

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Do Not Mark In this Box

1992 JUN -5 11:00 AM

Form #1

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Agriculture TITLE NUMBER: 61

RULE TYPE: Legislative; CITE AUTHORITY 19-16A-4; 20-5M-5-C

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 12G

TITLE OF RULE BEING PROPOSED: General Groundwater Protection Rules
for Pesticides

DATE OF PUBLIC HEARING: Monday, July 20, 1992 TIME: 3:00PM

LOCATION OF PUBLIC HEARING: West Virginia Department of Agriculture
J. T. Johnson Conference Room, Building 2
Guthrie Agricultural Center
Charleston, WV 25312

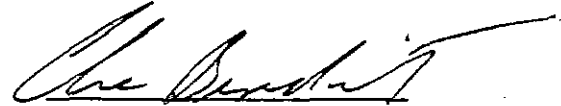
COMMENTS LIMITED TO: ORAL___, WRITTEN___, BOTH X
Written commentes will be accepted until 4:00PM Thursday, July 30, 1992.
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

Robert Frame
Director, Pesticide Division
West Virginia Dept. of Agriculture
1900 Kanawha Blvd., East
Charleston, WV 25305

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



3.00

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: General Groundwater Protection Rules for Pesticides

Type of Rule: X Legislative Interpretive Procedural

Agency Department of Agriculture Address Pesticide Division

1900 Kanawha Blvd. E., Charleston, WV 25305-0190

| 1. Effect of Proposed Rule: | ANNUAL | | FISCAL YEAR | | |
|-----------------------------|-----------|----------|-------------|-----------|------------|
| | Increase | Decrease | Current | Next | Thereafter |
| Estimated Total Cost | \$ 75,000 | \$ | \$ 75,000 | \$ 75,000 | \$ 75,000 |
| Personal Services | 70,000 | | 70,000 | 70,000 | 70,000 |
| Current Expense | 5,000 | | 5,000 | 5,000 | 5,000 |
| Repairs and Alterations | | | | | |
| Equipment | | | | | |
| Other | | | | | |

2. Explanation of above estimates:

The estimates are based on the assumption of an increased inspection staff to monitor and educate the regulated community on groundwater protection activities. The personal services estimate is for 2 additional field inspectors and 1 additional clerical person. Current expense estimates are for travel expenses.

3. Objectives of these rules:

The objective of this rule is to recognize regulations that are protective of groundwater, establish program and policy that is protective of groundwater, establish powers and authority of the commissioner to be protective of groundwater and to establish a procedure and process to assess penalties for persons violating regulations that are protective of groundwater.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

As groundwater protection programs emerge the costs to various state agencies will be significant. Bulk pesticide storage sites and non-bulk permanent operation areas will need to be built or upgraded. One such site at a state owned golf course cost \$65,000.00 approximately 3 years ago.

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


The costs to political sub-divisions will be similar to those of various state agencies and can be significant. Specific industries that will be impacted are the agricultural community, golf courses and pesticide application firms.

C. Economic Impact on Citizens/Public at Large.

The cost of goods and services can be expected to increase. Public service may decrease due to the need to divert fiscal dollars to comply with groundwater protection measures.

Date: June 5, 1992

Signature of Agency Head or Authorized Representative



TITLE 61
LEGISLATIVE RULE
STATE DEPARTMENT OF AGRICULTURE
SERIES 12-G

Title: GENERAL GROUNDWATER PROTECTION RULES FOR PESTICIDES

§61-12G-1 General.

1.1. Scope - This rule establishes the guidance and best management practices for the transportation, storage and use of pesticides to prevent, minimize or mitigate the entry of pesticides into groundwater.

1.2. Authority - Code of West Virginia 19-16A-4-6(N) and 20-5M-5-c.

1.3. Filing Date -

1.4. Effective Date -

1.5. This is a new legislative rule.

§61-12G-2. Incorporation by Reference.

2.1. The following rules are protective of groundwater or have components that are protective of groundwater. These documents are adopted in their entirety:

2.1.a. Certified Pesticide Applicator Rules, WV61CSR 12A et seq.

