



GUS R. DOUGLASS  
COMMISSIONER

STATE OF WEST VIRGINIA  
DEPARTMENT OF AGRICULTURE  
CHARLESTON 25305

WILLIAM H. GILLESPIE  
ADMINISTRATIVE ASSISTANT

March 13, 1981

**FILED IN THE OFFICE OF  
SECRETARY OF STATE OF  
WEST VIRGINIA**

**THIS DATE** 3/13/81

Honorable A. James Manchin  
Secretary of State  
Room W-157, Building #1  
Charleston, WV 25305

Dear Secretary Manchin:

On March 10, 1981, I filed regulations to regulate the aerial application of herbicides to right-of-ways with you. I filed them as emergency regulations to take effect immediately and also through the normal channel via your office and the Legislative Rule Making Review Committee.

I now find that the time constraints for prior notification are too tight for this current season as there is not 90 days left before June 1st. Consequently, I am amending, via this letter, the emergency regulations to read "no less than 60 and no more than 120 days before..."

With best regards, I am

Very truly yours,

Gus R. Douglass  
Agriculture Commissioner

GRD/G/d

SECY. OF STATE

81 MAR 13 P 2: 29

RECEIVED



STATE OF WEST VIRGINIA  
OFFICE OF THE SECRETARY OF STATE  
CHARLESTON 25305

FILED IN THE OFFICE OF  
SECRETARY OF STATE OF  
WEST VIRGINIA  
THIS DATE 3/10/81

A. JAMES MANCHIN  
SECRETARY OF STATE

STATE REGISTER FILING

I, Gus R. Douglass, Agriculture Commissioner,  
Title or Position

West Virginia Department of Agriculture  
Department or Division, hereby submit to record in

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations;
- rules and regulations; or
- other - specify ( ).

This filing pertains to

Chapter 19  
Article 16-b  
Series XIIa  
Sections 29 through 33  
Page No. \_\_\_\_\_

- proposed rules and regulations are required to go to Legislative Rule Making Committee; Dual filing - Emergency & regular. (see cover letter)
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

March 10, 1981  
Date Submitted

Gus R. Douglass  
Signature of Person Authorizing  
this Filing

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

ADMINISTRATIVE REGULATIONS

CHAPTER 19-2  
Series XIIIa (Supplement)

FILED IN THE OFFICE OF  
SECRETARY OF STATE OF  
WEST VIRGINIA  
THIS DATE 3/10/81

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

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

EFFECTIVE DATE: These regulations, due to a request from those being regulated,  
are being filed as emergency regulations to become effective  
upon filing. They are also being submitted to the Legislative  
Rule Making Review Committee for normal implementation.

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 locations 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 in 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 preceding 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.

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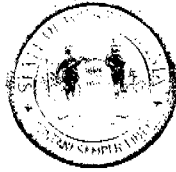
\*A tolerance of ten (10) percent in the buffer zone distances will be used to assess acceptability with this Section.

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.

SECTION 33. REVISION OF REGULATIONS.

The Commissioner will convene a public hearing at 1:00 P.M., on November 10, 1981, to evaluate the effectiveness of these regulations and to consider suggested revisions.



RECEIVED

81 MAR 10 P 1:23

GUS R. DOUGLASS  
COMMISSIONER

STATE OF WEST VIRGINIA  
DEPARTMENT OF AGRICULTURE  
CHARLESTON 25305

WILLIAM H. GILLESPIE  
ADMINISTRATIVE ASSISTANT

OFFICE  
SECY. OF STATE

March 9, 1981

Honorable A. James Manchin  
West Virginia Secretary of State  
Room W-157, Building #1  
Charleston, WV 25305

Dear Secretary Manchin:

I am enclosing two copies of Administrative Regulations concerning the West Virginia Pesticide Use & Application Act of 1975. These regulations are to govern the aerial application of herbicides to right-of-ways. Upon request by those to be regulated, I am filing them as emergency regulations to become effective upon filing. This is being done so that those to be regulated can take the regulations into account in preparing their new contracts which are presently being formulated.

I am also submitted the proper number of copies to the Legislative Rule Making Review Committee for normal implementation.

With best regards, I am

Very truly yours,

Gus R. Douglass  
Agriculture Commissioner

GRD/G/d  
Enc.

