

7.10

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

RECEIVED

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.

3. 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



DATE: September 15, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Barbara J. Smith, Director of Compliance, WV Dept. of Agriculture

LEGISLATIVE RULE TITLE: General Groundwater Protection Rules for Pesticides

1. Authorizing statute(s) citation 19-16A-4 and 20-5M-5-C

2. a. Date filed in State Register with Notice of Hearing:

June 5, 1992

b. What other notice, including advertising, did you give of the hearing?

Notice sent to all licensed pesticide businesses; all pesticide dealers;
Class I Legal Ad in Charleston Daily Mail and Morgantown Dominion Post;

press release to all state newspapers; ChemLawn, Columbus, Ohio + supplemental
list attached.

c. Date of hearing(s): July 20, 1992, Charleston

July 24, 1992, Morgantown

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)

September 15, 1992

f. Name and phone number(s) of agency person(s) to contact for additional information:

Robert Frame, 558-2209

Barbara Smith, 558-2226

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

- b. Date of hearing: _____

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

- d. Attach findings and determinations and reasons:

Attached _____

TITLE 61, SERIES 12G

GENERAL GROUNDWATER PROTECTION RULES FOR PESTICIDES

Summary and Description of the rule

This rule establishes the guidance and best management practices for the transportation, storage and use of pesticides. This rule relates all relevant pesticide rules to the Groundwater Protection Act and establishes the powers and duties of the commissioner of agriculture for the enforcement of the pesticide rules relevant to the protection of groundwater.

Circumstances requiring this rule

This rule is required to comply with the mandates of the Groundwater Protection Act which states that the Department of Agriculture is the groundwater protection agency for the use and application of pesticides.

RECEIVED

1991 SEP 15 PM 1:00

STATE DEPARTMENT OF AGRICULTURE
DIVISION OF PESTICIDES

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. Filling 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 at Temporary Operational areas for Non-bulk Pesticide Mixing and Loading Locations, 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. Such term does not apply to those pesticides packaged in containers approved by the U.S. Department of Transportation for interstate transportation.

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 fifty-five (55) U.S. gallons or less liquid or one hundred (100) pounds or less 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 "Operational Area" means an area or areas at a pesticide storage facility where pesticides are transferred, loaded, unloaded, mixed or where pesticides are cleaned or washed from application equipment, storage containers or transportation equipment.

3.8 "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.

3.9 "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 three times per calendar year at the same location for a period not exceeding 36 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.

3.10 "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 chemical management plans either chemical specific or generic in nature 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 beyond background levels established by monitoring programs or other valid data shows that concentrations exceeding the water quality standards have occurred. When methodology or technology results in the ability to detect lower concentrations, the commissioner shall utilize the new data in evaluating groundwater quality and establishing new background levels as appropriate. 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 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 at Temporary Operational Areas for Non-bulk Pesticide Mixing and Loading Locations (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.

§61-12G-10. Remediation.

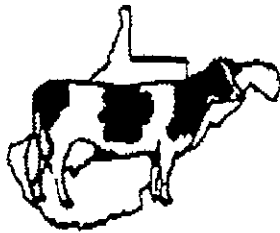
10.1. The commissioner has the authority to order persons to conduct remedial actions when issuing an order. The commissioner will;

10.1.a. encourage agreements for investigation and cleanups in appropriate cases;

10.1.b. use permanent solutions to the maximum extent practical to correct groundwater contamination where possible;

10.1.c. not allow for the dilution and dispersion of the contaminant if active remedial measures are technically and economically feasible; and

10.1.d. specify which parameters will be tested in a monitoring program in order to demonstrate control and containment.

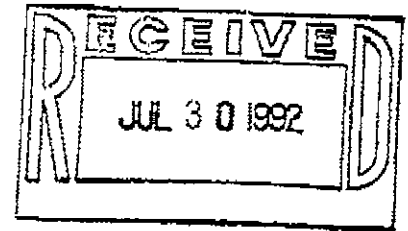


West Virginia Holstein Association

Mrs. Cathy Britvec, Secretary/Treasurer
620 Adaline Avenue
Morgantown, WV 26505
(304) 296-5028

CC: Bob Frame
Barbara

July 28, 1992



The Honorable Cleve Benedict
Commissioner of Agriculture
West Virginia Department of Agriculture
1900 Kanawha Blvd., East
Charleston, WV 25305

Dear Commissioner Benedict:

At our last board of directors meeting Steve Hannah, Executive Secretary, WV Farm Bureau, spoke to us about the following proposed legislation:

- Title 61 - Series 6A - General Groundwater Protection Rules for Fertilizer and Manures
- Title 61 - Series 6B - Primary and Secondary Containment of Fertilizers
- Title 61 - Series 12H - Bulk Pesticides Operational Rules
- Title 61 - Series 12I - Non-Bulk Pesticide Rules for Permanent Operation Areas
- Title 61 - Series 12G - General Groundwater Protection Rules for Pesticides
- Title 61 - Series 22 - Best Management Practices for Temporary Operational Areas of Non-Bulk Pesticides

Mr. Hannah supplied us with a copy of these regulations and I understand the deadline for comments on these regulations is July 30th.

We discussed the economic impact these regulations would have on the agricultural industry as well as state and local government. Considering the following found in the Economic Impact Statement of Title 61, Series 6B - Primary and Secondary Containment of Fertilizers: "As there is no evidence that fertilizers are a major, or minor, pollutant of groundwater there can be no calculation of the benefits to the present and future users of groundwater due to the impact of these rules", we feel adequate study must be done to determine the financial impact these regulations will have on individuals, companies, state, county, and local government.

Mr. Hannah has commented on specific parts of each proposed legislation and we trust you will view these comments favorably. We are concerned about the economic impact upon the dairy industry which is already overburdened with expenses and with low milk prices. We appreciate the efforts of the WV Farm Bureau to reflect the concerns of the agriculture industry in this state.

Sincerely,

Ivan McCombs

Ivan McCombs
President

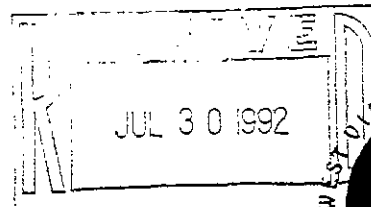
West Virginia Farm Bureau

Member of American Farm Bureau Federation

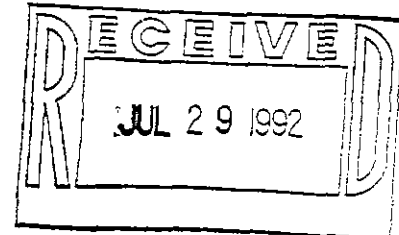
1 Red Rock Road, Buckhannon, WV 26201

304/472-2080

July 27, 1992



The Honorable Cleve Benedict
Commissioner of Agriculture
West Virginia Department of Agriculture
1900 Kanawha Blvd., East
Charleston, WV 25305



RE: COMMENTS ON PROPOSED REGULATIONS

Copies sent to:

- Brenda Harper
- Barbara Smith

-N

Title 61 - Series 6A - General Groundwater Protection
Rules for Fertilizer and Manures

Title 61 - Series 6B - Primary and Secondary
Containment of Fertilizers

Title 61 - Series 12H - Bulk Pesticides Operational Rules

Title 61 - Series 12I - Non-Bulk Pesticide Rules
for Permanent Operation Areas

Title 61 - Series 12G - General Groundwater Protection
Rules for Pesticides

Title 61 - Series 22A - Best Management Practices
for Temporary Operational Areas of Non-Bulk Pesticides

Title 61 - Series 22 - Generic State Management Plan for Pesticides
and Fertilizers in Groundwater

Dear Commissioner Benedict:

This is to respectfully comment on the proposed above-cited rules as they pertain to agriculture in West Virginia.

