

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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LEGISLATIVE SERVICES DIVISION
STATE HOUSE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Agriculture TITLE NUMBER: 61

CITE AUTHORITY 19-16A-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 121

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

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



6.60

FISCAL NOTE FOR PROPOSED RULES

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

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 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



DATE: September 15, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

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STATE DEPARTMENT OF AGRICULTURE
STATE HOUSE

LEGISLATIVE RULE TITLE: Non-Bulk Pesticide Rules for Permanent Operational Areas

1. Authorizing statute(s) citation 19-16A-4

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, WV

July 23, 1992, Morgantown, WV

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

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TITLE 61, SERIES 121

NON-BULK PESTICIDE RULES FOR PERMANENT OPERATIONAL AREAS

Summary and Description of the rule

This rule establishes requirements for the operation of areas where large quantities (over 300 lbs of liquid or 3,000 lbs of dry) of pesticides (that are not in containers larger than 55 gallons or 100 lbs net wt) are stored and establishes rules for the recovery, storage and use of any discharge from the containment area.

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 and that each groundwater protection agency shall take action necessary to assure that facilities under their jurisdiction maintain and protect groundwater at existing quality.

Title 61
West Virginia Legislative Rule
Series 12-I

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STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

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. Such term does not apply to those pesticides packaged in containers approved by the U. S. Department of Transportation for interstate transportation.

2.2 "Discharge" means any spill, leak, deposit, dumping or emptying, either accidental or otherwise, that results in a release of pesticide outside the contained 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 55 U.S. gallons or less, 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 pesticide concentrates or use dilution mixtures 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, handling equipment, storage equipment 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 4 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 a minimum volume of 10% of the total capacity of the single largest container or vehicle operated within the operational area or a minimum of 250 gallons, whichever is greater provided at least one person is available to monitor the entire loading and unloading process and is capable of stopping the process in the case of an operational spill. In the event no person is available to monitor the loading or unloading process, the design shall be equal to 125% of the capacity of the single largest container or vehicle operated within the operational area with a minimum containment capacity of 250 U.S. gallons.

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. 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. Rainwater recovered from containment areas may be used for pesticide dilutions or other appropriate uses, provided it is reasonably free of pesticides.

NON-BULK PESTICIDE RULES FOR PERMANENT OPERATIONAL AREAS (61-12I)

Public Hearing to Consider Proposed Rule
Oral Comments

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

Thursday, July 23, 1992
3:00 p.m.

Present: John Baniecki, WVU Extension Service, Morgantown, WV
James Linton, Linton Brothers, Inc., Martinsburg, WV
Dale Monks, West Virginia University, Morgantown, WV
Charles H. Moyers, Bruceton Ag Services, Bruceton Mills,
West Virginia
Peggy Powell, WVU Extension Service, Morgantown, WV
Luther Smith, WVU Extension Service, Morgantown, WV
Timothy Russell, Prescription Lawn & PCOA of WV,
Bridgeport, West Virginia
Richard Woodworth, Potomac State College, Keyser, WV

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

1 MS. SMITH: This is the public hearing for the non-bulk
2 pesticide rules for permanent operational areas, Thursday, July 23.
3 It is now 3:40 p.m. and there is at least one person here who wants
4 to make a formal statement. If you will say your name, please, and
5 who you represent.

6 MR. RUSSELL: Timothy Russell, I am with the Pest Control
7 Operators Association (PCOA) of West Virginia. Our concern on the
8 regulations comes with Section 2.6., permanent operational area.
9 We were concerned that the words "diluted pesticides" may be
10 confused with rinsates and we would like the wording to be "used
11 dilution mixture amount" used instead of "diluted pesticides" just
12 to prevent any confusion.

1 Also, in the same paragraph, 2.6., the statement,
2 "storage or transportation equipment" could possibly be confused
3 with storage areas and we would possibly like to see the statement,
4 like, "equipment used for storage" or "storage equipment" added to
5 that just to clarify that it is not storage areas.

