

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY WV Code 19-16A

AMENDMENT TO AN EXISTING RULE: YES NO

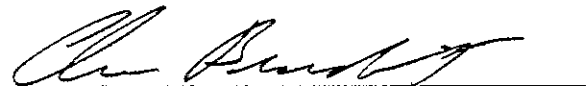
IF YES, SERIES NUMBER OF RULE BEING AMENDED: XIIC

TITLE OF RULE BEING AMENDED: Wood Destroying Insect Treatment
Standards (repeal and replace)

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

TITLE OF RULE BEING PROPOSED: _____

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



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1991 JUN -4 PM 3:10

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SUMMARY OF LEGISLATIVE RULE 61 - 12C

This rule establishes 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.

STATEMENT OF CIRCUMSTANCE

The passage of the 1990 Pesticide Control Act repealed the earlier Pesticide and Application Act, thereby rendering ineffective all regulations in place. This rule reestablishes the prior minimum standards for termite treatments. The rule further provides additional protection for groundwater and protection for consumers who are approached for unsolicited treatments of wood destroying beetles.

DATE: JUNE 4, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: AGRICULTURE, WV DEPARTMENT OF / ROBERT E FRAME DIRECTOR

LEGISLATIVE RULE TITLE: WOOD DESTROYING INSECT TREATMENT STANDARDS

1. Authorizing statute(s) citation §19-16A

2. a. Date filed in State Register with Notice of Hearing:

12-20-90

b. What other notice, including advertising, did you give of the hearing?

NONE OTHER

c. Date of hearing(s): JANUARY 31, 1991

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

Attached x No comments received

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

6-4-91

f. Name and phone number(s) of agency person(s) to contact for additional information:

ROBERT E FRAME 348-2209

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

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

b. Date of hearing: _____

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

d. Attach findings and determinations and reasons:

Attached _____

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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 Rules 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

2.2 Agreement means any written or verbal contract, accepted proposal, work order, guarantee, warranty, or combination of these.

2.3 Basement means the floor below the principle floor and may be wholly or partially below grade and may be earthen or covered.

2.4 Crawl space means an area under a structure between the wood portion above and the soil below, which cannot be considered as a floor.

2.5 Existing structure means any building or part thereof, whether vacant or occupied, in all stages of construction.

2.6 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.

2.7 Inside treatment 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.

2.8 Outside treatment 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.

2.9 New construction means any building or part thereof which is under construction and has not yet been occupied.

2.10 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.

2.11 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.

2.12 Termiticide means those pesticides that are approved by the United States Environmental Protection Agency for the control of termites.

2.13 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.

2.14 Trenching means the removal of the soil in contact with foundation, pillar, pier, chimney, etc.

2.15 Unit masonry foundation means foundation construction using concrete, cinder, or other blocks with voids, hollow tile blocks, brick with space between tiers, etc.

2.16 Use dilution 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 on the label that is on file with the commissioner.

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 the location of the structure) 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 an air compressor to pressurize holding tanks is prohibited.

§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 must 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 label that is on file with the commissioner 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.

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 directions for use on the pesticide label on file with the commissioner. 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 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 pesticide 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. 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.

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 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 shall 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 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. 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. 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 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.

4.1.F Crawl Space Construction - Inside Treatment

4.1.F.a Treatments shall be made according to the direction on the label for that pesticide being used 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 pesticide 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.

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 before or during construction (pre-treat) 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 label of the pesticide being used for termite control.

5.2 Any pre-treatment for termite control that does not meet these minimum standards shall be referred to as PARTIAL-TREATMENT in any written or verbal agreements whether or not a guarantee for 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 from the property owner 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 commissioner. 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 commissioner of the location at least 48 hours prior to the anticipated time of treatment.

§61-12C-8. Exceptions

8.1 When a licensed pesticide application business in the category of structural pest control is doing wood destroying insect 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 rules providing that the specifications under which he is working are available to the Commissioner and that the application does not conflict with the label of the pesticide being used for wood destroying insect control.

8.2 When any unusual structural or physical conditions render it impractical to comply with all of the minimum requirements of these rules, the licensed pesticide application business will not be in violation of the termite rules 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.

8.3 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 rules.

8.4 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 rules, provided circumstances of such exception is available to the commissioner.