First, we would like to make some general comments on the regulations.

While we appreciate your decision to fully comply with the Groundwater Protection Act particularly 20-5M-5(c) which requires the various agencies and departments to promulgate rules as they may be necessary to implement the authority granted them, we feel that the regulations filed by your department exceed the intent of the law.

We can certainly understand your desire to take the lead on this important issue; but we believe that it will be difficult to implement some of these regulations until the Water Resources Board establishes standards as provided in 20-5M-6(a)(2). Obviously, there is chronological ambiguity in the statute.

Honorable Cleve Benedict
Commissioner of Agriculture
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We are also very concerned with the economic impact these regulations will have on the agricultural industry as well as state and local government. In several instances, the impact is not clear, however "significant".

Given the scope and impact of these regulations, adequate study must be done to determine as nearly as possible the financial impact these regulations will have on individuals, companies, state, county and local government.

The Groundwater Protection Act capped fees at \$1 million and therefore did not intend to expand the cost to citizens, businesses and government.

We compliment you on the approach that was used in the Generic State Management Plan for Pesticides and Fertilizer in Groundwater. We feel these regulations comply with the law, particularly 20-5M-6(c) (1) thru (5), where voluntary cooperation is encouraged, to conduct studies, research, experiments, demonstrations, and to develop public education programs.

Following are the specific comments on each set of Regulations:

Title 61 - Series 6A - Groundwater Protection
Rules for Fertilizer and Manures

The fiscal note provides for an expenditure of \$28,000 by the Department of Agriculture. Since the authority cited is 20-5M, we believe that these expenditures should be included in the Groundwater Protection Act Fee Schedule Regulations 47-CSR-55 which have been filed as emergency regulations by the Department of Natural Resources, and not taken out of the department's budget.

We are also very concerned about the economic impact on those farms that need to install manure holding facilities. The projected costs range from \$12,000 to \$100,000 with additional auxiliary equipment cost of \$20,000 to \$50,000. This could put some farms out of business. We would suggest that an in depth study be made on each site to determine if alternative methods are available.

We concur with your assessment that the impact on the agricultural community by using Best Management Practices will be low. However, we believe it will take an extensive education program by the Department of Agriculture, the Cooperative Extension Service and Soil Conservation Service. The West Virginia Farm Bureau is willing to provide any assistance that we can in this matter.

Honorable Cleve Benedict
Commissioner of Agriculture
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61-6A-6 Protection of Groundwater from Point Source

6.3 and 6.3a - We recommend that these two sub-sections be deleted. We feel that sections 6.2 and 6.2a adequately cover those areas that are most likely to cause pollution. The description in 6.3 and 6.3a are vague and leaves room for different interpretation by different people. These items would best be covered under voluntary best management practices.

6.4 - It is recommended that this sub-section be deleted. This statement is unclear. It is very difficult to determine the volume of manure that would be produced. It is also unclear as to what time frame is covered. Again, this item would best be covered under voluntary best management practices.

6.5 thru 6.11 - It is recommended that these sub-sections be deleted. These are generally considered to be non-point source and not point source. Again, we feel these areas would best be addressed under the voluntary best management program.

61-6A-7 - Protection of Groundwater from Non-Point Sources

7.1 thru 7.3g - It is recommended that these sub-sections be deleted and replaced by reference to the Soil Conservation Service Technical Guide.

The SCS manual provides a complete list of Best Management Practices. The BMP are developed so that they may be used for site specific locations.

The SCS also updates this manual as new technology is developed.

We believe that if the manual is referenced rather than listing a few of the items that are listed in the regulations, the farm community and the environment will be better served.

Title 61- Series 6B - Primary and Secondary Containment of Fertilizers

Fiscal note - Again, we point out that if the regulations are being promulgated under the authority of Groundwater Protection Act, funds should come from that act and not from the budget of the Department of Agriculture.

Economic Impact - We are very concerned with the "very high" impact these regulations will have on the agricultural industry.

The \$50,000 to \$150,000 cost that retail firms will be required to spend is a considerable investment. If these firms do spend this kind of money, we believe that the cost of fertilizer to farmers will increase more than the \$10-\$20 that has been projected. Southern States Co-op projects \$75/Ton if the capitol costs are amortized over a 10 yr. period.

The other alternative that these businesses have is to not make the expenditure and not provide the service to farmers. If this happens, farmers may need to purchase fertilizer from out-of-state, incurring additional transportation cost and terrific inconvenience.

As is pointed out in the Economic Impact Statement, "As there is no evidence that fertilizers are a major, or minor, pollutant of groundwater there can be no calculation of the benefits to the present and future users of groundwater due to the impact of these rules." We, therefore, recommend that these regulations be withdrawn until:

1. The Division of Natural Resources develops a central groundwater data management system, as provided in 20-5M-6(a) (2).
2. The Department of Agriculture develops procedures to identify currently unknown farmers and firms that will be affected by these regulations.
3. The Department of Agriculture develops a procedure to determine an accurate estimate of the cost to farmers and firms for the installation of the facilities required.

Title 61 -- Series 12H -- Bulk Pesticide Operational Rules

61-12-H-2 Definitions - 2.7 Recommends changing the definition of discharge to mean any spill, etc. outside of the secondary containment area. The purpose of the secondary containment is to prevent such "spills" from escaping.

Title 61 -- Series 12I -- Non-Bulk Pesticide Rules for Permanent Operational Areas

Fiscal Note: The Groundwater Protection Act Fee Schedule establishes \$75,000 from the Department of Agriculture for pesticides. These regulations as well as Series 12G indicate that \$75,000 will be needed for each 12I and 12G.

We do not believe that the extra \$75,000 should come from the Department of Agriculture's general funds.

Economic Impact on State Government

One must ask the question, "With the state in dire economic times and no indication that pesticides have contaminated groundwater, is the cost benefit ratio justified?"

Economical Impact on Political Subdivisions

Specific Industries and Groups of Citizens (Same as above.)

Honorable Cleve Benedict
Commissioner of Agriculture
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Economic Impact on Citizens/Public at Large

With an estimated total cost of implementation these regulations at \$11,520,000 and the statement that "these costs would cause some small businesses to close", we respectfully request that these regulations be withdrawn.

We do not believe that it was ever the intent of the Legislature in passing the Groundwater Act to put people out of business, especially when there has been no indication that a problem exists.

Title 61-12G - General Groundwater Protection Rules for Pesticides

Fiscal Note: \$75,000 - We recommend that this money come from the Groundwater Protection Act Fees.

We totally agree with the program and policy statement listed in 61-12G-4.1 thru 4.4.

We would encourage the Department of Agriculture in Cooperation with other State and Federal Agencies to develop an aggressive education program on the use of Best Management Practices.

As stated in 4.4, we also agree that other steps may be necessary, but only after "valid predictive technology or valid groundwater data indicates that pesticides are contaminating the groundwater of the state and when technology develops to indicate the mandatory best management practices will be effective in the protection of groundwater".

Title 61 - Series 22A - Best Management Practices for Temporary Operational Areas of Non-bulk Pesticides

In general, these regulations are satisfactory. However, we are somewhat concerned by the lack of information that the department has on the number of sites that will be affected. Again, an educational program would be most beneficial.

