

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

FILED

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**OFFICE OF WEST VIRGINIA
SECRETARY OF STATE**

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Department of Agriculture TITLE NUMBER: 61

AMENDMENT TO AN EXISTING RULE: YES ___; NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

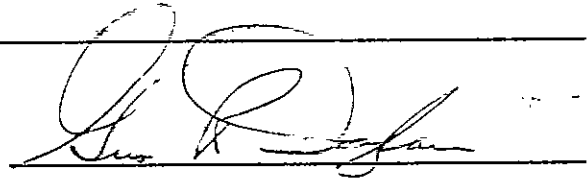
TITLE OF RULE BEING PROPOSED: General Groundwater Protection
Rules for Pesticides

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB100

SECTION 64-9-1(nn), PASSED ON May 26, 1993

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: July 1, 1993



Commissioner of Agriculture

3.40

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.

SENATE BILL NO. 223

(By Senator Manchin

[Introduced March 1, 1993; referred to the
Committee on Agriculture; and then to the
Committee on the Judiciary.]

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10 A BILL to amend and reenact section one, article nine, chapter
11 sixty-four of the code of West Virginia, one thousand nine
12 hundred thirty-one, as amended, relating to authorizing the
13 commissioner of agriculture to promulgate legislative rules
14 relating to general groundwater protection rules for
15 pesticides.

16 Be it enacted by the Legislature of West Virginia:

17 That section one, article nine, chapter sixty-four of the
18 code of West Virginia, one thousand nine hundred thirty-one, as
19 amended, be amended and reenacted, to read as follows:

20 ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS
21 TO PROMULGATE LEGISLATIVE RULES.

22 §64-9-1. Commissioner of agriculture.

23 (a) The legislative rules filed in the state register on the
24 sixth day of April, one thousand nine hundred eighty-three,

1 relating to the commissioner of agriculture (schedule of charges
2 for inspection services: fruit), are authorized.

3 (b) The legislative rules filed in the state register on the
4 third day of August, one thousand nine hundred eighty-three,
5 relating to the commissioner of agriculture (licensing of
6 auctioneers), are authorized.

7 (c) The legislative rules filed in the state register on the
8 eighth day of February, one thousand nine hundred eighty-four,
9 relating to the commissioner of agriculture (conduct of beef
10 industry self-improvement assessment program referendum), are
11 authorized.

12 (d) The legislative rules filed in the state register on the
13 fourth day of June, one thousand nine hundred eighty-four,
14 relating to the commissioner of agriculture (feeding untreated
15 garbage to swine), are authorized.

16 (e) The legislative rules filed in the state register on the
17 fourth day of June, one thousand nine hundred eighty-four,
18 relating to the commissioner of agriculture (registration,
19 taxation and control of dogs), are authorized.

20 (f) The legislative rules filed in the state register on the
21 first day of November, one thousand nine hundred eighty-four,
22 relating to the commissioner of agriculture (public markets), are
23 authorized.

24 (g) The legislative rules filed in the state register on the
25 tenth day of September, one thousand nine hundred eighty-four,

1 relating to the commissioner of agriculture (noxious weed rules),
2 are authorized.

3 (h) The legislative rules filed in the state register on the
4 fourth day of June, one thousand nine hundred eighty-four,
5 relating to the commissioner of agriculture (animal disease
6 control), are authorized.

7 (i) The legislative rules filed in the state register on the
8 fifth day of January, one thousand nine hundred eighty-four,
9 relating to the commissioner of agriculture (use of certain
10 picloram products), are authorized.

11 (j) The legislative rules filed in the state register on the
12 eighth day of March, one thousand nine hundred eighty-five,
13 relating to the commissioner of agriculture (increasing certain
14 fees by rules and regulations), are authorized.

15 (k) The legislative rules filed in the state register on the
16 thirteenth day of January, one thousand nine hundred eighty-six,
17 modified by the commissioner of agriculture to meet the
18 objections of the legislative rule-making review committee and
19 refiled in the state register on the thirty-first day of January,
20 one thousand nine hundred eighty-six, relating to the
21 commissioner of agriculture (licensing of livestock dealers), are
22 authorized.

23 (l) The legislative rules filed in the state register on the
24 eighteenth day of June, one thousand nine hundred eighty-six,
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and
2 refiled in the state register on the fifth day of January, one
3 thousand nine hundred eighty-seven, relating to the commissioner
4 of agriculture (West Virginia pesticide use and application act),
5 are authorized.