6 Other than that, that is all that we felt that some
7 confusion might have followed. Thank you.

8 MS. SMITH: Thank you. Is there anyone else here who
9 would like to make a formal statement?

10 Well, this hearing is now closed. The next hearing is at
11 5:00 p.m.

12 (The hearing was concluded at 3:45 p.m.)

NON-BULK PESTICIDE RULES FOR PERMANENT OPERATIONAL AREAS (61-12I)

Public Hearing to Consider Proposed Rule
Oral Comments

Building 2, Guthrie Agricultural Center
Charleston, West Virginia

July 20, 1992
1:00 p.m.

Present: Jerry H. Gass, Southern States Coop., Inc.
John McCallister, Southern States Coop., Inc.
W. B. Buffaloe, Rhone-Poulenc, Inc.
Dexter Owsley, PCOA of WV and House Doctor Exterminating

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 requested and was 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 12I.

3 In paragraph 2.1., we recommend that the following
4 sentence be added to the definition of bulk pesticide, similar to
5 my earlier comment, adding this sentence to the end of the
6 definition, "Such term does not apply to those pesticides packaged
7 in containers approved by the U. S. Department of Transportation
8 for interstate transportation."

9 In paragraph 2.2., if this definition of "discharge" is
10 to be retained, we suggest an additional definition of "release" as
11 defined by the Comprehensive Environmental Response Compensation
12 and Liability Act to be included in these definitions.

13 Alternatively, the definition of "discharge" could be

1 changed by changing the word "into" in line three to the word
2 "outside."

3 Paragraph 2.6., the reference to 1,500 pounds of
4 pesticides as active ingredients may be confusing. A decision
5 needs to be made as to whether this operational area will be
6 determined by the number of gallons or pounds of dry weight
7 pesticides handled there or if the determination will be based on
8 pounds of actual active ingredient. Our recommendation is to
9 eliminate the wording "...or where a total of 1,500 pounds of
10 pesticides as active ingredients..."

11 Paragraph 3.2.d.(a), as written, it appears to us that
12 this paragraph requires an operational containment area that is
13 excessive in size. Assuming that the largest single container or
14 vehicle would be about 2,000 gallons capacity and that the
15 containment curb would be four inches high, the size of the
16 containment area would have to be at least sixteen feet wide by
17 sixty-three feet long. We would suggest changing the wording to
18 read, "The operational area containment shall be capable of holding
19 a minimum volume of ten percent of the total capability of the
20 single largest container or vehicle operated within the operational
21 area or a minimum of two hundred fifty gallons, whichever is more."

22 As we interpret the purpose of this containment is to
23 insure that a spill does not contaminate the surrounding land or
24 groundwater. Since this is addressing non-bulk pesticide handling,
25 the anticipated maximum spillage or discharge can reasonably be
26 expected to be rather small and to occur in the presence of an

1 operator, so the smaller size would reduce the volume of rainwater
2 which would accumulate on the containment area and need to be
3 handled, as well.

4 Paragraph 4.1., this is my final comment on this
5 regulation, in line eight, the reference to paragraph 3.2.c.
6 apparently should be changed to 3.2.e. We would also suggest
7 adding at the end of paragraph 4.1. the following: "Rainwater
8 recovered from containment areas may be used for pesticide dilution
9 or other appropriate uses, provided it is reasonably free of
10 pesticides."

11 (Hearing recessed at 9:40 a.m. and reconvened
12 at 1:00 p.m.)

13 MS. SMITH: This hearing is to consider public comment on
14 the Non-Bulk Pesticide Rules for Permanent Operational Areas. This
15 rule is being promulgated under the authority of the Pesticide Act
16 and the Groundwater Protection Act and it is designed primarily to
17 protect groundwater, which is one of the mandates of the
18 groundwater rule.

19 Dexter Owsley is the only one that is present at this
20 time, who said he would like to make a statement. Since we are
21 putting this on the public record, we want to be sure we hear every
22 word, Dexter. You have got a nice voice, but would you mind coming
23 up and standing at the podium so that we are sure we get every
24 word?