Title 61 - Series 22 - Generic State Management Plan for Pesticides and Fertilizer in Groundwater

Fiscal Note: \$75,000 as stated previously, there is only a total of \$75,000 in the Groundwater Protection Act Fee Schedule for use by the Department of Agriculture.

General Comments: It is our belief that it is this type of regulations that was intended by the Legislature. That is to say, prior to adopting other very costly regulations, one must first put in place an educational program, provide for an assessment and planning phase mandated in 61-22-8 and establish a monitoring program as mandated in 61-22-11.

Honorable Cleve Benedict
Commissioner of Agriculture
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In summary, we feel that the regulations are chronologically not possible to implement at this time. If other agencies have not performed their statutory responsibility then these agencies should be held accountable for such non performance.

The 13,000 member West Virginia Farm Bureau considers itself and its individual members to be very environmentally responsible and our comments should be construed as constructive criticism. We trust you and your agency will view these comments favorably.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve Hannah", written in dark ink.

Richard S. (Steve) Hannah
Executive Secretary

RSH/vg



SIERRA CLUB WEST VIRGINIA CHAPTER

P. O. Box 4142
Morgantown, WV 26504

July 23, 1992

Barbara Smith
Compliance Division
West Virginia Dept. of Agriculture
1900 Kanawha Blvd., East
Charleston, WV 25305

Dear Ms. Smith:

I am submitting the following comments regarding the proposed groundwater regulations on behalf of the West Virginia Chapter of the Sierra Club. We have long advocated strong groundwater protection legislation for West Virginia and are strong supporters of West Virginia's Groundwater Protection Act of 1991. Thus it is disappointing to see such weak and ineffective rules being promulgated to enforce the Act. We believe that these proposed regulations violate the intent of the Legislature in passing the Groundwater Protection Act.

The Act states "it is the public policy of the state of West Virginia to maintain and protect the state's groundwater so as to support the present and future beneficial uses and further to maintain and protect groundwater at existing quality where the existing quality is better than that required to maintain and protect the present and future beneficial uses." It further states "Pollution of groundwater shall not be considered a beneficial use." The Legislature intended that the regulations proposed under the Act "provide for the establishment of groundwater protection programs consistent with this Article;" and "provide for such enforcement and compliance mechanisms as will assure the implementation of the state's groundwater management program." I cannot believe that these proposed regulations will even come close to fulfilling the intent of the law.

I wish to first cite several major gaps which exist in groundwater regulations currently being developed that are relevant to these regs. Specific comments on the weaknesses of the proposed regs and suggestions for their amendment will follow.

1. The issue of land application of various sludges, soil amendments, fly ash, and other solid wastes being applied as beneficial uses has not been addressed, in spite of frequent requests to do so. While many of these materials are actually solid wastes that are being disposed of on land, their organic matter or mineral nutrient content allows them to be exempted from solid waste regs under the beneficial use provisions. Although we do not wish to impede the application of those

"Not blind opposition to progress, but opposition to blind progress."

materials that truly do present benefit to the land, many of these substances produce a leachate that may be high in heavy metals, toxic organic compounds, or strongly alkaline or acid forming constituents. The definition of fertilizers and manures must be expanded to include these so-called beneficial materials into a regulatory program in order to assure that these beneficial uses are in fact beneficial and not just a convenient way for industry to avoid solid waste regulations.

2. Underground storage tanks for fuels used on farms were not included in regulations proposed by DNR to regulate groundwater impacts from these tanks because "Dept. of Ag will handle those" or so environmentalists were told. While the volume of these tanks is generally smaller than for many commercial facilities, their potential to contaminate groundwater is still very significant. An enforceable maintenance and monitoring program is needed.

3. These regs do not contain adequate remediation requirements if contamination should occur. Furthermore, no mention is made of how victims of pollution are to be compensated. As such, there is very little enforcement incentive to encourage voluntary compliance with these regs. Obviously, prevention is considerably cheaper than remediation, unless the cost of remediation is borne only by downstream users and not the polluter. Without the "stick" of remediation and cleanup costs, there is no incentive to follow the carrot of prevention by complying with these regs. Thus the Dept. is left with an enforcement nightmare.

4. These regs also lack any mention of a monitoring program. Without even a semblance of a monitoring program, the regs are totally unenforceable. Section 5 Paragraph (d) of the Act clearly states that agencies shall develop practices to prevent groundwater contamination and states specifically that such practices shall include "remediation and monitoring".

Areas discussed in these regs which must be amended include:

5. Enforcement. Regulatory actions by the Commissioner are discretionary. The regs should be amended to make regulatory action by the Commissioner mandatory when pollution is occurring. Citizens must have some assurance that their groundwater will be protected and that action to stop pollution will be forthcoming. A regulatory agency should not have the discretion to knowingly ignore pollution which violates West Virginia's groundwater protection law. Other states, such as Wisconsin, have adopted regulations which require regulatory agencies to evaluate, among other regulatory responses, "the practicality of stopping the further release" of a pollutant that exceeds groundwater standards, and "the risks and benefits of continued operation of a facility, practice, or activity." Unless these enforcement options are spelled out and made mandatory when pollution is occurring, the enforcement program simply is not credible.

6. Definitions of regulated facilities. Series 12-I defines "non-bulk permanent operational areas" as those exceeding 300 gallons liquid, 3000 pounds dry weight, or 1500 pounds active ingredient handled over thirty days. Areas smaller than these are not regulated. Series 6A defines feedlots to be regulated as those with more than 1000 animal units (500 in vulnerable areas). Facilities handling much smaller volumes of pesticides, or feedlots with many fewer animal units, could present very serious risks to groundwater, yet these regs do not provide for any mandatory enforcement activities for these facilities. As such, these regs clearly fail in their legislatively-mandated purpose of "providing such enforcement and compliance mechanisms as will assure the implementation of the state's groundwater management program".

7. Timetable for implementation. Various timetables are proposed for mandatory portions of these regs, ranging from three years for bulk pesticide storage facilities, up to ten years for feedlots. I believe that these timetables are simply too long to provide any incentive for a credible groundwater protection program. Our experience has shown that, if given three years to implement a rule, nothing will be done for two and a half years. If given ten years, nothing will get done for nine and a half years. Is there any credible justification for delaying implementation of these rules more than two years?

8. Findings. Many of the policy statements not only contradict those of the Act, but are contradicted internally within the regs as well. For example, in Series 6A and in 12-G, paragraph 4.1, the Commissioner finds that current knowledge is not sufficient to develop mandatory practices that will effectively protect groundwater. Yet in the next paragraph, 4.2, he believes voluntary practices will be effective in protecting groundwater. How can voluntary practices be effective, while mandatory ones won't?

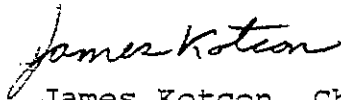
9. Making voluntary regs mandatory. Paragraphs 4.4 and 4.5 of series 6A and 12-G reserves the right of the Commissioner to make mandatory various practices when monitoring data indicate that pollution has occurred. This provision is directly contrary to the provisions of the law and to the principle of prevention. After contamination has occurred, it is too late to prevent it through mandatory rules. The Legislature mandated a policy to protect and maintain existing groundwater quality "unless it is established that (1) the measures necessary to preserve existing quality are not technically feasible or economically practical and (2) a change in groundwater quality is justified based upon economic or societal objectives." If the mandatory provisions are technically feasible after contamination has occurred, they are also feasible before. If the provisions are made mandatory after contamination has occurred, then the contamination clearly is not justified based on economic or societal objectives, otherwise mandatory provisions would not be needed. While I recognize the value of a phased in regulatory program, the

procedures identified in this section are clearly inconsistent with the intent of the Act as well as the processes spelled out in the Act.