6 (m) The legislative rules filed in the state register on the
7 eighteenth day of August, one thousand nine hundred eighty-six,
8 modified by the director of the division of forestry of the
9 department of agriculture to meet the objections of the
10 legislative rule-making review committee and refiled in the state
11 register on the fifth day of January, one thousand nine hundred
12 eighty-seven, relating to the director of the division of
13 forestry of the department of agriculture (ginseng), are
14 authorized.

15 (n) The legislative rules filed in the state register on the
16 tenth day of April, one thousand nine hundred eighty-seven,
17 relating to the commissioner of agriculture (schedule of charges
18 for inspection services: fruit), are authorized.

19 (o) The legislative rules filed in the state register on the
20 thirteenth day of August, one thousand nine hundred eighty-seven,
21 modified by the commissioner of agriculture to meet the
22 objections of the legislative rule-making review committee and
23 refiled in the state register on the eighth day of September, one
24 thousand nine hundred eighty-seven, relating to the commissioner
25 of agriculture (animal disease control), are authorized.

1 (p) The legislative rules filed in the state register on the
2 fifteenth day of September, one thousand nine hundred
3 eighty-eight, relating to the commissioner of agriculture (sale
4 and distribution of commercial fertilizer), are authorized.

5 (q) The legislative rules filed in the state register on the
6 fifteenth day of September, one thousand nine hundred
7 eighty-eight, modified by the commissioner of agriculture to meet
8 the objections of the legislative rule-making review committee
9 and refiled in the state register on the twenty-sixth day of
10 October, one thousand nine hundred eighty-eight, relating to the
11 commissioner of agriculture (animal disease control), are
12 authorized.

13 (r) The legislative rules filed in the state register on the
14 fifteenth day of May, one thousand nine hundred eighty-nine,
15 modified by the commissioner of agriculture to meet the
16 objections of the legislative rule-making review committee and
17 refiled in the state register on the twenty-first day of August,
18 one thousand nine hundred eighty-nine, relating to the
19 commissioner of agriculture (production of milk and cream for
20 manufacturing purposes), are authorized.

21 (s) The legislative rules filed in the state register on the
22 seventh day of August, one thousand nine hundred eighty-nine,
23 modified by the commissioner of agriculture to meet the
24 objections of the legislative rule-making review committee and
25 refiled in the state register on the twenty-third day of October,

1 one thousand nine hundred eighty-nine, relating to the
2 commissioner of agriculture (animal disease control), are
3 authorized.

4 (t) The legislative rules filed in the state register on the
5 tenth day of August, one thousand nine hundred ninety, modified
6 by the commissioner of agriculture to meet the objections of the
7 legislative rule-making review committee and refiled in the state
8 register on the fifth day of October, one thousand nine hundred
9 ninety, relating to the commissioner of agriculture (meat
10 inspection), are authorized.

11 (u) The legislative rules filed in the state register on the
12 tenth day of August, one thousand nine hundred ninety, modified
13 by the commissioner of agriculture to meet the objections of the
14 legislative rule-making review committee and refiled in the state
15 register on the third day of October, one thousand nine hundred
16 ninety, relating to the commissioner of agriculture (agricultural
17 liming materials), are authorized.

18 (v) The legislative rules filed in the state register on the
19 tenth day of August, one thousand nine hundred ninety, modified
20 by the commissioner of agriculture to meet the objections of the
21 legislative rule-making review committee and refiled in the state
22 register on the third day of October, one thousand nine hundred
23 ninety, relating to the commissioner of agriculture (public
24 markets), are authorized.

1 (w) The legislative rules filed in the state register on the
2 nineteenth day of September, one thousand nine hundred ninety,
3 modified by the commissioner of agriculture to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the ninth day of November, one
6 thousand nine hundred ninety, relating to the commissioner of
7 agriculture (animal disease control), are authorized.

8 (x) The legislative rules filed in the state register on the
9 eighth day of August, one thousand nine hundred ninety-one,
10 modified by the commissioner of agriculture to meet the
11 objections of the legislative rule-making review committee and
12 refiled in the state register on the twenty-fourth day of
13 September, one thousand nine hundred ninety-one, relating to the
14 commissioner of agriculture (commercial feed), are authorized
15 with the amendments set forth below:

16 On page two, after subsection 3.3., by adding a new
17 subsection, designated subsection 3.4., to read as follows:

18 "3.4. The commissioner will not assess a tonnage fee on any
19 commercial feed or feed ingredients used in the manufacture of
20 poultry contract feed.";

21 On page five, after subsection 4.3.m., by adding a new
22 subsection, designated subsection 4.3.n., to read as follows:

23 "4.3.n. The commissioner will consider poultry contract feed
24 to be customer-formula feed.";

25 And,

1 On page eight, after subsection 5.5., by adding a new
2 subsection, designated subsection 5.6., to read as follows:

3 "5.6. Poultry contract feed labels shall conform to the
4 requirements of W. Va. Code §19-14-8(d), except that:

5 5.6.a. The name of the grower or feeder will substitute for
6 the requirements for the name of the purchaser; and,

7 5.6.b. The net weight (avoir dupois) of the commercial feed
8 and each feed ingredient used in the feed shall not be required
9 to be listed."

10 (y) The legislative rules filed in the state register on the
11 fourth day of June, one thousand nine hundred ninety-one,
12 modified by the commissioner of agriculture to meet the
13 objections of the legislative rule-making review committee and
14 refiled in the state register on the second day of August, one
15 thousand nine hundred ninety-one, relating to the commissioner of
16 agriculture (wood destroying insect treatment standards), are
17 authorized.

18 (z) The legislative rules filed in the state register on the
19 twentieth day of December, one thousand nine hundred ninety,
20 modified by the commissioner of agriculture to meet the
21 objections of the legislative rule-making review committee and
22 refiled in the state register on the thirtieth day of April, one
23 thousand nine hundred ninety-one, relating to the commissioner of
24 agriculture (fee structure for the pesticide control act of
25 1990), are authorized.

1 (aa) The legislative rules filed in the state register on the
2 eighth day of August, one thousand nine hundred ninety-one,
3 modified by the commissioner of agriculture to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the twelfth day of November, one
6 thousand nine hundred ninety-one, relating to the commissioner of
7 agriculture (animal disease control), are authorized.

8 (bb) The legislative rules filed in the state register on the
9 eighth day of August, one thousand nine hundred ninety-one,
10 modified by the commissioner of agriculture to meet the
11 objections of the legislative rule-making review committee and
12 refiled in the state register on the tenth day of September, one
13 thousand nine hundred ninety-one, relating to the commissioner of
14 agriculture (West Virginia plant pest act), are authorized.

15 (cc) The legislative rules filed in the state register on the
16 twenty-sixth day of July, one thousand nine hundred ninety-one,
17 modified by the commissioner of agriculture to meet the
18 objections of the legislative rule-making review committee and
19 refiled in the state register on the sixteenth day of October,
20 one thousand nine hundred ninety-one, relating to the
21 commissioner of agriculture (licensing of pesticide businesses),
22 are authorized.

23 (dd) The legislative rules filed in the state register on the
24 eighth day of August, one thousand nine hundred ninety-one,
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and
2 refiled in the state register on the second day of October, one
3 thousand nine hundred ninety-one, relating to the commissioner of
4 agriculture (certified pesticide applicators), are authorized.

5 (ee) The legislative rules filed in the state register on the
6 eighth day of August, one thousand nine hundred ninety-one,
7 modified by the commissioner of agriculture to meet the
8 objections of the legislative rule-making review committee and
9 refiled in the state register on the twenty-fourth day of
10 September, one thousand nine hundred ninety-one, relating to the
11 commissioner of agriculture (assessment of civil penalties and
12 procedures for consent agreements and negotiated settlements),
13 are authorized.

14 (ff) The legislative rules filed in the state register on the
15 eighth day of August, one thousand nine hundred ninety-one,
16 modified by the commissioner of agriculture to meet the
17 objections of the legislative rule-making review committee and
18 refiled in the state register on the twenty-fourth day of
19 September, one thousand nine hundred ninety-one, relating to the
20 commissioner of agriculture (aerial application of herbicides to
21 rights-of-way), are authorized.

22 (gg) The legislative rules filed in the state register on the
23 eighth day of August, one thousand nine hundred ninety-one,
24 modified by the commissioner of agriculture to meet the
25 objections of the legislative rule-making review committee and

1 refiled in the state register on the twenty-fourth day of
2 September, one thousand nine hundred ninety-one, relating to the
3 commissioner of agriculture (frozen desserts and imitation frozen
4 desserts), are authorized, with the amendment set forth below:

5 On page twelve, by striking out all of section 15 and
6 substituting a new section 15, to read as follows:

7 **§61-4B-15. Enforcement policy.**

8 15.1. The commissioner may assess a violation of W. Va. Code
9 §19-11B-1 et seq. or of these rules against the manufacturer of
10 product and/or the distributor of the mix used to manufacture the
11 product.

12 15.2. The commissioner will assess any violations of W. Va.
13 Code §19-11B-1 et seq. or of this rule to the distributor for mix
14 sampled from unopened containers. The company will not be
15 assessed additional cumulative notices of violations until the
16 commissioner has determined that the firm has had adequate notice
17 of the previous notice, generally 10 days from the mailing of the
18 notice of violation.

19 15.3. Whenever one of the last five consecutive official
20 product sample(s) taken on separate days within a one year period
21 are found to be adulterated or misbranded, the commissioner shall
22 send a written "First Notice" to the manufacturer or distributor
23 whichever is appropriate. This notice shall notify the
24 manufacturer or distributor of the violation of W. Va. Code

1 §19-11B-1 et seq. or of these rules and the enforcement policy
2 established by this section of the rule.

3 15.4. Whenever two of the last five consecutive official
4 product sample(s) taken on separate days within a one year period
5 are found to be adulterated or misbranded the commissioner shall
6 send a written "Second Notice" to the manufacturer or distributor
7 whichever is appropriate.

8 15.4.a. The commissioner shall collect additional official
9 product sample(s) within 21 days of the sending of a Second
10 Notice to the manufacturer or distributor, but shall not collect
11 product samples before the lapse of 7 days from the sending of a
12 Second Notice.

13 15.5. Whenever three of the last five consecutive official
14 product sample(s) taken on separate days within a one year period
15 are found to be adulterated or misbranded the commissioner shall
16 send a written "Third Notice" to the manufacturer or distributor
17 whichever is appropriate.

18 15.5.a. The commissioner shall collect additional official
19 product sample(s) within 21 days of the sending of the Third
20 Notice to the manufacturer or distributor, but shall not collect
21 additional product samples before the lapse of 7 days from the
22 date of sending of the notice.

23 15.6. The commissioner will issue a "Shut-down Order" for a
24 period of 24 hours to a manufacturer or distributor when the
25 record of the firm indicates that effective action has not been

1 taken to correct the causes of the violations, for instance when
2 three out of the last five samples from the same machine are
3 violative. The "Shut-down Order" will normally be issued with
4 the "Third Notice". The "Shut-down Order" will give the reasons
5 for the order, state the portion of the manufacturing or
6 distributing operation that is prohibited from operating while
7 the order is in effect, give conditions of the order, state the
8 length of time that the Shut-down Order will be in effect and
9 specify a time and place for a hearing to be held in this matter.
10 Except that in the case where the public health, safety or
11 welfare is at risk, the commissioner will issue an immediate
12 Shut-down Order and give notice to the manufacturer or
13 distributor under the provisions of subdivision 15.6.a. of this
14 rule.

15 15.6.a. The commissioner will issue an immediate Shut-down
16 Order without giving the manufacturer or distributor the
17 opportunity to be heard where there is a hazard to the public
18 health, safety or welfare. In these cases, the manufacturer or
19 distributor will be given the opportunity to request a hearing
20 before the commissioner after the notification of the order is
21 received by the manufacturer or distributor. All Shut-down
22 Orders issued due to noncompliance with subdivisions 8.1.c.,
23 8.1.d. or 8.1.g. of this rule are considered to involve a risk to
24 the public health, safety or welfare.

1 15.6.b. The manufacturer or distributor will be responsible
2 for causing all operations covered by the Shut-down Order to
3 cease and follow all other conditions of the order. At the end
4 of the period of the order, the manufacturer or distributor may
5 resume operations without further action by the commissioner.

6 15.7. If after a Shut-down Order has been issued the
7 commissioner finds that effective corrective action has not been
8 taken, he may issue a suspension of the Frozen Desserts
9 Manufacturer Permit. The suspension shall state the time that
10 the suspension will become effective, give the reasons for the
11 suspension and specify a time and place for a hearing to be held
12 in this matter. Except that in the case of a summary suspension
13 the commissioner will give the manufacturer the opportunity to
14 request a hearing in this matter subsequent to the notification
15 of the suspension.

16 15.7.a. All suspensions due to nonconformance to
17 subdivisions 8.1.c., 8.1.d. or 8.1.g. of this rule are summary
18 suspensions.

