

TITLE 61  
LEGISLATIVE RULES  
DEPARTMENT OF AGRICULTURE

SERIES 12D  
REGULATIONS TO GOVERN THE AERIAL APPLICATION OF  
HERBICIDES TO RIGHT-OF-WAYS

**§61-12D-1. General.**

1.1. Scope. -- These legislative regulations, due to a request from those being regulated, are being filed to regulate aerial applications of herbicides to right-of-ways.

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

1.3. Filing Date. -- March 10, 1981

1.4. Effective Date. -- 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 Pesticide Section of the West Virginia Department of Agriculture, to radio and television stations within the area, to at least one (1) 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 ninety (90) days and no more than one hundred twenty (120) days prior to the anticipated beginning of the aerial spray program. (Written requests for special advance notification shall include the name, mailing address, property location and telephone number, if any, of the person making the request.)

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

2.1.1.1. Description of the area(s) to be aerially sprayed;

2.1.1.2. 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 round dwellings, public recreation areas and Christmas tree plantations. A caller should, whenever possible, reference the locations they are calling about to pole or tower numbers on the right-of-ways;

2.1.1.3. An address to which the information detailed in paragraph 2.1.1.2 above can be mailed or delivered in lieu of telephoning;

2.1.1.4. Information describing how a land owner or tenant can enter into a right-of-way maintenance agreement with the utility;

2.1.1.5. The location of a county or area office where individuals can inspect maps showing the location or right-of-ways that are included in the proposed spray program;

2.1.1.6. The herbicides to be used in the project; and

2.1.1.7. The procedures to be followed in lodging a complaint with either the utility or with the West Virginia Department of Agriculture.

2.2. 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 (2) 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:

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

3.1.2. When the spray may come into contact with fog banks;

3.1.3. During periods of temperature inversion and air stagnation;

3.1.4. When the air temperature exceeds ninety degrees (90<sup>0</sup>) Fahrenheit - except for low-volatile amines and chemicals whose volatility is known not to be a problem;

3.1.5. When it is raining or reasonably apparent that it will rain within two (2) hours; and

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

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.

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. The following minimum spray distances shall be adhered to unless greater distances are specified on the spray label.<sup>1</sup>**

4.1. Formulations containing picloram and dicamba: (See Table 61-12DA)

4.2. Phenoxy and Other Herbicide Formulations Not Listed in Section 4.1 above: (See Table 61-12DB)

<sup>1</sup>A tolerance of ten percent (10%) in the buffer zone distances will be used to assess acceptability with this section.

**§61-12D-5. Company monitoring of herbicide applications to their right-of-ways.**

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

**§61-12D-6. Revision of regulations.**

6.1. The Commissioner will convene a public hearing at one p.m. on November 10, 1981, to evaluate the effectiveness of these regulations and to consider suggested revisions.

TABLE 61-12DA

<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 round 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

TABLE 61-12DB

<u>ITEM</u>	<u>Drift Control System</u>	<u>Standard System</u>
Ponds	100 feet	200 feet
Year Round 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 and 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