

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Agriculture TITLE NUMBER: 61

CITE AUTHORITY 19-16A-4

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

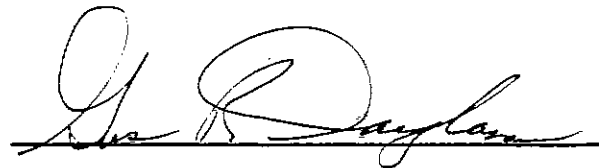
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

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.

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE
MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT
BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE
FILED WITH THE SECRETARY OF STATE.



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Title 61
West Virginia Legislative Rule
Series 12-I

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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 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.

2.2 "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 in containers approved by the U. S. Department of Transportation for interstate transportation.

2.3 "Discharge" means any spill, leak, deposit, dumping or emptying, either accidental or otherwise, that results in a release of a 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 these or other similar activities are carried out within an operational area containment. In addition, discharge does not include the lawful distribution, use, disposal or application of a pesticide.

2.4 "Non-bulk Pesticide" means all pesticides not meeting the definition of bulk pesticides.

2.5 "Operational Area" means an area or areas where pesticides 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 these containers remain sealed or otherwise unopened or areas not falling within the definition of a permanent operational area defined in this rule.

2.6 "Operational Area Containment" means any structure or system 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.

2.7 "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 thirty (30) day period either consecutive or cumulative during a calendar year.

§61-12I-3 Permanent Operational Areas

3.1 Four (4) years after the effective date of this rule all permanent operational area activities shall be conducted or carried out within operational area containments.

3.2 All operational area activities conducted or carried out within a permanent operational area:

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

3.2.b. 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.

3.3. All operational area containments:

3.3.a. 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.

3.3.b. shall be maintained at all times when operational activities are occurring.

3.3.c. shall be designed to catch and contain any discharge in the operational area.

3.3.c.A. The operational area containment for liquid pesticides, including container and equipment rinsates and those mixed with a liquid or dry carrier, shall be curbed or sloped to contain discharges. Discharges shall be immediately recovered from the operational area containment. Rainfall or other liquids may flow onto or out of the operational area containment only when a suitable recovery or storage facility collects, diverts or manages 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. At least one person shall be available to monitor the loading and unloading and stop the process in the case of an operational spill, except when the operational area containment is equal to 125% of the capacity of the single largest container or vehicle operated within the operational area.

3.3.c.B. The operational area containment for non-liquid pesticides may extend beneath any conveyers or augers used in operational area activities only when such conveyers or augers are fully enclosed and constructed to prevent discharge. Operational area containment shall be of adequate dimension (area) to contain discharges from the largest container or equipment operated within the operational area containment. The operational area containment for non-liquid pesticides shall 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 may flow either onto or out of the operational area containment only when a suitable recovery or storage facility collects, diverts or manages rainfall.

3.3.c.C. Sumps, meeting state and federal requirements may be incorporated into the design of the permanent operational area when they are maintained and operated according to a plan, after approval 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. 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. Recovered discharges shall be stored above ground in suitable containers in compliance with all secondary containment provisions. Recovered discharges may be used according to applicable product label(s). Rainwater recovered from containment areas may be used for pesticide dilutions when it is reasonably free of pesticides.

§61-12I-5. Hearings and penalties

5.1. The commissioner shall be governed by West Virginia Code 19-16A-22 when conducting hearings or assessing civil penalties for the violation of these rules. The penalty provisions of West Virginia Code 19-16A does not preclude the commissioner's right to issue orders or assess penalties pursuant to West Virginia Code 20-5M-1 et seq. .



WEST VIRGINIA LEGISLATURE
 LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
 Room M-152, State Capitol
 Charleston, West Virginia 25305
 (304) 340-3286

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OFFICE OF WEST VIRGINIA
 SECRETARY OF STATE

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

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

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

February 8, 1993

TO: Ken Hechler, Secretary of State, State Register

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

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Non-Bulk Pesticide Rules for Permanent Operational
 Areas, Series 12I

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

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

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

cc: Ray Barber, Guthrie Center
 Forrester Potter
 True Green-Chem Lawn
 135 Winter Road
 Delaware, Ohio 43015