2.1.b. Licensing of Pesticide Business, WV61CSR 12B et seq.

2.1.c. Wood Destroying Insect Treatment Standards WV61CSR 12C et seq.

2.1.d. Regulations Governing the Aerial Application of Herbicides to Rights of Way, WV61CSR 12D et seq.

2.1.e. Bulk Pesticide Operational Rules, WV61CSR 12H et seq.

2.1.f. Non-bulk Pesticide Rules for Permanent Operational Areas WV61CSR 12I et seq.

2.1.g. Generic State Management Plan for Pesticides and Fertilizers (latest version) WV61CSR 22 et seq.

2.1.h. Best Management Practices for Temporary Operational areas of Non-bulk Pesticides, WV61CSR 22A et seq.

§61-12G-3. Definitions.

3.1. The definitions used in West Virginia Code 19-16A-1 et seq. and the regulations adopted thereunder shall apply to these regulations unless otherwise defined in this regulation.

3.2. "Best Management Practices" means activities, procedures and practices to prevent or remedy the introduction of pesticide or pesticide residues into groundwater to the extent technically feasible and economically possible. Best Management Practices for pesticides are designed to maintain our homes and public health, prevent the disruption of energy, enhance the safety of our highways and assure the quality and quantity of our supply of food and fiber and at the same time to maintain the health and long-term productivity of the environment.

3.3. "Bulk Pesticide" means any registered pesticide which is transported or held in an individual container in undivided quantities of greater than fifty-five (55) U.S. gallons liquid measure or one hundred (100) pounds net dry weight.

3.4. "Chemigation" means the application of pesticides by an irrigation system.

3.5. "Non-bulk pesticide" means any liquid or non-liquid pesticides distributed, sold, offered for sale, packaged or repackaged in containers of less than fifty-six (56) gallons liquid or one hundred (100) pounds net dry weight and includes all pesticides not meeting the definition of bulk pesticides.

3.6. "Non-point source" means a diffuse source of chemicals resulting from activities over a relatively large area, the effects of which must normally be addressed by a management or conservation practice.

3.7. "Point Source" means a source of chemicals resulting from an activity over a small area and generally is limited to mixing, loading and storage sites.

3.8. "Temporary Operational Area" means an operational area that is not a permanent operational area. A temporary operational area does not include the operational area activities carried out within the field or site of application provided these activities occur no more than twice per calendar year at the same location for a period not exceeding 24 hours total and does not include the area in and around a private dwelling where a resident

of that dwelling is conducting incidental activities associated with pesticide use in and around such dwelling that otherwise falls within the scope and definition of an operational area.

3.9 "Water quality standards" means the standards of purity and quality promulgated by the State Water Resources Board.

§61-12G-4. Program and Policy Statements.

4.1. The commissioner finds that the current knowledge of the soils of the state and the leaching of many of the active ingredients found in pesticides is, in many instances, not sufficient to allow for the development of statewide mandatory use and application practices that are different from the directions for use found on pesticide product labels as registered by the U.S. Environmental Protection Agency or the commissioner for use in this state.

4.2. The commissioner encourages the use of voluntary best management practices promulgated by rules that he believes will be effective in the protection of the groundwaters of the state.

4.3. The commissioner will encourage the education of all users of pesticides so that they have the knowledge and technical means to respond independently and voluntarily in addressing environmental concerns. The commissioner will encourage the development of training and educational programs for persons who make recommendations for the application of pesticides and for the persons who apply pesticides.

4.4. The commissioner reserves the right to develop mandatory best management practices by rule for the storage and use of pesticides when valid predictive technology or valid groundwater data indicates that pesticides are contaminating the groundwaters of the state and when technology develops to indicate the mandatory best management practices will be effective in the protection of groundwater.