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

State Capitol
Charleston, WV 25305

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1991 JUN -4 PM 3:10

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Cleve Benedict
Commissioner

MEMORANDUM

TO: The Record

FROM: Robert E. Frame, Pesticide Director *pest.*

SUBJECT: Public Hearing and comments received
regarding Wood Destroying Insect
Treatment Standards, Regulation 61-12C
filed December 20, 1990

DATE: April 3, 1991

Regulations establishing Wood Destroying Insect Treatment Standards were drafted and filed on December 20, 1990, after seeking consultation with the Pest Control Operation Association of West Virginia (PCOA). A public hearing was scheduled for 10:00 a.m. on January 31, 1991 to receive additional comments. Prior to the public hearing a copy of the regulations and a general notice was mailed to all 118 pest control companies licensed to perform pesticide treatment for wood destroying insects. The notice explained the regulation, detailing changes and additions from prior regulations.

Prior to the hearing a request was made to meet with a delegation of the PCOA. I met on January 28, 1991 with Mr. Dexter Owsley, PCOA Secretary/Treasurer, Mr. Will Cheve, PCOA Vice-President and Mr. Cecil Taylor, owner of Bruce Terminix in Charleston. Their questions and answers were with Sections 6.2 and 8.1 of the regulations. In particular, where the applicator was to seek the required information concerning well construction and the inclusion of beetle treatments in 8.1.A. A discussion was held concerning 8.1.B to allow beetle treatments the same exemption as termite treatments. However, 8.1.B relates to the minimum treatment specification for termites and no treatment specifications exist for beetle treatments. As such, the concern was dropped.

On January 31, 1991 the hearing was convened at 10:00 a.m. in the J. T. Johnson Conference Room of Building 2, Guthrie Agriculture Center. At the beginning of the hearing three people were present. Mr. Cecil Taylor of Bruce Terminix, Mr. Richard Whitman of Whitman Exterminating and Mr. Dexter Owsley representing the PCOA. Only Mr. Owsley wished to speak to the regulations. Mr Owsley's comments were as reported in the meeting of January 28, 1991.

Following Mr. Owsley's comments, we waited to see if anyone else would appear. At approximately 10:15 Mr. Roger McKinney of General Exterminating and Mr. Clyde Ervin of Allied Exterminating came to the hearing. Both wished to address the regulations in regards to Section 3.3.D publishing the use of pressurized holding tanks for termiticide chemicals.

After Mr. McKinney and Mr. Ervin's comments were received regarding the regulations, the hearing was adjourned. Following adjournment, a general discussion was held with all parties present to answer questions about these regulations and other aspects of the pesticide regulatory program.

After consideration of all comments and discussion regarding the regulations, two changes were incorporated into the regulations. They are in Section 6.2 and Section 8. In Section 6.2 the words "from the property owner" were added in line 6 following "business must obtain". There is no central repository for well information and the property owner is the most reliable source available.

Section 8 Exemptions was renumbered to read 8.1, 8.2, 8.3, and 8.4. Section 8.1 was changed to allow exemption from various in bid specification for both termite and beetle treatments. This was done by substituting the words "wood destroying insect" for the word "termite" in lines 2 and 9.

No change was made for the prohibition of pressurize holding tanks in Section 3.3. The industry standard for termite control is the use of a pump to pull chemical from a holding tank. The only people in the entire pesticide application industry utilizing pressurized chemical tanks on vehicles are a small number of termite applicators. Mr. McKinney and Mr. Ervin were the only two businesses of the 118 notified that voiced an objection to this Section of the regulation.

This regulation does not prohibit them from using steel tanks as they desire. The only change needed is the substitution of a pump for an air compressor and minimal pumping alterations. Otherwise, they can use all of their existing tanks, hoses, etc. During the discussion following the reviewed comments, they were asked if a longer implementation period would be of benefit to them. They responded their objection was to a change and not the length of the implementation period. As such, the decision was to let Section 3.3.D stand as is with no change.

The transcript of the hearing, the single letter reviewed by the Pesticide Division regarding the regulations and the notice mailed to all affected businesses are attached.



PEST CONTROL OPERATORS ASSOCIATION
OF
WEST VIRGINIA



DEXTER OWSLEY, Secretary-Treasurer

P. O. Box 9445, South Charleston, W. Va. 25309

Dear Bob;

Thank you for meeting with us on Monday, January 28th to discuss the pending termite and beetle regulations.