10. Penalties. This section needs to spell out specific penalties for specific acts, or alternatively, indicate the liability incurred for contaminating groundwater. Paragraph 9.1 in particular clearly limits the Commissioner's ability to assess penalties and, furthermore, places a substantial burden of proof on him to show that violations were "grossly negligent, reckless or intentional". This is directly contrary to the need, which I have expressed above, for nondiscretionary enforcement actions for violations. The language throughout this section seems to imply that just about any excuse will relieve a polluter of any liabilities for penalties.

In conclusion, we urge the Dept. of Agriculture to revise and strengthen these regs to address our concerns and to bring them into compliance with the Groundwater Protection Act. We cannot support these regs as currently drafted because they undermine both the intent and the letter of the law. We anticipate submitting additional comments regarding specific language before the close of public comment. Thank you for the opportunity to present our views.

Sincerely,



James Kotcon, Chair
West Virginia Chapter of the Sierra Club

cc:

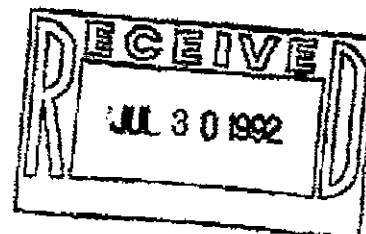
Chuck Chambers, Speaker, WV House of Delegates
Dr. Eli McCoy, Chief, Water Resources Section



LINGER FARMS INC.

P. O. Box 14
Huttonsville, WV 26273

Mr. & Mrs. Russell T. Linger, Jr.
(304) 335-4422



July 28, 1992

The Honorable Cleve Benedict
Commissioner of Agriculture
West Virginia Department of Agriculture
1900 Kanawha Blvd., East
Charleston, WV 25305

Dear Commissioner Benedict,

I am making a few comments on the proposed regulations for ground water protection from fertilizer, manure and pesticides.

I feel these regulations will have a serious economic impact on farmers and farm supply business of the state. If surrounding states do not have equal or more stringent rules on storage of fertilizer and pesticides, the small suppliers in West Virginia will be forced to discontinue their service and farmers in West Virginia will be forced to go out of state to get these products. Our farm, on occasion, stores trailer load loads of bulk fertilizer for up to 5 months if they can be bought at a more competitive price earlier in the season. With these being stored in a sound building with a concrete floor. I can see no possibility of the fertilizer getting into the ground water. Also, I feel if pesticides are stored, locked in a good building, there is no danger.

I believe that instead of listing some of the management practices for the spreading of manure and fertilizer that reference be made to the Soil Conservation Service manual. They have the technical expertise and would keep this updated as the need arises.

I realize we must protect our environment and our farm strives to do this. It would be damaging to the agriculture economy of the state if we set up more stringent rules than are necessary until a problem is located, especially since this state is a low user of these products compared to other more dense agriculture states.

Thank you for your consideration to these points. I hope that we can end up with final regulations that will protect our ground water supply but will not put an untimely or unnecessary economic burden on the agriculture economy.

Sincerely,

Russell T. Linger, Jr.

c11

CIBA-GEIGY

Agricultural Division

CIBA-GEIGY Corporation
P.O. Box 18300
Greensboro, North Carolina 27419
Telephone 919 632 6000

July 24, 1992

Mr. Robert Frame
West Virginia Department of
Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305

Dear Mr. Frame:

SUBJECT: COMMENTS FOR THE RECORD
WV 1204 - GROUNDWATER PROTECTION RULES FOR PESTICIDES
WV 1205 - BULK PESTICIDE OPERATION RULES
WV 1206 - NON-BULK PESTICIDE RULES FOR PERMANENT
OPERATIONAL AREAS
WV - BEST MANAGEMENT PRACTICE FOR TEMPORARY
OPERATIONAL AREAS
WV 1207 - GENERIC STATE MANAGEMENT PLAN FOR PESTICIDES
AND IN GROUNDWATER

The Agricultural Division of CIBA-GEIGY Corporation is a major producer and supplier of pesticides to West Virginia's important agricultural industry. As such, the Division is interested in regulatory proposals and management plans that may impact the users of these pest management tools. The purpose in this correspondence is to offer comment for the record on the above noted proposals as identified by sequence number and title.

The Agricultural Division is supportive of rules and practices that promote environmental protection while allowing the benefits of pesticides to be received by the public. CIBA-GEIGY supports the above subject proposals and encourages their collective adoption. We also commend you and your Department for the vision and wisdom illustrated by the balance seen in the proposals between environmental protection, reliance on education and best management practices to achieve Department environmental protection goals.

Enclosed are specific comments on the respective proposals that should be included in the hearing record.

Thank you for the opportunity to comment and to lend support for adoption of these proposals.

Sincerely,



Charles G. Rock
Manager, State Government Relations

L502CCG0724CGR

Specific Comments on Proposed Rules

*Submitted by
CIBA-GEIGY, Agricultural Division
(Underline Connotes Suggested Revisions)*

WV-1204 - General Groundwater Protection Rules for Pesticides
(Title 61, Series 12-G)

S61-12G-3 Definitions

3.5 "Non-bulk pesticide" (Page 2)

The definition as proposed creates a gap between itself and the "Bulk Pesticide" proposed definition of 3.3. The non-bulk definition covers containers of less than 56 gallons liquid and 100 pounds dry while the bulk definition addresses quantities of greater than 55 gallons liquid or 100 pounds dry. This creates a "no-mans-land" for containers of 55 gallons 1 ounce to 55 gallons 15 ounces as meeting both definitions or neither. Similarly, a 100 pound weight container would follow outside either definition or meet both.

Suggested revision:

3.5 "Non-bulk pesticide" means any liquid or non-liquid pesticides distributed, xxx or repackaged in containers of fifty-five (55) gallons or less liquid or one hundred (100) pounds or less net dry weight and includes all pesticides not meeting the definition of bulk pesticides.

S61-12G-4 Program and Policy Statements

Subsection 4.4 (Page 3) provides for the phrase "mandatory best management practices" while in 4.2 speaks to "voluntary" plans. In order to ensure a clear and reasoned distinction between mandatory and voluntary, we strongly recommend that voluntary practices and plans be associated with best management plans while mandatory practices be termed agricultural chemical management plans or practices. This may necessitate definitions for the respective terms.

This suggestion further illustrates in policy outlined in subsection 4.2 and 4.3 as being the foundation of the West Virginia approach. Appropriate changes would be needed in subsection 4.4.

Suggested revision:

4.4 (Page 3) - The Commissioner reserves the right to develop mandatory agricultural chemical management plans either chemical specific or generic in nature by rule xxx

Specific Comments on Proposed Rules

*Submitted by
CIBA-GEIGY, Agricultural Division
(Underline Connotes Suggested Revisions)*

WV-1205 - Bulk Pesticide Operational Rules

3.2.e (Page 4) Change the word "distributing" in the first sentence to "distribution."

3.4. (Page 4) Strike the phrase "appropriate state" at end of sentence.

