

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: Aerial Application of Herbicides to Rights of Way 1991 JUN -4 PM 3:05

Type of Rule: X Legislative Interpretive Procedural
OFFICE OF WEST VIRGINIA SECRETARY GENERAL

Agency Department of Agriculture Address Capitol Building Room 28
Charleston, WV 25305

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:

No increase or decrease is expected as these regulations replace similar repealed regulations promulgated under the old state pesticide law. Programs are on going.

3. Objectives of these rules:

To reestablish regulations governing the aerial application of herbicides to right-of-way. The regulations establish prior notification and minimum spray distances.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE - These regulations are a continuation of prior existing activities.

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

NONE - These regulations are a continuation of prior existing activities.

C. Economic Impact on Citizens/Public at Large.

NONE - These regulations are a continuation of prior existing activities.

Date: May 30, 1991

Signature of Agency Head or Authorized Representative

Alan Benedict

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1991 JUN -4 PM 3:05

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SUMMARY OF LEGISLATIVE RULE 11-12D

This rule establishes procedures for prior notification to citizens for the aerial application of herbicides to rights-of-way. Minimum spray distances are specified in areas near streams, ponds, crops, structure and roads. Spraying restrictions are established for certain climatic conditions such as temperature, wind, fog and rain.

STATEMENT OF CIRCUMSTANCE

The passage of the 1990 Pesticide Control Act repealed the earlier Pesticide Use and Application Act, thereby rendering ineffective all regulations in place. This rule reestablishes the prior regulation governing the aerial application of herbicides to rights-of-way with minor changes.

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1991 JUN -4 PM 3:05

WEST VIRGINIA LEGISLATIVE RULE
WEST VIRGINIA DEPARTMENT OF AGRICULTURE
CHAPTER 19 ARTICLE 16A
SERIES XIID

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Title: Aerial Application of Herbicides to Rights-of-Way

\$61-12D-1. General

1.1 Scope - This legislative rule establishes the minimum standards governing the aerial application of herbicides to right-of-ways.

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 West Virginia Department of Agriculture Administrative Regulations Series XIID effective September 1, 1981.

\$61-12D-2. Prior Notification

2.1 Persons intending to apply herbicides aerially on any right-of-way, except on right-of-ways specifically excepted by laws held by the Attorney General of West Virginia to be preemptory, shall provide notification in writing, to the commissioner of the West Virginia Department of Agriculture, to all persons in the spray area on the hypersensitivity registry maintained by the West Virginia Department of Agriculture and to all property owners, tenants or other persons in control of land adjacent to the right-of-ways, who have made a written request for special advance notification, at least 90 days and no more than 120 days prior to

the anticipated beginning of the aerial spray program. Written request for special advance notification shall include the name, mailing address, property location and telephone number, if any, of the person making the request.

2.1.A The notice shall include, but is not limited to:

- 2.1.A.a. description of the area(s) to be aerial sprayed;
- 2.1.A.b. a toll-free telephone number of a utility office to which people can call to alert the utility to sensitive areas - including, but not limited to springs, wells, streams, lakes, ponds, orchards, crop areas, gardens, pastures, meadows, year around dwellings, public recreation areas, and Christmas tree plantations. A caller should, whenever, possible, reference the location they are calling about to pole or tower numbers on the right-of-ways;
- 2.1.A.c. an address to which the information detailed in 2.1.A.b can be mailed or delivered in lieu of telephoning;
- 2.1.A.d. information describing how a land owner or tenant can enter into a right-of-way maintenance agreement with the utility;
- 2.1.A.e. the location of a county or area office where individuals can inspect maps showing the location of right-of-ways that are included in the proposed spray program;
- 2.1.A.f. the herbicides to be used in the project, and

Dept. of Agriculture
Leg. Rule, §19-16A
Series XIID, Sec. 2

2.1.A.g. the procedures to be followed in lodging a complaint with either the utility or with the West Virginia Department of Agriculture.

2.1.B The utility shall, on a weekly basis, provide the contemplated aerial spray program for the following week to the commissioner of the West Virginia Department of Agriculture, to a radio or TV station serving the area and to a newspaper of general circulation within each county in which the aerial application of herbicides is planned. The initial notice each year shall be published on each of two weeks immediately preceding the proposed beginning of the aerial herbicide spraying program.

§61-12D-3 Procedural Prohibitions and Restrictions.

