infest. Identification aids for these beetles are: (1) timber beetles and pinworms - no frass in tunnels, tunnel walls stained darker than surrounding wood, no activity in products older than 5 years, and (2) bark beetles or bostrichids in softwoods - holes few in number in or near bark, larval tunnels beneath bark scoring bark and wood, some of the frass is same color as inner bark.

7.2.B Determining the activity of powder post beetles (Lyctidae) infestations is not required if infested products are less than 10 years old. Otherwise, fresh frass and/or live larva or pupae in wood will be acceptable evidence of activity.

7.2.C Determining the activity of old house borer (Hylotrupes bajulus L.) infestations.

7.2.C.a The presence of adult beetles and oval exit holes with fresh sawdust-like frass consisting of fine powder and tiny pellets southern pine, Douglas fir, or spruce wood will be evidence of an active infestation of the old house borer.

7.2.C.b The presence of live larvae or pupae in the above softwoods will be evidence of an active old house borer infestation, if the frass is sawdust-like.

7.2.C.c To aid in identification, other long-horned borers, flat-headed borers, Siricid woodwasps, and marine borers sometimes damage softwood used in building construction. These other long-horned borers produce loosely packed fibrous tobacco-like frass, the flat headed borers make tunnels three times wider than high, whereas old house borer tunnels are less than three times wider than high, Siricids make perfectly circular exit holes, and marine borer excavations usually contain whitish calcium deposits but no frass.

### 7.3 Treatment Procedures.

7.3.A When wood-destroying beetles are present at or below the subfloor level, then control measures should be applied from underneath the structure using an approved pesticide in accordance with label directions.

7.3.B If there is evidence to indicate or reasonable cause to suspect that a substantial active infestation of wood-destroying beetles exists above the subfloor level, then fumigation with an approved fumigant is permitted, provided the property owner has been informed of other alternative treatments such as spot application, removal and replacement of infested wood members or treatment of the sub-structure only if it is actively infested. If fumigation is chosen by the property owner, the licensee shall notify the Pesticide Division of the location at least 48 hours prior to the anticipated time of treatment.

## 61-12C-8. Exceptions

### 8.A Termite Treatments.

8.1.A. When a licensed pesticide application business in the category of structural pest control is doing termite control or Pre-treatment to control termites according to specifications set forth in a bid proposal which do not meet these minimum requirements, he shall not be in violation of these regulations providing that the specifications under which he is working are available to the Commissioner and that the application does not conflict with the registered label or the pesticide being used for termite control.

8.1.B. When any unusual structural or physical conditions render it impractical to comply with all of the minimum requirements of these regulations, the licensed pesticide application business will not be in violation of the termite regulations providing the unusual condition has been explained in writing to the person purchasing the service and that the parts of the structure being treated which are not involved in the unusual condition are treated according to these minimum requirements.

8.2 Wood-Destroying Beetle Treatments.

8.2.A When the treatments of wood-destroying beetles is required to facilitate the immediate closing in the sale and transfer of real estate or is required in the protection of log homes, the licensed pesticide application business will not be in violation for treatments not made in accordance with Section 7.1 and 7.2 of these regulations.

8.2.B When fumigation is required to facilitate the immediate closing in the sale or transfer of real estate and the licensed pesticide application business cannot provide at least 48 hours prior notice of treatment, he will not be in violation of Section 7.3.B of these regulations, provided circumstances of such exception is available to the commissioner.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 345-4000  
Corporations: 342-8000



## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

SHEREE COHEN  
Special Assistant

(Plus all the volunteer  
help we can get)

January 14, 1991

#### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Agriculture

RULE: New Rule, Series 12C; Wood Destroying Insect Treatment Standards

DATE FILED AS AN EMERGENCY RULE: December 20, 1990

DECISION NO. 1-91

Following review under WV Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

  
\_\_\_\_\_  
KEN HECHLER  
Secretary of State

FILED  
1991 JAN 23 PM 2:53  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 345-4000  
Corporations: 342-8000



WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

SHEREE COHEN  
Special Assistant

(Plus all the volunteer  
help we can get)

## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Charleston 25305

#### DECISION                      EMERGENCY RULE DECISION (ERD 1-91)

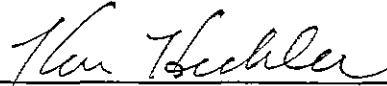
AGENCY: Department of Agriculture  
RULE: New Rule, Series 12C, Wood Destroying Insect Treatment Standards

FILED AS AN EMERGENCY RULE: December 20, 1990

- par. 1 The Department of Agriculture (Department) has filed the above new rule as an emergency.
- par. 2 West Virginia Code §29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Department filed this emergency rule with supporting documents with the Secretary of State on December 20, 1990 and with the LRMRC on December 20, 1990.

- par. 7 It is the determination of the Secretary of State that the Department has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- WV Code §19-16A-4(6) reads:  
*(6) Promulgate rules pursuant to §29A-1-1 et seq. of this code.*
- par. 9 It is the determination of the Secretary of State that the Department has not exceeded its statutory authority in promulgating this emergency rule.
- par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:  
*(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*
- par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.
- par. 12 The facts and circumstances as presented by the Department are as follows:  
  
This rule protects the public safety and welfare by regulating the application of pesticides to termites and other wood destroying insects. This rule is required to protect the safety of the groundwater, humans and animals in the area of the treatment. There are currently no regulations in effect due to repeal of WV Code §19-16B.
- par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in 29A-3-15(g) . . . "immediate preservation of public peace, health, safety or welfare" and "prevent substantial harm to public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 1-91 or ERD 1-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Department of Agriculture, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER  
SECRETARY OF STATE

Entered \_\_\_\_\_

FILED

1991 JAN 23 PM 2:53

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE