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ADMINISTRATIVE LAW DIVISION

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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 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 designed to prevent or remedy the introduction of pesticides or pesticide residues into groundwater to the extent technically feasible and economically possible.

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. This term does not apply to those pesticides packaged for retail sale and use 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 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 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 where the contents of pesticide containers are transferred between containers, including the transfer to application equipment, loaded, unloaded, mixed, repackaged, refilled or where pesticides are cleaned, washed or rinsed from containers or application, handling, storage or transportation equipment. An operational area does not include a facility or location that receives and/or distributes pesticides in the manufacturer's original unbroken container and such containers remain sealed or otherwise unopened.

3.8 "Point Source" means a source of chemicals resulting from a mixing, loading, storage or other activity over a small area.

3.8 "Temporary Operational Area" means an operational area that is not a permanent operational area, except when the operational area activities are carried out within the field or at

a site of application and these activities occur no more than three times per calendar year at the same location for a period of less than thirty-six (36) hours total and areas in and around a private dwelling where a resident of that dwelling is conducting incidental activities associated with pesticides.

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 other than 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 may be effective in the protection of the groundwaters of the state.

4.3. The commissioner encourages 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 shall 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 may develop chemical specific or generic mandatory best management practices by rule for the storage and use of pesticides.

4.5. The commissioner shall 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 shall 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 shall review the voluntary and mandatory programs every five (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.

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

5.1 The commissioner:

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

5.1.c. shall utilize the Division of Environmental Protection data management system for data on groundwater;

5.1.d. shall notify all well owners of any known contamination of groundwater, 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. shall share data with other appropriate agencies for their evaluation and further investigation;

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

5.1.g. shall 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. shall 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. shall 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. may 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. shall 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. shall maintain a testing laboratory or contract with other laboratories for the testing of pesticides or pesticide residues and;

5.1.q. shall 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.

5.1.r. may issue orders for remediation pursuant to West Virginia Code 20-5M-10.

§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 thirty (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. Remediation.

8.1 In issuing any remediation order pursuant to West Virginia State Code 20-5M-10, the commissioner shall:

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

8.1.b. use permanent solutions to the maximum extent practical to correct groundwater contaminations where possible;

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

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

§61-12G-9. Hearings and civil penalties.

9.1 The commissioner shall be governed by West Virginia State Code 20-5M-10 when conducting hearings or assessing civil penalties for the violation of groundwater rules.



WEST VIRGINIA LEGISLATURE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Room M-152, State Capitol
Charleston, West Virginia 25305
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Senator Joe Manchin III, Co-Chair
Delegate Brian A. Gallagher, Co-Chair

Debra A. Graham, Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

February 8, 1993

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Robert Frame
Department of Agriculture
Pesticide Division
State Capitol
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: General Groundwater Protection Rules for Pesticides,
Series 12G

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Ray Barter, Guthrie Center
Forrester Potter
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135 Winter Road
Delaware. Ohio 43015