In our meeting, on behalf of the members of the West Virginia Pest Control Operators Association, we proposed the following amendments to your proposed regulations:

1. Item 6.2 on page 8, line 6, insert the words, "from the property owner", following "Business must."
2. Item 8.1 on page 11, line 2, change the wording as follows, "pest control is doing wood destroying insect control according to specifications..."
Change line 8 to, "being used for wood destroying insect control."
3. Item 8.1 B., line 4, change "the termite" to read "these".

As we expressed to you on the first item, including the words, "from the property owner" will clear up to what extent the pest control operator must pursue obtaining information about wells. Items two and three would combine the "exceptions" granted for termite to include the same "exceptions" for the beetle regulations. We felt this was fair to to the operators.

Bob, you seemed to agree with our proposed changes, and for this we are grateful. We look forward to working in this same cooperative way with you on the remaining regulation proposals.

Sincerely yours,


Dexter Owsley

Transcript of Public Hearing, January 31, 1991
Wood Destroying Insect Treatment Standards

Barbara Smith: Thank you all for coming in. The hearing today is to consider comments on the regulations for wood destroying treatment standards -- Regulation 61-12C. This is January 31, 1991, 10:00 a.m.

Notice of the hearing was filed at the Secretary of State's Office 12-20-90 and published volume 7, issue 53. This rule is to establish minimum standards for the treatment of termites and wood destroying beetles, providing for the protection of private water wells and ground water by requiring the gathering of information necessary to evaluate proper termite treatment techniques. The types of application equipment are specified to eliminate antiquated equipment and the regulations provide for protection of the consumer and the environment. My name is Barbara Smith. I am the Director of Compliance and Bob Frame is here, he is the Director of the Pesticide Division. After this hearing a transcript of this hearing will be prepared and all written and oral comments, that have been received on this issue will be reviewed. If the Commissioner agrees to amend the rule, subsequent to the hearing then this amendment will be made before we refile with the Secretary of State. The proposal as amended or originally proposed, along with a summary of all the comments received is filed again with the Secretary of State and the Legislative rule making committee. This committee receives all the documents, holds public hearings and recommends to Legislature if the rule should be passed or not. All comments during the hearing will be limited to this rule. There will be no debate on the comments. If you have written comments, you don't need to read them to be placed in the public record.

Dexter, you are the only one that said he would like to speak. Would you like to make a comment, please?

Dexter: Yes, I would. I am Dexter Owsley, House Doctor Exterminating Company and Secretary/Treasurer of the Pest Control Operators Association of West Virginia. In a letter we sent to Bob Frame, we had two items that we would like to have the words changed. I guess -- amendment 2 item 6.2 on page 8 of line 6 we would like to insert the words "from the property owner" following business must. That would solve that problem on that one particular item for us. The second item is 8.1 on page 11, line 2, change the word as follows, "pest control is doing wood destroying insect control according to specifications...". That changes line 8 to, "being used for wood destroying insect control." That is all my comments and I think that we would be satisfied with that, if we could have those amendments changed.

Barbara Smith: Is there anyone who wished to speak to the issue? If not we will adjourn the hearing.

This hearing is reconvened and two other gentlemen are here to make comments, the rules of the hearing have been explained to them. Go ahead.