4.5. The commissioner will take action to promulgate rules to make some or all of the voluntary best management practices mandatory in a portion or all of the state when the monitoring program indicates that the concentrations of residues from pesticides in groundwater are increasing or other valid data shows that concentrations exceeding the water quality standards have occurred. The commissioner will utilize data averaged from at least four samples over a one year period to determine if the water quality standards have been exceeded or there is a trend of increasing concentrations of pesticide residues.

4.6 The commissioner will review the voluntary and mandatory programs every 5 years to determine the effectiveness of the programs and will effect change in the programs if the voluntary

and/or mandatory programs are not effective or if the current best available technology needs to be incorporated into these programs.

4.7. Activities conducted in this state, if consistent with the voluntary or mandatory practices outlined in this rule, shall be entitled to a rebuttable presumption that the activity is reasonable and does not constitute a hazard to groundwater. If such activity is conducted in conformity with federal and state laws and regulations, it is presumed to be an activity what is not adversely affecting the public health and safety. However, a person who alters groundwater quality or character shall be liable if the alteration was negligent, reckless or intentional.

§61-12G-5. Powers and Duties of the Commissioner

5.1 The commissioner has the power and authority to:

5.1.a. enter and inspect during reasonable business hours, any location where pesticides are manufactured, distributed, transported, stored or used, and where records relating to the storage, manufacture, distribution, shipment, labeling or use of pesticides are kept;

5.1.b. coordinate the sampling and inspection program with all other groundwater regulatory agencies within the framework of the Division of Natural Resources state groundwater management strategy and their rules relating to the monitoring and analysis of groundwater;

5.1.c. utilize the Division of Natural Resources data management system for data on groundwater;

5.1.d. to notify the well owner of the situation, conduct a study to determine the cause of the contamination, and assess remediation options for the situation, if contamination is predicted or if known to be occurring due to the residues of pesticides;

5.1.e. share data with other appropriate agencies for their evaluation and further investigation;

5.1.f. promote the protection of groundwater from pesticides through public education programs;

5.1.g. encourage, participate in or conduct or cause to be conducted studies on the environmental impact of the use of pesticides on the groundwaters of this state as well as ecologically and economically sound pesticide use and application practices;

5.1.h. take action in the shortest reasonable time to revise this rule when these voluntary best management practices are

found to be inadequate to protect the groundwater in this state from contamination with residues of pesticides that affect the present and future beneficial use of the groundwaters of this state when such data is found to be valid and relevant to the conditions found in this state;

5.1.i. collect and expend monies as provided under West Virginia code 20-5M-1 et seq. and rules for Groundwater Protection Fees, WV47CSR 55.

5.1.j. cooperate and enter into agreements with governmental agencies of this state or other states, agencies of the federal government and foreign governments and private associations or entities in order to carry out the purpose and provisions of this rule;

5.1.k. make reports and recommendations to the Groundwater Coordinating Committee or to the legislature as needed to further the protection of groundwaters in this state;

5.1.l. maintain a testing laboratory or to contract with other laboratories for the testing of pesticides or pesticide residues;

5.1.m. conduct hearings as provided by this rule;

5.1.n. assess civil penalties, negotiate agreements and refer violations to a court of competent jurisdiction;

5.1.o. obtain court orders directing any person refusing to submit to inspection, sampling or auditing to submit;

5.1.p. issue orders requiring compliance with these rules; and

5.1.q. promulgate additional regulations as necessary to protect groundwater within statutory mandates that may include but not be limited to permitting, licensing and certification, facility design, operational management, closure, remediation and monitoring of water quality.

§61-12G-6. Protection of groundwater from point sources.

6.1. Any person storing bulk pesticides in undivided quantities in excess of 300 U.S. gallons liquid or one hundred (100) pounds dry weight for more than thirty (30) consecutive days per year shall comply with the Bulk Pesticide Operational Rules (WV61CSR 12H) in addition to these rules.

6.2. Any person maintaining a permanent operational area where either concentrate or diluted pesticides in excess of 300

U.S. gallons of liquid or 3,000 pounds of net dry weight or where a total of 1,500 pounds of pesticides as active ingredients are transferred, loaded, unloaded, mixed, repackaged, refilled, or cleaned, washed or rinsed from containers or application equipment over a 30 day period either consecutive or cumulative during a calendar year shall comply with the Non-bulk Pesticide Rules for Permanent Operational Areas (WV61CSR 12I) in addition to these rules.