§61-12H-4 Bulk Pesticide Storage Facility Registry

4.1 (Page 4) - The proposal provides that the Commissioner "may" require annual notification by the product manufacturer or registrant without specifying the reason for such notification. This provision should either be deleted or further explanation citing such conditions as to when the Commissioner would require notice. The vagueness and ambiguity of the subsection would hopefully be removed. In addition, the phrase "appropriate state regulatory agency" (Page 5) should be deleted and replaced with "Department."

§61-12H-5 Bulk Storage Facility Requirements

5.1 Storage (Page 5)

5.1.b - Primary Containments: Strike the phrase "shall be" from the end of the fourth line replacing it with the word "are." Strike the phrase "shall be" from the sixth line as it is inappropriate.

5.1.c.B (Page 5 and 6) - The proposal provides for 110% and 100% containment capacities for storage outside and under roof, respectively. You may wish to consider increasing these to 125% and 110%, respectively to be more consistent with U.S. EPA directions and current thinking. In so doing, the future may be less uncertain for these facilities.

5.1.c.D (Page 6) - The wording of the subpart implies that the Commissioner is to approve "floor designs" and "coatings" while such designs and coatings are only "encouraged." This should be clarified as to the principal intent.

5.1.c.E (Page 6) - A need for recognition of the use of "automatic sump pumps" as provided in 5.1.c.D is apparent. These pumps can be utilized under a defined set of circumstances in 5.1.c.D while in 5.1.c.E "approval of the Commissioner" is required. Approval by the Commissioner in this case appears warranted.

Suggested revision:

5.1.c.E - Floor or in-wall drains xxx sump pumps shall be prohibited within the secondary containment area unless installed in accordance 5.1.c.D or if approved by the Commissioner.

5.2 Operations

5.2.a (Page 6) - Change the word "operation" to "operating" in the first line.

5.2.b (Page 7) - The proposal provides for a 3-year effective date of the operational area containment requirement yet provides 5 years for the secondary containment requirements (5.1.c) at a bulk facility. The differentiation is not without justification; however, it appears that the intervals are opposite what would make good business and construction sense. The secondary containment is likely to be the most expensive part but fitting secondary containment to operational area containment already in existence may prove to be a tremendous challenge ending in environmental compromise. You may wish to consider a compromise of 4 years from enactment if 3 years for both requirements proves unacceptable per other testimony.

5.2.d (Page 7) From the second sentence strike the word "appropriate."

5.3.b.A (Page 8) - The proposal for inspection of containers and appurtenances weekly during the use-season should be expanded to include inspections while the bulk pesticide is in storage. It is a common practice to "warehouse" bulk pesticide during the non-use season on a contract basis. Inspections should likewise occur.

Suggested Revision:

5.3.b.A for bulk pesticide containers and appurtenances, at least weekly during the use season and whenever pesticide is stored therein.

Specific Comments on Proposed Rules

*Submitted by
CIBA-GEIGY, Agricultural Division
(Underline Connotes Suggested Revisions)*

WV-1206 - Non-Bulk Pesticide Rules for Permanent Operational Areas
(Title 61, Series 12-I)

\$61-12I-3 Permanent Operational Areas

3.1 - The 5-year effective date of the proposal should be consistent with other implementation requirements for permanent operational and bulk containment. Again, 4 years, as suggested in \$61-12G-5 appears to be reasonable. Three years may prove to be sufficient to allow for implementation in all cases.

Specific Comments on Proposed Rules

*Submitted by
CIBA-GEIGY, Agricultural Division
(Underline Connotes Suggested Revisions)*

WV-_____ - Best Management Practices for Temporary Operational Areas
of Non-Bulk Pesticide

The title is unclear and does not reflect the intent of the guidelines.

Suggested revision: Retitle to Best Management Practices Guidelines at
Temporary Operational Area at Non-Bulk Pesticide Storage, Mixing and Loading
Locations.

§61-22A-2 - Definitions

2.1 "Bulk Pesticide" and 2.3 "Non-Bulk Pesticide." See comments and
suggested revisions noted §61-12G-3.5 to clarify respective definition gap.

Specific Comments on Proposed Rules

*Submitted by
CIBA-GEIGY, Agricultural Division
(Underline Connotes Suggested Revisions)*

WV-1207 - Generic State Management Plan for Pesticides and
Fertilizer in Groundwater

It is suggested that plan include a clearer distinction between voluntary best management practices and mandatory practices by identifying the latter as agricultural chemical management plan either generic or specific. See comments under §61-12G-4 - Programs and Policy Statements.

GENERAL GROUNDWATER PROTECTION RULES FOR PESTICIDES (61-12G)

Public Hearing to Consider Proposed Rule
Oral Comments

Room 315/316 Percival Hall, Forestry Building
Evansdale Campus, West Virginia University
Morgantown, West Virginia

Friday, July 24, 1992
8:00 a.m.

Present: Dr. Jack Baniecki, WVU, Extension, Morgantown, WV
James Linton, Linton Brothers, Inc., Martinsburg, WV
Peggy K. Powell, WVU, Extension, Morgantown, WV
Jennifer Y. Scott, West Virginia Farm Bureau, Buckhannon,
WV
Luther Smith, WVU, Extension Farm Management, Morgantown,
WV

Barbara Smith, Director of Compliance Division, WVDA
Bob Frame, Director of Pesticides Division, WVDA

1 No comments made.

2

3 (Hearing concluded 9:00 a.m.)

GENERAL GROUNDWATER PROTECTION RULES FOR PESTICIDES (61-12G)

Public Hearing to Consider Proposed Rule
Oral Comments

Building 2, Guthrie Agricultural Center
Charleston, West Virginia

July 20, 1992
3:00 p.m.

Present: Jerry H. Gass, Southern States Coop., Inc.
John McCallister, Southern States Coop., Inc.
W. B. Buffaloe, Rhone-Poulenc, Inc.
Philip Ross, Appalachian Power Company

Barbara Smith, Director of Compliance Division, WVDA
Bob Frame, Director of Pesticides Division, WVDA
Dwayne O'Dell, Marketing & Development, WVDA
Paula Moore, Compliance Division, WVDA

Note: Due to the number of people present at the July 20, 9:00 a.m. hearing and to expedite the day's schedule, Mr. Gass and Mr. Buffaloe requested and were allowed the opportunity to comment on this rule earlier.

1 MR. GASS: I am Jerry Gass with Southern States. These
2 are my comments on Series 12G.

3 Paragraph 3.3., we recommend, again, that the following
4 sentence be added to the definition of bulk pesticides: "Such term
5 does not apply to those pesticides packaged in containers approved
6 by the US DOT for interstate transportation."

7 Paragraph 3.8, line five, we would recommend changing the
8 word "twice" to "three times." The reasoning for this is to allow
9 utilization of the area on a temporary basis during those years
10 when an unusual circumstance, such as a heavy insect infestation,
11 would make more than the normal pesticide applications necessary.
12 It does happen. We wish it were not so, but every once in a while
13 it does happen.

1 Although you have a definition of "temporary operational
2 area," there is no definition of "operational area;" therefore, we
3 suggest that the following be added: "Operational area. An area
4 or areas at a pesticide storage facility where pesticides are
5 transferred, loaded, unloaded, mixed or where pesticides are
6 cleaned or washed from application equipment, storage containers or
7 transportation equipment."

8 MR. FRAME: Jerry, about the temporary area, if you are
9 going from twice a year to three times a year, what about the
10 twenty-four hours there?

11 MR. GASS: All right, let me find the reference. I was
12 reading only from notes there.

13 MR. FRAME: If you increase the number of times, then
14 you are decreasing the hours of operation per time, if you are
15 staying with the same twenty-four hours.