FILED IN THE OFFICE OF  
SECRETARY OF STATE OF  
WEST VIRGINIA  
THIS DATE 3/10/81



STATE OF WEST VIRGINIA  
DEPARTMENT OF AGRICULTURE  
CHARLESTON 25305

WILLIAM H. GILLESPIE  
ADMINISTRATIVE ASSISTANT

GUS R. DOUGLASS  
COMMISSIONER

March 9, 1981

Mr. Earl M. Vickers, Director  
Legislative Services  
Room E-132, Building #1  
Charleston, WV 25305

Dear Mr. Vickers:

I am enclosing 17 copies of Administrative Regulations to govern the aerial application of herbicides to right-of-ways. These regulations have been promulgated after a rather lengthy series of hearings. We first held informal hearings after which we drew up voluntary regulations. These voluntary regulations were followed throughout the 1980 season. After the season was over, we had another hearing in October to assess the value of the voluntary regulations. In general, the feeling was pretty good from those being regulated, but there were a few who did not see it that way.

Accordingly, we drew up a more precise set of regulations and announced a public hearing. After this public hearing, we modified the phraseology of the proposed regulations as per the input from the various individuals and organizations represented at the hearing. These regulations have been filed with the Secretary of State as emergency regulations so that the utilities can take them into account as they contract for this year's aerial spraying. This is done at their request. If, for some reason or other, the Legislative Rule Making Review Committee does not complete their work on the regulations by the end of the 90 day period, I will reaffirm them as emergency regulations.

With best regards, I am

Very truly yours,

A handwritten signature in cursive script, appearing to read "Gus R. Douglass".

Gus R. Douglass  
Agriculture Commissioner

GRD/G/d  
Enc.



STATE OF WEST VIRGINIA  
OFFICE OF THE SECRETARY OF STATE  
CHARLESTON 25305

A. JAMES MANCHIN  
SECRETARY OF STATE

STATE REGISTER FILING

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SECRETARY OF STATE OF  
WEST VIRGINIA  
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March 10, 1981  
Date Submitted  
Gus R. Douglass  
Signature of Person Authorizing  
this Filing

WEST VIRGINIA DEPARTMENT OF AGRICULTURE  
WEST VIRGINIA PESTICIDE USE & APPLICATION  
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ADMINISTRATIVE REGULATIONS

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SECTION 33. REVISION OF REGULATIONS.

The Commissioner will convene a public hearing at 1:00 P.M., on November 10, 1981, to evaluate the effectiveness of these regulations and to consider suggested revisions.



GUS R. DOUGLASS  
COMMISSIONER

STATE OF WEST VIRGINIA  
DEPARTMENT OF AGRICULTURE  
CHARLESTON 25305

August 26, 1981

Honorable A. James Manchin  
Secretary of State  
Room W-157, Building #1  
Charleston, WV 25305

Dear Secretary Manchin:

Several weeks ago, we filed emergency regulations to govern the Aerial Application of Herbicides to Right-of-ways by Utilities in West Virginia. At the same time, we filed the regulations with the Rule Making Review Committee of the West Virginia Legislature. The Legislative Rule Making Review Committee did not ask for additional information. Consequently, we would like for the Aerial Spray Regulations to become effective on September 1, 1981. At that time, we would like for them to supercede the same regulations which were filed in an emergency manner.

We announced a public hearing on January 9, 1981, to be convened on February 11, 1981. This hearing was held as scheduled. A copy of the release is attached.

If you need additional information, please let us know.

Sincerely,

Gus R. Douglass  
Agriculture Commissioner  
by

William H. Gillespie  
Assistant to Commissioner

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 8/26/81  
Administrative Law Division

WHG/rkd  
Enc.



GUS R. DOUGLASS  
COMMISSIONER

STATE OF WEST VIRGINIA  
DEPARTMENT OF AGRICULTURE  
CHARLESTON 25305

August 26, 1981

Honorable A. James Manchin  
Secretary of State  
Room W-157, Building #1  
Charleston, WV 25305

Dear Secretary Manchin:

Several weeks ago, we filed emergency regulations to govern the Aerial Application of Herbicides to Right-of-ways by Utilities in West Virginia. At the same time, we filed the regulations with the Rule Making Review Committee of the West Virginia Legislature. The Legislative Rule Making Review Committee did not ask for additional information. Consequently, we would like for the Aerial Spray Regulations to become effective on September 1, 1981. At that time, we would like for them to supercede the same regulations which were filed in an emergency manner.