6.3. Any person maintaining a temporary operational area where non-bulk quantities of pesticides are stored, handled, transferred between containers, including application equipment, loaded, unloaded, mixed, repackaged, refilled or where pesticides are cleaned, washed, or rinsed from containers, or application, handling, storage or transportation equipment shall consult or review the practices contained in Best Management Practices for Temporary Operational Areas of Non-bulk Pesticides (WV61CSR 22A).

6.4. Other point source management practices, voluntary and/or mandatory are reserved.

§61-12G-7. Protection of groundwater from non-point sources.

7.1 Any person who applies pesticides shall use them in accordance with their labeling as accepted by the U.S. Environmental Protection Agency or as registered by the commissioner or subject to any restrictions, modifications or as ordered by the commissioner when necessary to protect groundwater in this state or portions of this state.

7.2. Any person applying pesticides classified as "restricted use pesticides" by either the U.S. Environmental Protection Agency or the commissioner or who commercially applies pesticides shall comply with the rules for Certified Pesticide Applicators (WV61CSR 12A) and/or the rules for the Licensing of Pesticide Business (WV61CSR 12B) as applicable to their operation.

7.3 Other non-point source management practices, voluntary and/or mandatory are reserved.

§61-12G-8. Hearings.

8.1. The commissioner will offer a person an opportunity for an informal hearing prior to issuing an order in all cases except where the protection of the public health requires immediate action to protect groundwaters in this state.

§61-12G-9. Civil and criminal penalties.

9.1. When determining the assessment of civil or criminal

penalties under the provisions in West Virginia Code 19-16A-1 et seq. or 20-5M-1 et seq., the commissioner shall consider the following factors in determining the unreasonableness of any harm referred to in this rule. Such factors shall include, but not be limited to the burden of fairness of requiring a person to bear the loss, the causing of harm in the conduct of reasonable activities utilizing practices conducted in conformity with federal and state laws and regulations, and activities that were conducted in a negligent, reckless or intentional manner.



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

State Capitol
Charleston, WV 25305

Cleve Benedict
Commissioner

June 15, 1992

Handwritten notes: "Hechler", "Room 315/316", "Morgantown", "WV", "July 23-24", "5:00 PM", "7:00 PM", "10:00 AM", "2:30 PM"

The Honorable Ken Hechler
Secretary of State
Ground Floor, W-157, State Capitol
Charleston, West Virginia 25305

Dear Mr. Hechler:

The Commissioner of Agriculture announces that he has scheduled public hearings for the proposed rules affecting groundwater in addition to the hearings listed on the "Notice of Public Hearing on a Proposed Rule" filed with you on June 5, 1992.

The additional hearings will all be held in Room 315/316 Percival Hall, Forestry Building, Evansdale Campus, West Virginia University, Morgantown, WV according to the following schedule:

- Non-Bulk Pesticide Rules for Permanent Operational Areas (61-12I)
Thursday July 23 3 PM
- General Groundwater Protection Rules for Fertilizer and Manures (61-6A)
Thursday July 23 5PM
- Primary and Secondary Containment of Fertilizers (61-6B)
Thursday July 23 7PM
- General Groundwater Protection Rules for Pesticides (61-12G)
Friday July 24 8AM
- Bulk Pesticide Operational Rules (61-12H)
Friday July 24 10AM
- Generic State Management Plan for Pesticides and Fertilizer in Groundwater (61-22)
Friday July 24 1PM
- Best Management Practices for Temporary Operational Areas of Non- Bulk Pesticides (61-22A) Friday July 24 2:30PM

Please publish this notice in the State Register.

Sincerely,

Barbara J. Smith

Barbara J. Smith
Director, Compliance Division
(304)-558-2226 FAX: - 3594

BJS:pfhear.hec