16 MR. GASS: Very good point, Bob. Thank you. I think
17 that should be extended to thirty-six. I appreciate that.

18 Paragraph 4.5., we have a concern with the concept of
19 implementing programs or taking actions on the basis only of an
20 increase of concentrations of pesticide residues in the
21 groundwater. The basis for objection is two-fold.

22 First, we know that the common measure of residues today
23 is in parts per million; however, the technology is developing, in
24 fact, is in place in some areas, which makes measurement of parts
25 per billion and even parts per trillion possible. I know of some
26 cases in which they are even talking of more minute particles than

1 that.

2 So as technology continues to develop, it would seem that
3 this clause as now written could get us into the same kind of
4 problems that we are having with the Delaney clause in the Food and
5 Drug Administration today. When the Delaney clause was written,
6 you know, zero tolerance was measured in parts per thousand. For
7 at least twenty years, the food industry has been trying to get
8 Congress to adopt a degree of reasonableness in that area.

9 So I think we would be better off addressing this at this
10 time and changing the wording so that if a residue is present, but
11 could not be detected by current methods of analysis, that we would
12 be protected in the future, whereas it would not actually be a
13 decline in water quality, but just an improvement in the technology
14 that makes it possible to analyze water quality.

15 We would recommend that the paragraph be changed to
16 reflect that, "The Commissioner will take action to promulgate
17 rules to make some or all of the voluntary best management
18 practices mandatory in a portion or all of the state when a
19 monitoring program indicates that the concentration of residues
20 from pesticides or other valid data shows the concentrations exceed
21 water quality standards."

22 Paragraph 6.2., here again, we believe that the reference
23 to 1,500 pounds of pesticides as active ingredients may be
24 confusing. A decision needs to be made as to whether the
25 operational area will be determined by the number of gallons or
26 pounds of dry weight pesticides or if the determination will be

1 based on pounds of actual active ingredients. Our recommendation
2 is to eliminate the wording, "...or where a total of 1,500 pounds
3 of pesticides as active ingredients..."

4 Then the following paragraph 6.3., line six, where it
5 says, "...shall consult or..." This line says, "Any person
6 maintaining a temporary operational area shall consult or review
7 the practices contained as best management practices." However,
8 paragraph 6.2., line eight says that, "Any person maintaining a
9 permanent operational area shall comply..." Our recommendation is
10 to make the two paragraphs consistent as "shall comply" rather than
11 "shall consult or review."

12 Finally, on this item, paragraph 7.1., the paragraph, as
13 written, appears to us to give the Commissioner certain rights to
14 preempt the provisions of FIFRA. We would suggest placing a period
15 after the word "commissioner" in line four and then deleting the
16 remainder of the paragraph.

17 Thank you, again. That ends my comments on 12G.

18 MS. SMITH: Any other comments?

19 MR. BUFFALOE: Yes, I would like to comment on 12G. I
20 wanted to hear what others were saying. All of these rules, as
21 best as I can determine, are based mostly on the AAPCO model
22 legislation. Because it is mainly based on their model
23 regulations, which have worked in most of the other states, we did
24 not have any major concerns. Regarding the provision that was just
25 spoken to, 4.5. in 12G, as was alluded to, not only are we
26 detecting parts per million, billion and even trillion, there are

1 even a few compounds that the labs are even able to detect at parts
2 per quadrillion now.

3 So we were concerned about the last phrase in this
4 paragraph, which I will just read most of it. "The Commissioner
5 will utilize data averaged from at least four samples over one
6 year..." -- which is a good provision -- "...to determine that the
7 water quality standards have been exceeded..." -- here is where the
8 concern is -- "...where there is a trend of increasing
9 concentrations of pesticide residues."

10 We have seen a few states where they have not been able
11 to detect, say, parts per quadrillion. Maybe the method was not
12 there and all of a sudden, methodology improves and you can detect
13 that part per quadrillion. Someone says, okay, there must be an
14 increase. There must be an increase in level and that is not the
15 case necessarily.

16 The other point is, if it is increasing from four to five
17 parts per quadrillion, we would like to add a phrase at the end,
18 which speaks to, "...where there is a trend of increasing
19 concentrations of pesticide residues." We would add, "...which are
20 approaching the standard." In this, we are saying it is getting
21 closer to the standard, rather than so far, a much smaller level
22 out in the part per quadrillion and your standard might be one part
23 per billion or million.

24 Thank you.

25 (Hearing recessed at 9:50 a.m. and reconvened
26 at 3:00 p.m.)

1 MS. SMITH: Does anyone wish to make a comment? With no
2 comments to be made at this time, this hearing is now closed.

3 (Hearing closed at 3:15 p.m.)
4
5
6

Supplemental listing:

Regulations sent to:

Ms. Leslie McCarty
Box 135
Hillsboro, WV 24946

William Smith
Rt 1 Box 415
Thornton, WV 26440

Patty Rukavina
Rt 4 Box 112
Grafton, WV 26354



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

State Capitol
Charleston, WV 25305

June 17, 1992

Cleve Benedict
Commissioner

RECEIVED

JUN 17 15 PM 1992

1-558-2226

Charleston Newspapers
1001 Virginia Street, East
Charleston, West Virginia 25301

ATTENTION: CLASSIFIED ADS

Dear Sir/Madam:

Please print the attached public hearing notice in the Legal Notices section of the Charleston Daily Mail, pursuant to Article 59, Chapter 3 of the West Virginia Code.

Please send invoicing to:

Administrative Services Division
West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305-0170

Please send the notarized affidavit and copy of the ad to my attention at the following address:

Barbara J. Smith, Director
Compliance Division
West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305-0170

Should you have any questions, please call me at 304-558-2226.
Thank you for your assistance in this matter.

Sincerely,

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

BJS:pm:legadch
Enclosure (1)

NOTICE OF PUBLIC HEARINGS

*Class I Legal Ad
Charleston Daily
Mail*

The Commissioner of Agriculture has scheduled hearings for the proposed rules affecting groundwater protection from fertilizers and pesticides in accordance with the provisions of the West Virginia Groundwater Protection Act. These rules affect the use and storage of fertilizers, manures and pesticides by any person in this state.

Both written and oral comments will be accepted at the hearings. Written comments will also be accepted by mail until July 30, 1992 and should be addressed Barbara Smith, Compliance Division, WV Dept. of Agriculture, 1900 Kanawha Blvd., E., Charleston, WV 25305-0170.

Each rule will have one public hearing in the Charleston area where oral and written comments will be received. Each hearing will be held at the J.T. Johnson Conference Room, Building 2, Guthrie Agricultural Center, Charleston, WV:

Non-Bulk Pesticide Rules for Permanent Operational Areas (61-12I)
Monday, July 20 at 1:00 p.m.

General Groundwater Protection Rules for Fertilizer and Manures
(61-6A) Tuesday, July 21 at 9:00 a.m.

Primary and Secondary Containment of Fertilizers (61-6B) Monday,
July 20 at 11:00 a.m.

General Groundwater Protection Rules for Pesticides (61-12G)
Monday, July 20 at 3:00 p.m.

Bulk Pesticide Operational Rules (61-12H) Monday, July 21 at 1:00
p.m.

Generic State Management Plan for Pesticides and Fertilizer in
Groundwater (61-22) Tuesday, July 21 at 1:00 p.m.

Best Management Practices for Temporary Operational Areas of Non-
Bulk Pesticides (61-22A) Tuesday, July 21 at 11:00 a.m.