25 MR. OWSLEY: Well, really, the only statements I have I
26 think as I note here on the Non-Bulk Pesticide Operational Rules

1 Summary. I believe that is, Bob, what we had previously discussed
2 at the Board meeting. Isn't that about what we wanted?

3 MR. FRAME: There was concern about the term "storage or
4 transportation equipment."

5 MR. OWSLEY: And also about the use dilution?

6 MR. FRAME: Yes.

7 MR. OWSLEY: Use dilution there is stated with a quantity
8 in excess of 300 U. S. gallons of liquid or 3,000 pounds of net dry
9 weight. I think as long as those -- well, first, I want to say
10 that we fully endorse the new proposed regulations, with the
11 exception of the wording in 2.6. pertaining to permanent
12 operational area.

13 Changing the wording from "diluted pesticide" to the "use
14 dilution" is the only change that we see that we would be more in
15 favor of.

16 Also, one other part in 2.6. would be, we would also like
17 you to change the wording about storage or transportation equipment
18 for clarification to read, "storage equipment," not "storage area."

19 I think that is the only two real concerns that the
20 Association had and myself, as a member and secretary and
21 treasurer. I would just like to go on the record as stating that
22 we feel that these regulations are well-written and everything.
23 With those two changes, we would be happy to go along with them one
24 hundred percent. A few points were made, as far as a platform is
25 concerned. We feel that it would probably be in our best position
26 for any permanent operation that we have, an office that we might

1 have, that we should establish this.

2 The time period of five years from the date of
3 implementation is a real good time frame for us to meet these
4 regulations.

5 I have no objections whatsoever. I think it is well
6 written.

7 MS. SMITH: Thank you, Dexter. We will recess this
8 hearing and see if anyone else shows up in the next five or ten
9 minutes.

10 (Hearing recessed at 1:15 and closed at 1:30
11 p.m.)

12

13

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)

NV-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 3) 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

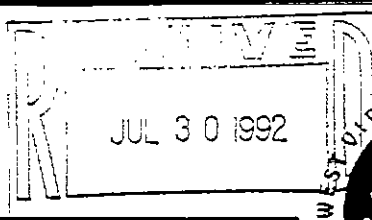
*Submitted by
CIBA-GEIGY, Agricultural Division
(Underline Connotes Suggested Revisions)*

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.

West Virginia Farm Bureau

Member of American Farm Bureau Federation

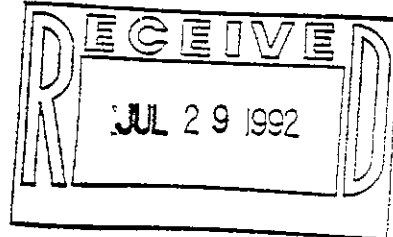


1 Red Rock Road, Buckhannon, WV 26201

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

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.

Copies sent to:
• Brenda Harper
• Barbara Smith

-N

Honorable Cleve Benedict
Commissioner of Agriculture
Page -2-

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.

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.)

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,



Richard S. (Steve) Hannah
Executive Secretary

RSE/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?

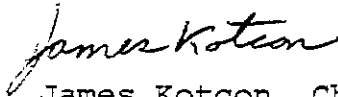
9. Making voluntary regs mandatory. Paragraphs 4.4 and 4.5 of series 6A and 12-G reserves the right of the Commissioner to make mandatory various practices when monitoring data indicate that pollution has occurred. This provision is directly contrary to the provisions of the law and to the principle 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.

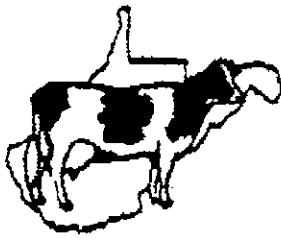
In conclusion, we urge the Dept. of Agriculture to revise and strengthen these regs to address our concerns and to bring them into compliance with the Groundwater Protection Act. We cannot support these regs as currently drafted because they undermine both the intent and the letter of the law. We anticipate 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

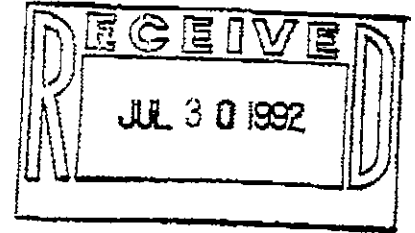


West Virginia
Holstein Association

Mrs. Cathy Brivvec, 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

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

*Notice sent to all pesticide businesses,
and all pesticide dealers*

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.

