

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

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NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY 19-16A

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: XII C

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

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

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



TITLE 61
DEPARTMENT OF AGRICULTURE
WEST VIRGINIA LEGISLATIVE RULE
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-4

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

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

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

2.4 Existing structure means any building or part thereof, whether vacant or occupied.

2.5 Footer or footing means the base or lower course upon which a foundation, pillar, pier, chimney, or other structure rests which may be below the surface of the ground or on the ground.

2.6 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 application to any area inside a structure where a pesticide is applied through or under the slab.

2.7 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.

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

2.9 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 and may be used in conjunction with a shallow trench. Rodding may be the creation of holes made with a bar or rod in the soil.

2.10 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.

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

2.12 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.

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

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

2.15 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. General Requirements for Termite Treatments 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 prior to treatment 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 to be 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 to be applied;

3.2.a.E the pesticide(s) to be 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 to be 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 manner to prevent leaks or spills.

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 of the termiticide shall be indicated by pressure gauges, flow meters or other means of equal measurement capable of demonstration by the applicator.

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 of Existing Structures in West Virginia.

4.1 Licensed pesticide application businesses engaged in termite control on existing structures shall, as a minimum standard 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 required in sub-paragraph 4.1.a.C of this rule. Piers, pillars, etc., shall be treated as masonry foundations and any voids in unit masonry piers should be treated as required in sub-paragraph 4.1.a.C. of this rule.

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 concrete 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. by trenching or rodding 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 required in paragraph 4.1.b of this rule. The soil under patios, driveways, walks, and other places where they abut the foundation shall be treated as structures with basements as required in paragraph 4.1.b of this rule. 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 should 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 as required in paragraph 4.1.b of this rule.

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 the porch or entrance platform is above grade and filled, the treatment shall be as required in structures with basements as required in paragraph 4.1.a of this rule.

4.2 Partial Treatment.

4.2.a The procedures detailed in the paragraphs 4.1.a and 4.1.b of this rule - Structures with Basements; paragraphs 4.1.c and 4.1.d - Slab-on-Ground Construction; and paragraphs 4.1.e and 4.1.f of this rule - 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. In addition, the areas where a slab is to be poured shall be 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 licensed pesticide application business must decide whether or not a treatment can be made to a property or portions of a property containing wells.

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 of 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 the overall depth of the well;

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

6.2.b.C the presence or absence of grouting around the well casing;

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

6.2.b.E the 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 the overall depth of the well;

6.2.c.B the depth to the surface of water in the well;

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

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

6.3 Evaluation of the information gathered in paragraphs 6.2.a, 6.2.b and 6.2.c of this rule may reveal situations where conventional treatments detailed in Sections 4 and 5 of this rule 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. The pesticide applicator may chose to:

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 used, the property owner is to be informed as in sub-sections 4.2 and 8.2 of this rule.

§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. Requests for prior approval must specify the organism involved.

7.2 Determining Active Infestations.

7.2.a Anobiidae - the following criteria shall be used in determining the activity of anobiid powder post beetles in sub-structures, attached garages, outbuildings and stored lumber.

7.2.a.A The presence of frass the color of fresh cut wood is 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 is not 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 representative of the licensed pesticide application business should check the upper living areas for infestation and the property should be checked during the optimum time for frass production which is May 15 to September 1. Anobiidae beetles usually infest products more than 10 years old 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:

7.2.a.D.(a) timber beetles and pinworms produce no frass in their tunnels, tunnel walls are stained darker than surrounding wood and there is no activity in products more than 5 years old.

7.2.a.D.(b) bark beetles or bostrichids in softwoods produce holes fewer in number in or near bark, with larval tunnels beneath bark scoring the bark and the wood with some of the frass being the same color as the inner bark.

7.2.b Determining the activity of powder post beetles (Lyctidae) infestations is not required if the infested products are less than 10 years old. Otherwise, fresh frass and/or live larva or pupae in wood is 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 is evidence of an active infestation of the old house borer.

7.2.c.B The presence of live larvae or pupae in the softwoods listed in sub-paragraph 7.2.c.A of this rule is evidence of an active old house borer infestation, if the frass is sawdust-like.

7.2.c.C Identification aids:

7.2.c.C.(a) other long-horned borers, flat-headed borers, Siricid woodwasps, and marine borers sometimes damage softwood used in building construction. These long-horned borers produce loosely packed fibrous tobacco-like frass,

7.2.c.C.(b) the flat headed borers make tunnels three times wider than high, whereas old house borer tunnels are less than three times wider than high,

7.2.c.C.(c) Siricids woodwasps make perfectly circular exit holes, and

7.2.c.C.(d) 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, pesticides 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 licensed pesticide application business shall notify the commissioner of the location at least 48 hours prior to the anticipated time of treatment.

§61-12C-8. Exceptions to this Rule

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 the minimum requirements set forth in this rule, the pesticide application business is not in violation of this rule provided 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 this rule, the pesticide application business is not in violation of the provisions of this rule provided 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 the minimum requirements of this rule.

8.3 When the treatment 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 pesticide application business is not in violation for treatments not made in accordance with sub-sections 7.1 and 7.2 of this rule.

8.4 When fumigation is required to facilitate the immediate closing in the sale or transfer of real estate and the pesticide application business cannot provide at least 48 hours prior notice of treatment, the pesticide application business is not in violation of paragraph 7.3.b of this rule, provided the circumstances which did not allow prior notification are available to the commissioner.