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

State Capitol
Charleston, WV 25305

June 17, 1992

Cleve Benedict
Commissioner

The Dominion-Post
Greer Building
Morgantown, West Virginia 26505

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Barbara J. Smith, Director
Compliance Division
West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305-0170

Should you have any questions, please call me at 304-558-2226.
Thank you for your assistance in this matter.

Sincerely,

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

BJS:pm:legadmj
Enclosure (1)

*Class 7 Legal Ad
Morgantown Dominion
Post*

NOTICE OF PUBLIC HEARINGS

The Commissioner of Agriculture has scheduled hearings for the proposed rules affecting groundwater protection from fertilizers and pesticides in accordance with the provisions of the West Virginia Groundwater Protection Act. These rules affect the use and storage of fertilizers, manures and pesticides by any person in this state.

Both written and oral comments will be accepted at the hearings. Written comments will also be accepted by mail until July 30, 1992 and should be addressed Barbara Smith, Compliance Division, WV Dept. of Agriculture, 1900 Kanawha Blvd., E., Charleston, WV 25305-0170.

Each rule will have one public hearing in the Morgantown area where oral and written comments will be received. Each hearing will be held at Room 315/316 Percival Hall, Forestry Building, Evansdale Campus, West Virginia University, Morgantown, WV:

Non-Bulk Pesticide Rules for Permanent Operational Areas (61-12I)
Thursday, July 23 at 3:00 p.m.

General Groundwater Protection Rules for Fertilizer and Manures
(61-6A) Thursday, July 23 at 5:00 p.m.

Primary and Secondary Containment of Fertilizers (61-6B) Thursday,
July 23 at 7:00 p.m.

General Groundwater Protection Rules for Pesticides (61-12G)
Friday, July 24 at 8:00 a.m.

Bulk Pesticide Operational Rules (61-12H) Friday, July 24 at 10:00
a.m.

Generic State Management Plan for Pesticides and Fertilizer in
Groundwater (61-22) Friday, July 24 at 1:00 p.m.

Best Management Practices for Temporary Operational Areas of Non-
Bulk Pesticides (61-22A) Friday, July 24 at 2:30 p.m.

*Letter Sent to pesticide
dealers & businesses*

West Virginia Department of Agriculture - Pesticide Division
1900 Kanawha Blvd E.
Charleston, WV 25305-0190

PROPOSED REGULATIONS FOR GROUNDWATER PROTECTION

The Pesticide Division has filed for public comment 5 sets of regulations to comply with the mandates of the 1991 Groundwater Protection Act. The regulations were filed with the Secretary of State's office under Title 61 Series 12 and 22. The regulations are named General Groundwater Protection Rules (61-12G); Bulk Pesticide Operational Rules (61-12H); Non-bulk Pesticide Rules for Permanent Operational Areas (61-12I); Generic State Management Plan for Pesticides and Fertilizers in Groundwater (61-22); and Best Management Practices for Temporary Operational Areas of Non-bulk Pesticides (61-22A).

Series 12G, 12H and 12I have been filed as Legislative rules for adoption by the Legislature through the Legislative Rule Making Review Process. Rule 12H governing bulk pesticide operational areas and rule 12I governing non-bulk operational permanent operational areas establish mandatory practice to be followed. These practices include mixer/loader pads and containment of materials discharged to the mixer/loader pads including rinsates, wash waters, etc. The bulk rule also requires secondary containment for stored products.

A bulk pesticide is defined as a registered pesticide transported or held in an individual container in undivided quantities greater than 55 gallons liquid measures or 100 pounds dry weight. A bulk quality is regulated if bulk pesticides are stored for more than 30 consecutive days per year in quantities greater than 300 gallons or 100 pounds. A non-bulk pesticide is defined as any liquid or non-liquid pesticides distributed, sold, offered for sale, packaged or repackaged in containers of less than 56 U.S. gallons liquid or 100 pounds net dry weight. A permanent operation site is where pesticides in quantities greater than 300 gallons liquid, 3,000 pounds net dry weight or 1,500 pounds of active ingredient are transferred, loaded, unloaded, mixed, repackaged, refilled, or cleaned, washed or rinsed from containers or application equipment, handling, storage or transportation equipment over a 30-day period during a calendar year.

Regulations 12G and 22 establish guidelines to be followed in implementing and pursuing pesticide regulations or practices to protect groundwater. These regulations generally establish program and policy for groundwater activities. Regulation 22A establishes voluntary best management practices for persons handling non-bulk pesticides at temporary operation sites.

Persons desiring copies of any or all of the proposed regulations may request them by calling (304) 558-2209; or writing to the address above. A copy of the schedule of public hearings to receive comments is attached.

June 15, 1992

NOTICE OF PUBLIC HEARINGS

The Commissioner of Agriculture announces that he has scheduled public hearings for the proposed rules affecting groundwater protection from fertilizers and pesticides in accordance with the provisions of the West Virginia Groundwater Protection Act. These regulations affect the use and storage of fertilizers, manures and pesticides by any person in this state.

Both written and oral comments will be accepted. Written comments will be accepted until July 30, 1992 addressed to Barbara Smith, Compliance Division, West Virginia Department of Agriculture, 1900 Kanawha Blvd., East, Charleston, West Virginia 25305.

Each rule will have two public hearings where oral and written comments will be received. They will be held at:

Location 1: J.T. Johnson Conference Room, Building 2, Guthrie Agricultural Center, Charleston, West Virginia

Location 2: Room 315/316 Percival Hall, Forestry Building, Evansdale Campus, West Virginia University, Morgantown, WV

Non-Bulk Pesticide Rules for Permanent Operational Areas (61-12I)

Location 1: Monday, July 20 1PM Location 2: Thursday July 23 3 PM

General Groundwater Protection Rules for Fertilizer and Manures (61-6A)

Location 1: Tuesday July 21 9AM Location 2: Thursday July 23 5PM

Primary and Secondary Containment of Fertilizers (61-6B)

Location 1: Monday July 20 11AM Location 2: Thursday July 23 7PM

General Groundwater Protection Rules for Pesticides (61-12G)

Location 1: Monday July 20 3PM Location 2: Friday July 24 8AM

Bulk Pesticide Operational Rules (61-12H)

Location 1: Monday July 20 9AM Location 2: Friday July 24 10AM

Generic State Management Plan for Pesticides and Fertilizer in Groundwater (61-22)

Location 1: Tuesday July 21 1PM Location 2: Friday July 24 1PM

Best Management Practices for Temporary Operational Areas of Non-Bulk Pesticides (61-22A)

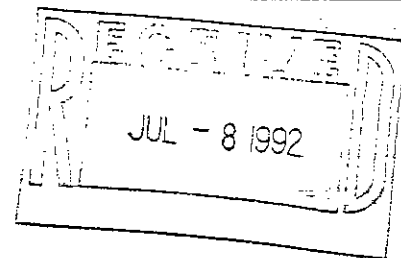
Location 1: Tuesday July 21 11AM Location 2: Friday July 24 2:30PM

BJS:pfhear.not



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

State Capitol
Charleston, WV 25305



Press release

Cleve Benedict
Commissioner

FOR IMMEDIATE RELEASE:
July 7, 1992

WVDA To Hold Public Hearings on Groundwater Rules

CHARLESTON, W.Va. -- The West Virginia Department of Agriculture (WVDA) has scheduled public hearings for proposed rules affecting groundwater protection from fertilizers and pesticides in accordance with the Groundwater Protection Act, Commissioner of Agriculture Cleve Benedict announced.