**PROPOSED REGULATIONS FOR GROUNDWATER PROTECTION
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

These regulations are necessary to protect groundwater and prevent pesticide and fertilizer from entering the groundwater. These regulations generally establish procedures and policy for groundwater protection activities. Regulations 61-12I through 61-12H establish best management practices for persons handling non-bulk pesticides in temporary operational areas.

Persons wishing to comment on any of the proposed regulations may request a copy of the proposed regulations by calling (304) 258-3300 or writing to the address above a copy of the schedule of public hearings is attached.

*Class I Legal ad for
Charleston Daily Mail*

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 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.

*Class I Special Ad for
Morgantown Dominion
Cost.*

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.

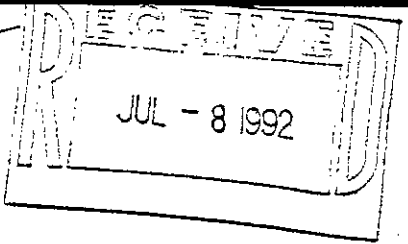
Both written and oral comments will be accepted at the hearings. Written comments will also be accepted by mail until July 30, 1992 and should be addressed Barbara Smith, Compliance Division, WV Dept. of Agriculture, 1900 Kanawha Blvd., E., Charleston, WV 25305-0170.

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.



Press release



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

State Capitol
Charleston, WV 25305

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 12I
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: Paragraph 2.1, 2.2, 2.3, 2.6, 3.2.d.A, 3.2.e, and 4.1.

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

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

Non-bulk Pesticide Rules for Permanent Operational Areas

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 were received at the hearings from Mr. Dexter Owsley and Mr. Tim Russell of the Pest Control Operators Association of West Virginia, Mr. Jerry Gass of the Southern States Cooperative Incorporated and Mr. Jim Kotcon of the Sierra Club, West Virginia Chapter. In addition to comments received at the public hearings, written comments were received from the West Virginia Farm Bureau and the CIBA-GEIGY Corporation.

PARAGRAPH 2.1- Mr. Jerry Gass 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 for interstate transportation." This request was felt to be acceptable and the requested change was incorporated in the proposed rule.

PARAGRAPH 2.2- Mr. Gass suggested the term "Discharge" be amended by changing the word into on line three to the word outside or by deleting the term "discharge" and adding an additional term of "release". The intent of Mr. Gass's comment was directed at addressing material discharged or released outside of a contained area. Although the current language addressed material discharged "into an uncontained portion of an operational area" and already addressed his concern, the language was changed to read "outside a contained portion of an operational area" to add clarity.

PARAGRAPH 2.3- CIBA-GEIGY Corporation suggested the definition of "non-bulk pesticide" be clarified by changing the

number "56" to "55". The resulting change reads "...containers of 55 U.S. gallons or less liquid...".

PARAGRAPH 2.6- Two comments were received on this paragraph. Mr. Gass felt the inclusion of a reference to 1,500 pounds of active ingredient in the definition of the term "Permanent Operational Area" was confusing and suggested that reference be deleted. Based on his comment and conversations with other people prior to the hearing about the meaning of the term in question, it was felt to be appropriate to delete this reference.

Representatives of the Pest Control Operators Association of West Virginia expressed concerns over the wording "diluted pesticides" in line two of that paragraph and the wording in line seven relating to "handling, storage or transportation equipment". In order to address their concerns and to add clarity to the definition to the wording "diluted pesticides" was changed to "use dilution pesticides" and "handling, storage or transportation equipment was changed to "handling equipment, storage equipment or transportation equipment".

