

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #1

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: Agriculture TITLE NUMBER: 61

RULE TYPE: Legislative; CITE AUTHORITY 19-16A-4

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: 12I

TITLE OF RULE BEING PROPOSED: Non-Bulk Pesticide Rules for Permanent  
Operational Areas

DATE OF PUBLIC HEARING: Monday, July 20, 1992 TIME: 1:00 PM

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

COMMENTS LIMITED TO: ORAL\_\_\_, WRITTEN\_\_\_, BOTH X

Written comments will be accepted until Thursday, July 30, 1992.

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

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

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

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



2.60

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Non-Bulk Pesticide Rules for Permanent Operational Areas

Type of Rule:  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 estimations 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 mandate operational area and storage conditions for non-bulk quantities of pesticides so as to prevent off-site movement of pesticide discharges. The Pesticide Control Act and the Groundwater Protection Act both designate the Department of Agriculture as the regulatory agency for pesticides. Both statutes require the agency to develop practices to protect the resources of the state, including groundwater.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The economic impact to state government will be significant. State pesticide storage and operation sites controlled by the Divisions of Highways and Parks and Recreation golf courses will be the most heavily impacted. One state owned golf course built a facility that would meet these requirements 3 years ago at a cost of \$65,000.00. An estimated 60 sites at \$50,000.00 each would cost \$3,000,000.00.

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

Political sub-division could face an economic impact equal or exceeding that of the state. Pesticide application businesses and private golf courses would be expected base costs far in excess of those by the state. An estimated 276 facilities x \$20,000.00 each would equal \$5,520,000.00. Individuals with large private pesticide operations could also be impacted.

C. Economic Impact on Citizens/Public at Large.

The costs of goods and services will increase. An estimated total cost of implementation would be approximately \$11,520,000.00. These costs would cause some small businesses to close.

Date: June 5, 1992

Signature of Agency Head or Authorized Representative



Title 61  
West Virginia Legislative Rule  
Series 12-I

Title: Non-bulk Pesticide Rules for Permanent Operational Areas

§61-12I-1. General

1.1 Scope - This Legislative rule establishes the requirements governing the operation of permanent locations used for the storage and mixing and loading of non-bulk pesticides.

1.2 Authority - WV Code 19-16A-4

1.3 Filing date -

1.4 Effective date -

§61-12I-2 Definitions

2.1 "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.

2.2 "Discharge" means any spill, leak, deposit, dumping or emptying, either accidental or otherwise, that results in a release of pesticide into an uncontained portion of an operational area. Discharge does not include lawful transfer, mixing, loading, unloading, repackaging or refilling of a pesticide provided such transfer, mixing, loading, unloading, repackaging, refilling or other similar activity, if carried out within an operational area containment. In addition, discharge does not include lawful distribution, use, disposal or application of a pesticide.

2.3 "Non-bulk Pesticide" means 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 and includes all pesticides not meeting the definition of bulk pesticides

2.4 "Operational Area" means in the case of non-bulk pesticide storage or handling facilities or locations, an area or areas where the contents of pesticide containers are transferred between containers, including 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 or areas not falling within the definition of a permanent operational area defined in this rule.

2.5 "Operational Area Containment" means in the case of non-bulk pesticide storage or handling facilities or location, any structure or system effectively designed and constructed to intercept and contain discharges, including container or equipment wash water, rinsates, and rainwater, and to prevent escape, run-off and leaching from an operational area.

2.6 "Permanent Operational Area" means an 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, handling, storage or transportation equipment over a 30 day period either consecutive or cumulative during a calendar year.

#### §61-12I-3 Permanent Operational Areas

3.1 Beginning 5 years after the effective date of this rule, the commissioner shall require all permanent operational area activities be conducted or carried out within operational area containment. Such containment shall be properly maintained at all times when operational activities are occurring.

3.2 The commissioner shall insure the following requirements are met for operational area activities conducted or carried out within a permanent operational area:

3.2.a. Operational area activities shall be carried out in a manner that prevents escape of discharges that may result in unreasonable adverse effects on the environment.

3.2.b Operational area activities shall be carried out on an impervious surface, such as a concrete pad or other similar pad approved by the Commissioner, that is suitably coated with a material to retard absorption of discharges and to facilitate recovery of any discharged materials.

3.2.c The operational area containment shall be constructed of materials and in a manner that will withstand the weight and movement of any equipment that may be placed or parked within the operational area containment.

3.2.d The operational area containment shall be designed to catch and contain any discharges in the operational area.

3.2.d.A For liquid pesticides, including container and equipment rinsates and those mixed with a liquid or dry carrier, the operational area containment shall be curbed or sloped to contain discharges so as to facilitate recovery of discharged materials. Discharges shall be immediately recovered from the operational area containment. Rainfall or other liquids shall not be allowed to flow either onto or out of the operational area containment unless a suitable recovery or storage facility is provided to collect, divert or manage the rainfall. The operational area containment shall be capable of holding 125% of the capacity of the single largest container or vehicle operated within the operational area. A minimum containment capacity of 250 U.S. gallons shall be provided.

3.2.d.B For non-liquid pesticides, the operational area containment shall extend beneath any conveyers or augers used in operational area activities unless such conveyers or augers are fully enclosed and constructed to prevent discharge. Operational area containment shall be of adequate dimension (area) to contain reasonably foreseeable discharges from the largest container or equipment operated within the operational area containment. The operational area containment for non-liquid pesticides may consist of a tarpaulin made of nonabsorbent materials which is of adequate thickness and construction to withstand all foreseeable loading conditions, and is generally compatible with the materials stored or placed thereon. Discharges shall be immediately recovered from the operational area containment. Rainfall or other liquids shall not be allowed to flow either onto or out of the operational area containment unless a suitable recovery or storage facility is provided to collect, divert or manage rainfall.

3.2.e The commissioner shall prohibit underground storage of recovered discharges from the operational area containment is prohibited. This does not preclude the use of approved sumps, which meet applicable state and federal requirements, that are incorporated into the design of the permanent operational area and are maintained and operated according to a plan approved by the commissioner.

#### §61-12I-4 Recovery, Storage and Use of Discharges

4.1 Any person who operates within the operational area containment shall immediately and fully recover all discharges, to the extent practicable, using appropriate absorbent materials, pumps or other acceptable means. Operational area surfaces exposed to pesticides (concentrate or dilute) shall be periodically cleaned with all rinsates recovered and properly stored or disposed of according to state requirements. No person shall store recovered discharges below ground except as provided in 3.2.c, but may be stored in suitable containers above ground provided secondary containment provisions are complied with. Recovered discharges may be used according to applicable product label(s) if appropriate.



STATE OF WEST VIRGINIA  
DEPARTMENT OF AGRICULTURE

State Capitol  
Charleston, WV 25305

June 15, 1992

Cleve Benedict  
Commissioner

Handwritten notes: "Hechler", "June 15 1992", "AM 8 27", "Benedict", "Commissioner", "Agriculture", "Department", "State of West Virginia", "Charleston, WV 25305"

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

Dear Mr. Hechler:

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

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

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

Please publish this notice in the State Register.

Sincerely,

*Barbara J. Smith*

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

BJS:pfhear.hec