3.1 Aerial application of herbicides shall not be made when:

3.1.A the wind velocity in the local area exceeds five (5) miles per hour;

3.1.B when the spray may come into contact with fog banks;

3.1.C during periods of temperature inversion and air stagnation;

3.1.D when the air temperature exceeds 90 degrees Fahrenheit - except for the application of low-volatile amines and chemicals whose volatility is known not to be a problem;

3.1.E when it is raining or reasonably apparent that it will rain within two hours, or;

3.1.F when the distance between transmission line(s) at maximum design sag and the ground is greater than 100 feet.

3.2 Before herbicides are applied, the applicator shall fly a reconnaissance flight over the area to be sprayed and shall not

apply herbicides if humans or domestic animals are visible in areas subject to the intended application of herbicides.

3.3 Herbicides shall not be applied to any body of water during aerial spraying of right-of-ways to control woody vegetation.

§61-12D-4. Minimum Spray Distances

4.1 Herbicides shall not be applied within the distance specified in the charts. The following minimum spray distances shall be adhered to unless greater distances are specified on the label of the pesticide.

4.1.A Formulations Containing Picloram or Dicamba herbicides:

ITEM	
Ponds	100 feet
Year Around Flowing Water (including wells, springs, and other water areas used for domestic purposes)	200 feet
Cultivated Land, Except Tobacco	100 feet
Tobacco	500 feet
Christmas Tree Plantations	100 feet
Pasture Lands	100 feet
Public Recreation Areas	100 feet
Residential Structures (used as year-around homes)	150 feet
Barns and Other Outbuildings Where People or Livestock Might Ordinarily Be Expected	150 feet
County, State, and Federal, Graveled or Paved Road Crossovers and Lines paralleling such Roads	50 feet

4.1.B Other Herbicide Formulations Not Listed in 4.1.A Above.

Dept. of Agriculture
Leg. Rule, §19-16A
Series XIID, Sec. 4

ITEM

Ponds	100 feet
Year Around Flowing Water (including wells, springs, and other water areas used for domestic purposes)	200 feet
Cultivated Land, except Tobacco	100 feet
Tobacco	200 feet
Pasture Lands	100 feet
Christmas Tree Plantations	100 feet
Residential Structures (used as year around homes)	150 feet
Barns & Other Outbuildings Where People or Livestock Might Ordinarily Be Expected	150 feet
Public Recreation Areas	150 feet
County, State, and Federal, Graveled or Paved Road Crossovers and lines Parallelling such Roads	50 feet

4.2. Application Spray System.

The buffer zone distance listed in 4.1.A and 4.1.B shall apply to applications utilizing drift control system such as a microfoil spray boom or its equivalent. Persons using non-drift control technology in the aerial application of herbicides shall notify the commissioner of the West Virginia Department of Agriculture in writing and will be required to specify minimum spray distances at least double those listed in 4.1.A and 4.1.B .

4.3 Measured Tolerance.

A tolerance of ten (10) percent in the buffer zone distances will be used to assess acceptability with this Section.

Dept. of Agriculture
Leg. Rule, §19-16A
Series XIID, Sec. 5

§61-12D-5. Company Montiroing Herbicide Applications to their
Rights-of-Way.

5.1.A Utility personnel shall inspect their right-of-ways which have been sprayed with herbicides to insure that applicable standards have been adhered to and shall keep logs of such inspections on files for no less than two (2) years.

WEST VIRGINIA DEPARTMENT OF AGRICULTURE
WEST VIRGINIA PESTICIDE USE & APPLICATION
ACT OF 1975

ADMINISTRATIVE REGULATIONS

CHAPTER 19-2
Series XIII~~A~~ (Supplement)

SUBJECT: Regulations to Govern the Aerial Application of Herbicides
To Right-of-Ways.

AUTHORITY: These regulations are promulgated under the authority of
Chapter 19, Article 16-B, Section 4a.

EFFECTIVE DATE: September 1, 1981.

SECTION 29. PRIOR NOTIFICATION

A. Persons intending to apply herbicides aerially on any right-of way, except on right-of ways specifically excepted by laws held by the Attorney General of West Virginia to be preemptory, shall provide notification in writing, to the Pesticide Section of the West Virginia Department of Agriculture, to radio and television stations within the area, to at least one newspaper of general circulation within the area, and to all property owners, tenants or other persons in control of land adjacent to the right-of-ways, who have made a written request for special advance notification, at least 90 days and no more than 120 days prior to the anticipated beginning of the aerial spray program. (Written request for special advance notification shall include the name, mailing address, property location and telephone number, if any, of the person making the request.