The Pest Control Operators Association of West Virginia is made up of the pest control firms treating homes for termites and other pests and the lawn care companies operating in the State. A representative of their Association was present at each of the public hearings and offered support of this proposed rule.

PARAGRAPH 3.1- The CIBA-GEIGY Corporation offered written comments on this rule and others proposed at the same time. In rule 12-G two implementation dates were proposed for the construction of containment facilities. They felt the time frames for the implementation dates should be combined to aid in construction planning and be set at 4 years. This change was accepted and is so proposed. They also felt the time frame in this rule should also be 4 years for consistency. As such the change from 5 years to 4 years is also proposed for this rule.

PARAGRAPH 3.2.d.A- Mr. Gass expressed a concern containment area required in this paragraph was too large based on the fact or belief an operator would be monitoring any transfers of material and as such would be available to close valves in the event a hose should burst or begin to leak. His suggestion was to change the wording to read "The operational area containment shall be capable of holding a minimum volume of 10% of the total capability of the single largest container or vehicle operated within the operational area or a minimum of 250 gallons, whichever is more".

It was felt Mr. Gass's comment may be appropriate for some operations, but not all. As such his suggestion was incorporated with the addition of language to address those instances where an operator may not be present. The changed language, as proposed, now reads "The operational area containment shall be capable of holding a minimum 10% of the total capacity of the single largest container or vehicle operated within the operational area or a minimum of 250 gallons, whichever is greater, provided at least one person is available, on site, to monitor the process in the case of an operational spill. In the event no person is available to

monitor the loading or unloading process, the design shall be equal to 125% of the capacity of the single largest container or vehicle operated within the operational area with a minimum containment capacity of 250 gallons."

PARAGRAPH 3.2.e- A typographical error was pointed out and as such the words "is prohibited" were deleted from line three.

PARAGRAPH 4.1- Mr. Gass requested the sentence "Rainwater recovered from containment areas may be used for pesticide dilutions or other appropriate uses, provided it is reasonably free of pesticides." This addition is consistent with the intent of the rule and was added.

The West Virginia Farm Bureau expressed concerns about the money needed to fund this and other companion regulations being proposed. They were also concerned about the economic impact of the rule on government and business. They felt the rule should be withdrawn as there was no known or demonstrated impact of pesticides to groundwater.

The Groundwater Protection Act provides for a groundwater protection fund where fees are to be deposited. The allocation set aside for the Department of Agriculture to implement groundwater protection practices is \$75,000.00. As such this sum was reflected in the fiscal note attached to the rule.

The rule as proposed effects not only the protection of groundwater but also surface waters and the soil around permanent pesticide operational areas. The prevention of soil contamination is of particular importance to small business in future real estate transactions for the transfer or sale of their property. While it is probable some small businesses may be affected to the point of going out of business, these are most likely to be business that are of marginal operation and present the greatest threat of contamination to their surrounding environment.

The groundwater sampling data that currently exists has come from areas that are covered by proposed best management practices for temporary operational areas. It is because of that data that the Department of Agriculture is proposing those areas be addressed by best management practices rather than mandatory practices. There has been no monitoring of permanent operational areas and as such no data exists to determine they have no impact. One of the business groups most likely affected by the rule, the Pest Control Operators Association of West Virginia, has spoken in support of the rule. Their support comes from the need for decreased liability around their mixing sites and the need be able to transfer or sell their property at some future time without the need for costly remediation measures.

The Groundwater Protection Act is a preventative act to provide protection to groundwaters of the State. As such it is felt it is inappropriate to withdraw the proposed rule.

The Sierra Club, West Virginia Chapter expressed the concern that operations not meeting the definition of "Non-bulk Permanent Operational Areas" would not be regulated. Persons or operations

of quantities less than those stated would be incidental operations covered by rules for temporary operational areas. No genuine pesticide business would normally be using quantities less than those covered by this rule.

The WV Holstein Association commented on several rules. The Association was concerned about the economic impact of the rules to their industry.