19 15.7.b. A suspension of the Frozen Desserts Manufacturer
20 Permit remains in effect until the manufacturer submits and the
21 commissioner accepts a written plan of correction and a request
22 for a reinstatement of the permit.

23 15.7.c. The commissioner has seven days from the date of
24 receipt of this application to respond to a suspension in the
25 case of violations of subdivisions 8.1.c., 8.1.d. or 8.1.g. of

1 this rule and fourteen days to respond for all other violations
2 of W. Va. Code §19-11B-1 et seq. or these rules. The
3 commissioner will accept or deny the application for a
4 reinstatement of the permit and will give the terms and
5 conditions under which the permit will be reinstated.

6 15.8. If the commissioner finds that after the firm has
7 resumed production following a suspension of their Frozen
8 Desserts Manufacturer Permit that effective corrective action has
9 not been taken, then the commissioner will hold a hearing to
10 determine if the Frozen Desserts Manufacturer Permit should be
11 revoked.

12 15.9. Persons who manufacture a product on an intermittent
13 or infrequent basis, so that the standard enforcement policy
14 cannot apply, will enter into a consent agreement with the
15 commissioner for correction of all items found to be not in
16 conformance with W. Va. Code §19-11B-1 et seq. or these rules.

17 15.10. Whenever an antibiotic or pesticide residue test is
18 found to be above tolerance, the commissioner shall notify the
19 manufacturer and/or distributor immediately of this fact and
20 shall begin an investigation to determine the cause of the
21 residue. The commissioner shall require that any person found to
22 be responsible for the residue shall correct the cause of the
23 residue prior to the resumption of the manufacturing or
24 distribution of the product.

1 15.11. A person who performs a recall by voluntarily
2 removing product from sale and distribution in an effective
3 manner so as to limit the potential harm to the health and
4 well-being of the public may be eligible for exemptions from the
5 normal enforcement policy. The commissioner shall consider the
6 facts of each case when making a decision on an exemption.

7 15.12. The commissioner may apply the enforcement policy in
8 a liberal manner in cases where all official product sample
9 results that involve a product in the form actually sold to the
10 public have been found to be in conformance with W. Va. Code
11 §19-11B-1 et seq. or these rules.

12 15.13. The commissioner may suspend the standard enforcement
13 policy in cases where such action is necessary to protect the
14 public health, safety or welfare.

15 15.14. Resamples will only be taken from machines that were
16 shown to be producing violative product the previous visit,
17 except for resamples needed to check that the nonviolative status
18 is being maintained according to the following schedule:

19 15.14.a. After a first notice and one nonviolative sample,
20 resamples will be taken between 5 to 6 months after the
21 nonviolative sample.

22 15.14.b. After a second notice and one nonviolative sample,
23 resamples will be taken between 3-4 months after the nonviolative
24 sample.

1 15.14.c. Other resamples may be considered necessary to
2 determine that the nonviolative status is being maintained."

3 (hh) The legislative rules filed in the state register on the
4 eighth day of August, one thousand nine hundred ninety-one,
5 modified by the commissioner of agriculture to meet the
6 objections of the legislative rule-making review committee and
7 refiled in the state register on the twenty-fourth day of
8 September, one thousand nine hundred ninety-one, relating to the
9 commissioner of agriculture (West Virginia apiary law of 1991),
10 are authorized.

11 (ii) The legislative rules filed in the state register on the
12 eighth day of August, one thousand nine hundred ninety-one,
13 modified by the commissioner of agriculture to meet the
14 objections of the legislative rule-making review committee and
15 refiled in the state register on the twenty-fourth day of
16 September, one thousand nine hundred ninety-one, relating to the
17 commissioner of agriculture (disposal of dead poultry), are
18 authorized with the amendments set forth below:

19 On page two, section two, by adding a new subsection to read
20 as follows:

21 "2.8 "Disposal pit" means an opening dug in the ground to a
22 minimum depth of six feet, containing a minimum capacity of 150
23 cubic feet, covered with a minimum of 12 inches of dirt, and
24 provided with one or more openings for the introduction of
25 poultry. The openings shall be a minimum size of eight inches

1 square and equipped with tight lids. A disposal pit shall be
2 located in a site which will prevent contamination of the
3 groundwater or the surface water. This site should conform to
4 the standards established in this rule."

5 On page two, subsection 3.1 after the word "incinerator," by
6 adding the words "disposal pit,"

7 And,

8 On page two, by adding a new section, designated section 4,
9 to read as follows:

10 **"§61-1C-4. Standards for Site Location for Disposal Pits.**

11 4.1 No part of a disposal pit system shall be located in a
12 poorly drained or filled area, or in any area where seasonal
13 flooding occurs.