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If you need additional information, please let us know.

Sincerely,

Gus R. Douglass  
Agriculture Commissioner  
by

William H. Gillespie  
Assistant to Commissioner

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 8/26/81  
Administrative Law Division

WHG/rkd  
Enc.



STATE OF WEST VIRGINIA  
DEPARTMENT OF AGRICULTURE  
CHARLESTON 25305

July 17, 1981

WILLIAM H. GILLESPIE  
ADMINISTRATIVE ASSISTANT

RECEIVED  
81 JUL 17 P 3:33  
OFFICE STATE  
SECY. OF STATE

GUS R. DOUGLASS  
COMMISSIONER

Honorable A. James Manchin  
Secretary of State  
Capitol Building  
Charleston, WV 25305

Dear Secretary Manchin:

Enclosed is a verbatim set of regulations dealing with the Aerial Application of Herbicides as filed under emergency regulations on March 10, 1981. The ninety day period has now expired and, as the Legislative Rule Making Review Committee has not acted and as the reconstituted committee has asked that final action on regulations be held in abeyance until they can consider them, the Department is, on this day, refiling the Aerial Spray Regulations for another ninety (90) days under the emergency regulation provision.

Sincerely,

Gus R. Douglass  
Agriculture Commissioner

by William H. Gillespie  
Assistant to Commissioner

WHG/rkd  
Enc.  
cc - Earl Vickers  
Legislative Services

Al Cole  
Plant Pest Control Division



GUS R. DOUGLASS  
COMMISSIONER

STATE OF WEST VIRGINIA  
DEPARTMENT OF AGRICULTURE  
CHARLESTON 25305

WILLIAM H. GILLESPIE  
ADMINISTRATIVE ASSISTANT

July 23, 1981

Honorable A. James Manchin  
West Virginia Secretary of State  
Capitol Building, Room W-157  
Charleston, WV 25305

Attention: Mary Lopez  
Rules & Regulations Section

Dear Secretary Manchin:

Some time ago we filed a set of Aerial Spray Regulations with your agency. We filed them dually - to take effect on an emergency basis for 90 days and to start the routine measure of becoming permanent regulations. The 90 days expired and we renewed the emergency regulations.

This week, the Legislative Rule Making Review Committee met and during their deliberations reported that they had no objections to the Regulations. Consequently, since they have been filed for more than 90 days, we would like the Aerial Spray Regulations to take effect on a permanent basis with an effective date of August 1, 1981. If there are any question, please call the undersigned.

Sincerely,

William H. Gillespie  
Assistant to Commissioner

WHG/rkd

cc - Al Cole  
Commissioner Douglass

FILED IN THE OFFICE OF  
SECRETARY OF STATE  
THIS DATE 7/23/81



STATE OF WEST VIRGINIA  
DEPARTMENT OF AGRICULTURE  
CHARLESTON  
25305

Gus R. Douglass  
Commissioner

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 8/26/81  
Administrative Law Division

For Immediate Release

January 9, 1981.

AGRICULTURE PUBLIC HEARINGS

CHARLESTON, W.VA.--A public hearing to consider additions to the West Virginia Rules & Regulations covering Chapter 19, Article 16-b, Section 4-a, the West Virginia Pesticide Use & Application Act, will be held on Wednesday, February 11, 1981, at 10:00 A.M., in the John T. Johnson Conference Room in the basement of the East Wing of the State Capitol Building in Charleston, West Virginia.

Agricultural Commissioner Gus R. Douglass explained that the proposed Rules & Regulations are to regulate the aerial application of herbicides to right-of-ways. The Commissioner said that two informal hearings have been held within the last year and that the proposed regulations are based upon volunteer guidelines which were utilized during the 1980 spraying season and upon testimony delivered at the informal hearing called to evaluate the volunteer guidelines.

All interested persons are invited to attend the hearing. Interested parties may obtain copies of the proposed regulations or may submit written comments to Gus R. Douglass, Agriculture Commissioner, West Virginia Department of Agriculture, State Capitol Building, Charleston, WV 25305, prior to the date of the hearing.



STATE OF WEST VIRGINIA  
DEPARTMENT OF AGRICULTURE  
CHARLESTON  
25305

Gus R. Douglass  
Commissioner

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 8/26/81  
Administrative Services Division

For Immediate Release

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