These regulations affect the use and storage of fertilizers, manures and pesticides by any person in the state.

Both written and oral comments will be accepted. Written comments will be accepted until July 30, 1992, addressed to Barbara Smith, Compliance Division, WVDA, 1900 Kanawha Blvd., East, Charleston, WV 25305.

Each rule will have two public hearings where oral and written comments will be received. The hearings will be held at:

Location 1: J.T. Johnson Conference Room, Building 2, Guthrie Agricultural Center, Charleston, WV.

Location 2: Room 315/316 Percival Hall, Forestry Building, Evansdale Campus, West Virginia University, Morgantown, WV.

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Non-Bulk Pesticide Rules for Permanent Operational Areas (61-12I)

Location 1: Monday, July 20, 1 pm; Location 2: Thursday, July 23, 3 pm

General Groundwater Protection Rules for Fertilizer and Manures (61-6A)

Location 1: Tuesday, July 21, 9 am; Location 2: Thursday, July 23, 5 pm

Primary and Secondary Containment of Fertilizers (61-6B)

Location 1: Monday, July 20, 11 am; Location 2: Thursday, July 23, 7 pm

General Groundwater Protection Rules for Pesticides (61-12G)

Location 1: Monday, July 20, 3 pm; Location 2: Friday, July 24, 8 am

Bulk Pesticide Operational Rules (61-12H)

Location 1: Monday, July 20, 9 am; Location 2: Friday, July 24, 10 am

Generic State Management Plan for Pesticides and Fertilizer in Groundwater (61-22)

Location 1: Tuesday, July 21, 1 pm; Location 2: Friday, July 24 1 pm

Best Management Practices for Temporary Operational Areas of Non-Bulk Pesticides (61-22A)

Location 1: Tuesday, July 21 11 am; Location 2: Friday, July 24 2:30 pm

For information, contact Compliance Division, WVDA, at (304) 558-2208.

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AMENDMENTS TO TITLE 61, SERIES 12G
MADE TO THE RULE AS A RESULT OF COMMENTS RECEIVED

Amendments were made to the following paragraphs as a result of written and oral comments received: Paragraphs 3.3, 3.5, 3.7, 3.9, 4.4, 4.5, 6.2, 6.3 (and 2.1.h), and added Section 10.

The changes made and the reasons for the changes are explained in the "Summary of Comments".



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

State Capitol
Charleston, WV 25305

Cleve Benedict
Commissioner

SUMMARY OF COMMENTS
WEST VIRGINIA LEGISLATIVE RULE
TITLE 61 SERIES - 12G

GENERAL GROUNDWATER PROTECTION RULES FOR PESTICIDES

Notices of public hearing of this rule were sent to all licensed pesticide application business and licensed pesticide dealers in the state. In addition, a general news release was made concerning the proposed rule. Public hearings were conducted in Charleston on July 29, 1992 and in Morgantown on July 23, 1992. Oral comments specific to this rule were received at the hearings from Mr. Jerry Gass of the Southern States Cooperative Incorporated, Mr. W.B. Buffaloe of Rhone-Poulenc and Mr. James Kotcon of the Sierra Club, West Virginia Chapter. In addition written comments were received from the West Virginia Farm Bureau and the CIBA-GEIGY Corporation.

PARAGRAPH 3.3- Mr. Jerry Gass of Southern States Cooperative Incorporated suggested the term "bulk pesticide" be amended by adding the following words, "Such term does not apply to those pesticides packaged in containers approved by the U.S. Department of Transportation." His recommendation was incorporated into the definition.

PARAGRAPH 3.5- The CIBA-GEIGY Corporation suggested the definition of "non-bulk pesticide" be amended by changing the reference to containers of less than 56 gallons to 55 gallons. The suggestion was accepted and the wording was changed to read "...containers of 55 U.S. gallons or less liquid or 100 pounds or less net dry weight...".

PARAGRAPH 3.7- Mr. Gass suggested there was a need to add a definition of "operational area" for clarity. The recommendation was accepted. By adding this definition, the remainder of the original numbering in section 3 is increased by one number. Hence an original reference to 3.8 will now appear in the rule as 3.9.

PARAGRAPH 3.9- Mr. Gass suggested changing the word "twice"

in line 5 to read "three times". This change reflects a need to change "24" to "36" in line 7. The change was recommended due to the unpredictability of weather and pest problems and would allow greater flexibility. The recommendation was adopted.

PARAGRAPH 4.4- The CIBA-GEIGY Corporation suggested a clarification to line 1 in the reference to "mandatory best management practices". Their suggestion was to reference agricultural chemical management plans. In West Virginia there are probably more non-agricultural use of pesticides than agricultural uses. As such it was believed to be more correct to make the reference to "chemical management plans". The words "mandatory best management practices" were replaced with the words "...mandatory chemical management plans either chemical specific or generic in nature...".

PARAGRAPH 4.5- Both Mr. Gass and Mr. Buffaloe spoke to this section. In summary their concern was that a reference to increasing concentrations was not appropriate in world of rapidly changing methodology and technology. Not many years ago detection limits were in the parts per million. Anything less than that level was non detectable. Today laboratories routinely look at levels in the parts or tenths of a part per billion and for some compounds parts per trillion or quadrillion. As such, lower detection limits do not necessarily mean increased contamination, but a greater ability to find smaller quantities that may have been present earlier but "undetectable".

The paragraph has been amended to try and reflect those concerns, yet at the same time allow the use of the increased technology to better evaluate what is happening in the State's groundwater. The following additions were made to this paragraph. In Line 5, after the word "increasing", "beyond background levels established by monitoring programs..." was added. Beginning on Line 8, the following sentence was added, "When methodology or technology results in the ability to detect lower concentrations, the commissioner shall utilize the new data in evaluating groundwater quality and establishing new background levels as appropriate."

PARAGRAPH 6.2- Mr. Gass suggested the reference to "1,500 pounds of active ingredient" was confusing. In earlier conversations with other people the reference was confusing to them also. As such the recommendation was adopted.

PARAGRAPH 6.3^{2.1h} On line 7 the title of proposed rule WV61SCR 22A was changed to reflect the new proposed title based on comments received regarding that rule.

The Sierra Club made several comments in general as to the appropriateness of various sections of all 7 proposed rules. Those most identifiable to this rule regard remediation and voluntary vs. mandatory practices. Section 10 is hereby proposed to address the concerns of remediation.

As to the issue of voluntary vs. mandatory practices, at

present there is little data to show that groundwater is being impacted by pesticides. The use of voluntary best management practices, coupled with educational efforts, is belived to be the best approach to prevent non-point source problems. The creation of costly, burdensome mandatory practices to combat a perceived problem is not likely to offer greater protection the State's resources. As further data becomes available on the location and vulnerability of the State's groundwaters and their potential for contamination, then mandatory practices are appropriate for the State, either in its entirety or to specific gepgraphic areas. Other companion rules (12H & 12I) propose mandatory practices that are belived to be the greatest threat to the State's groundwater, surface water and soil.

The West Virginia Farm Bureau commented they generally agreed the rule was satisfactory. They emphasized the need for an educational program. Education is the key to most regulatory programs and has been a key component of all Department of Agriculture pesticide programs since their inception in 1975. Educational programs are included in the Departments overall generic management plan to protect groundwater from pesticides (proposed Series 22).

Other general written comments were received from the West Virginia Holstein Association and Linger Farms Incorporated. The comments are generic and not specific to this rule. They are included for informational purposes.