14 4.2 No part of a disposal pit system shall be located within
15 10 feet of a building, foundation or property line.

16 4.3 No part of a disposal pit system shall be located within
17 50 feet of a public water supply line or within 10 feet of a
18 private water supply system.

19 4.4 A disposal pit shall be located at least 50 feet from a
20 private well or groundwater supply.

21 4.5 There shall be a minimum of three feet between the bottom
22 of a disposal pit and seasonal groundwater or rock, shale or any
23 other impermeable layer.

1 4.6 The evaluation of the site for installation of a disposal
2 pit shall be based upon percolation test results. Percolation
3 tests shall be performed in the following manner:

4 4.6.1 Location - At least two holes shall be placed over the
5 selected site. The results of these two test holes will be
6 averaged.

7 4.6.2 Holes shall be dug or bored from six to eight inches in
8 diameter at the site where the disposal pit will be installed.
9 The holes should be at least 24 inches in depth.

10 4.6.3 The bottom and sides of the holes shall be scratched
11 with a sharp pointed instrument or wire brush to remove any
12 smeared soil surfaces which interfere with the absorption of
13 water into the soil.

14 4.6.4 Loose dirt shall be removed from the bottom of the test
15 holes and two inches of coarse sand or fine gravel shall be
16 placed into the holes to prevent sealing.

17 4.6.5 An eight or ten penny nail shall be placed in the wall
18 of each hole exactly six inches above the level of sand or
19 gravel.

20 4.6.6 The test hole shall be completely filled with water to
21 ground level. Water in the hole shall be kept to a depth of at
22 least 12 inches for a minimum period of four hours before
23 beginning the percolation rate measurement.

24 4.7 Percolation rate measurement - Upon completion of the
25 above, the water depth in the holes shall be adjusted to the

1 level of the nail. The number of minutes it takes for this six
2 inches of water (all the water) to be absorbed into the soil
3 shall be accurately determined. This time in minutes, divided by
4 six, gives the rate of fall per inch. The average rate of fall
5 must be between five minutes and 60 minutes."

6 (jj) The legislative rules filed in the state register on the
7 eighth day of August, one thousand nine hundred ninety-one,
8 modified by the commissioner of agriculture to meet the
9 objections of the legislative rule-making review committee and
10 refiled in the state register on the twenty-fourth day of
11 September, one thousand nine hundred ninety-one, relating to the
12 commissioner of agriculture (licensing of livestock dealers), are
13 authorized.

14 (kk) The legislative rules filed in the state register on the
15 fifteenth day of September, one thousand nine hundred ninety-two,
16 modified by the commissioner of agriculture to meet the
17 objections of the legislative rule-making review committee and
18 refiled in the state register on the nineteenth day of February,
19 one thousand nine hundred ninety-three, relating to the
20 commissioner of agriculture (general groundwater protection rules
21 for pesticides), are authorized.

22

23 NOTE: The purpose of this bill is to authorize the
24 Commissioner of Agriculture to promulgate legislative rules
25 relating to general groundwater protection rules for pesticides.

26

27 Strike-throughs indicate language that would be stricken from
28 the present law, and underscoring indicates new language that
29 would be added.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get!)

FAX: (304) 558-0900

May 28, 1993

Bob Morris
Agriculture
Building 1, State Capitol
Charleston, WV 25305

HB 100 authorizing, **Title 61, Series 12G, General Ground Protection Rules for Pesticides**, passed the Legislature on **May 26, 1993**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs HB 100, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office. Authorization for your legislative rule is cited in **HB 100** section **64-9-1(nn)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, PLEASE SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

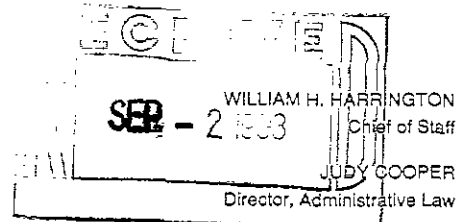
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DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

TO: John Liggett

AGENCY: Department of Agriculture

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: August 30, 1993

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SEP 22 9 08 AM '93

FILED

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 12G TITLE: 61 Department of Agriculture

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Robert E. Lamm

TITLE OF PERSON SIGNING: Asst. Director Plant Industries Division

DATE: Sept 17, 1993

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.