1. The notice shall include, but is not limited to:

- a. description of the area(s) to be aerially sprayed;
- b. a toll-free telephone number of a utility office to which people can call to alert the utility to sensitive areas - including, but not limited to springs, wells, streams, lakes, ponds, orchards, crop areas, gardens, pastures, meadows, year around dwellings, public recreation areas, and Christmas tree plantations. A caller should, whenever possible, reference the location they are calling about to pole or tower numbers on the right-of-ways;
- c. an address to which the information detailed in A-1-b can be mailed or delivered on lieu of telephoning;
- d. information describing how a land owner or tenant can enter into a right-of-way maintenance agreement with the utility;

- e. the location of a county or area office where individuals can inspect maps showing the location of right-of-ways that are included in the proposed spray program;
 - f. the herbicides to be used in the project, and
 - g. the procedures to be followed in lodging a complaint with either the utility or with the West Virginia Department of Agriculture.
- B. The utility shall each week provide the contemplated aerial spray program for the following week to the Pesticide Section of the Plant Pest Control Division of the West Virginia Department of Agriculture, to a radio or TV station serving the area and to a newspaper of general circulation within each county in which the aerial application of herbicides is planned. The initial notice each year shall be published on each of two weeks immediately proceeding the proposed beginning of the aerial herbicide spraying program.

SECTION 30. PROCEDURAL PROHIBITIONS AND RESTRICTIONS.

- A. Aerial application of herbicides shall not be made when:
- 1. the wind velocity in the local area exceeds five (5) miles per hour;
 - 2. when the spray may come into contact with fog banks;
 - 3. during periods of temperature inversion and air stagnation;
 - 4. when the air temperature exceeds 90° Fahrenheit - except for low-volatile amines and chemicals whose volatility is known not to be a problem;
 - 5. when it is raining or reasonably apparent that it will rain within two hours, and;
 - 6. when the distance between the transmission line(s) at maximum design sag and the ground is greater than 100 feet.
- B. Before herbicides are applied, the applicator shall fly a reconnaissance flight over the area to be sprayed and shall not apply herbicides if humans or domestic animals are visible in areas subject to spraying.
- C. Herbicides shall not be applied to any body of water during aerial spraying of right-of-ways to control woody vegetation.

SECTION 31. *THE FOLLOWING MINIMUM SPRAY DISTANCES SHALL BE ADHERED TO UNLESS GREATER DISTANCES ARE SPECIFIED ON THE SPRAY LABEL.

Sec. 31.

A. Formulation Containing Picloram & Dicamba

<u>ITEM</u>	<u>DRIFT CONTROL SYSTEM</u>	<u>STANDARD SYSTEM</u>
Ponds	100 feet	300 feet
Year Around Flowing Water (including wells, springs, and other water areas used for domestic purposes)	200 feet	300 feet
Cultivated Land, except Tobacco	100 feet	300 feet
Tobacco	500 feet	500 feet
Christmas Tree Plantations	100 feet	200 feet
Pasture Lands	100 feet	300 feet
Public Recreation Areas	100 feet	300 feet
Residential Structures (used as year around homes)	150 feet	300 feet
Barns and Other Outbuildings Where People or Livestock Might Ordinarily Be Expected	150 feet	300 feet
County, State, and Federal, Graveled or Paved Road Crossovers	50 feet	100 feet

B. Phenoxy & Other Herbicide Formulations Not Listed in A (Above)

<u>ITEM</u>	<u>DRIFT CONTROL SYSTEM</u>	<u>STANDARD SYSTEM</u>
Ponds	100 feet	200 feet
Year Around Flowing Water (including wells, springs, and other water areas used for domestic purposes)	200 feet	200 feet
Cultivated Land, except Tobacco	100 feet	200 feet
Tobacco	200 feet	300 feet
Pasture Lands	100 feet	200 feet
Christmas Tree Plantations	100 feet	200 feet
Residential Structures (used as year around homes)	150 feet	300 feet
Barns & Other Outbuildings Where People or Livestock Might Ordinarily Be Expected	150 feet	300 feet
Public Recreation Areas	150 feet	300 feet
County, State, and Federal, Graveled or Paved Road Crossovers	50 feet	100 feet

*A tolerance of ten(10) percent in the buffer zone distances will be used to assess acceptability with this Section.

SECTION 32. COMPANY MONITORING OF HERBICIDE APPLICATIONS TO THEIR RIGHT-OF-WAYS.

Utility personnel shall inspect their right-of-ways which have been sprayed with herbicides to insure that applicable standards have been adhered to and shall keep logs of such inspections on file for no less than two (2) years.