Roger McKinney: Yes, I am Roger McKinney with the General Exterminating Company in Fayetteville. My purpose in being here is on the amendment ----- on the use of --- the pressurized termite regs --- treatment regs. I feel that this regulation would really put a burden on some of the smaller companies in the state, my company in particular, I use the pressurized type equipment and I can't understand why that the pressurized equipment wouldn't be sufficient to apply the termiticide. Because if it was applied according to the state regulations and the label, which I understand is the law -- I can't understand why it wouldn't be the same as applying it with a pump or a pull type apparatus to apply the termiticide. We have just built new equipment, particularly one brand new rig, and I think in my estimation, that the equipment I am using is as good or equal to anyone else's in the State and that is my purpose in being here is to find out why that this type of compressor outfit would - what the negative side of it is. I just believe that the pressure type equipment is as good as the pump type equipment -- I have used the pump type equipment before and I really think, I really, my feeling is --- I just don't like it. I like the pressurized equipment much better and I feel it's a much safer rig too. I can understand the -- having a lot of pressure on the termiticide in the tank. I can understand where that can be a hazard, if you would have a hose to break or piece of pipe to break or something like that. But I also feel like that the other type of equipment could be also as dangerous. Because even if you do have a hose that would break, the termiticide is still being pumped out of the tank -- or pulled out of the tank at the same rate. I can't see where that would be a problem, because pressure would continue to push the termiticide out of the tank if you have a hose break or if it breaks the pump is still going to pull it out of the tank at the same rate. And another thing. We use all steel tanks and I feel that if one of our vehicles was in an accident that the steel tanks we use would be much safer in an accident than a - than a - say a tank used in a fiberglass or an outfit using a fiberglass tank. Because if you would have a wreck or turn a truck over or something you're going to lose your termiticide out a plastic tank. It's much more susceptible to a puncture. I feel a steel tank would stand up much better in an accident. I feel that the pressurized equipment is as good or in my opinion, I like it better that I do centrifugal rigs.

Barbara Smith: You have raised some good questions for discussion and I am sure that, after the hearing, the gentlemen here will be happy to discuss that with you.

Clyde Ervin: My name is Clyde Ervin and I am with Allied Exterminating Company in Oak Hill. I am of the same opinion as Mr. McKinney, and I have 10 trucks equipped with compressor type rigs. Several of my trucks in over a period of 35 years have been in accidents. We have never had a truck that was wrecked that had any chemical leak out onto the road. The equipment did get damaged, but not to the point that the chemical leaks in the road. And as far as the mixing in those tanks, if you got a 60 gallon tank with 25, 30 or 40 gallon of chemical in that tank and the truck is constantly moving that chemical is going to stay mixed up. Your using hose with 400 lbs. of pressure 250 lbs.

working pressure, you got 80 lbs. or 60 lbs. on a pressurized tank. There is very little chance of that hose busting. I have never had a hose to bust in 35 years. And I do hundred of jobs a year in two states. We have never had that to happen. I've got some centrifugal rigs. I don't particularly like them, because they leaked. I've never seen one that didn't leak. I am of the same opinion of Mr. McKinney in that if a hose did break you would get that continuous spray, if you did not have a man at the truck to shut it off. The same would apply to pressure -- pressure fluid.

McKinney: Can I make another comment?

Smith: Yes.

McKinney: This is Pat McKinney of General Exterminating Company. On the mixing of the chemical in the tanks, I can understand how you would get a better mixture with a centrifugal rig of having a reentry hose to it. But also on some of our equipment, we have the ability to put another transfer hose on to our truck which if we had a mix we could just continuously pump the termiticide back right back into the same tank again getting the same effect as you would with a centrifugal rig.

Ervin: I also have some more comments.

Smith: This is Clyde?

Ervin: This is Clyde Ervin of Allied Exterminating. The rigs I have on my truck are \$1000 to \$1500 apiece. I consider them to be some of the best equipment in the state. I have used them for 35 years. That type of equipment. I can put a rig on a truck for \$250, but it's not the same quality equipment that I use. But if I have to abandon the equipment I got. It's going to cost me a considerable amount of money to make these changes to meet these regulations. When really it is not necessary. Now if I'd had trouble out of this equipment over the years, I could understand switching them. But if you use something for that length of time and have no trouble out of it I see no sense in changing it.

Smith: Is there anyone else that wants to make a statement for the record?

Ervin: And I would say that if you purchased new equipment -- if this became law. It should become law that if you replaced equipment on new vehicles or done any replacement in the future then go to that type of equipment. But to abandon what you already got I don't feel that's fair. That's all I have to say.

Owsley: I'd like to make a comment at this time.

Smith: Yes sir.

Owsley: I'm Dexter Owsley with House Doctor Exterminating Company and I have pressurized tanks also. But as far as changing to the other system, I have no problem with it, but I do

not have the number of units. I've got one unit. So I don't have the number of units involved in the economical situation to my company. That's all I would like to say -- is that I do use that system and it works well for me. But I don't mind changing.

There were no more comments to the regulations following Mr. Owsley. The official record was closed and discussion was held by several parties concerning the pros and cons of various type of equipment.