

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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1995 JUL 31 PM 4: 04

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY 19-16A-4(h)

AMENDMENT TO AN EXISTING RULE: YES NO

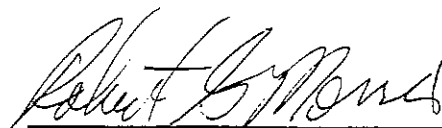
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

TITLE OF RULE BEING PROPOSED: Intregated Pest Management Program in Schools
and Day Care Centers.

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.



Authorized Signature

11.00



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

Gus R. Douglass
Commissioner

1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0170
(304) 558-3550

Robert G. Morris
Assistant Commissioner

Statement of Circumstances for Proposed Legislative Rule
61CSR12J

Integrated Pest Management Programs for Schools
and Day Care Centers

During the 1995 session the West Virginia Legislature passed legislation (House Bill 2471) requiring the Department of Agriculture to promulgate emergency and legislative rules establishing an integrated pest management program to be implemented into schools and day care centers in the State. The rules are required to address the use of the least hazardous materials, that pesticides can only be applied when monitoring indicates pests are present, that pesticides cannot be applied in the presence of students or employees of school and day care centers, a definition of pesticides for the integrated pest management program, and a system of prior notification to parents and school and day care center employees. These regulations meet those requirements.

The legislation also requires the Department of Education and the Department of Health and Human Resources to begin the implementation of the integrated pest management program in schools and day care centers by August 15, 1995.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Intregated Pest Management Programs for Schools and Day Care Centers

Type of Rule: X Legislative Interpretive Procedural

Agency Robert G. Morris telephone: 558-2201

Address West Virginia Department of Agriculture

1900 Kanawha Blvd., East

Charleston WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 100,000	\$	\$	\$ 100,000	\$ 100,000
PERSONAL SERVICES	75,000			75,000	75,000
CURRENT EXPENSE	20,000			20,000	20,000
REPAIRS & ALTERNATIONS					
EQUIPMENT	5,000			5,000	5,000
OTHER					

2. Explanation of above estimates:

The estimated costs are for personnel, travel and equipment needed to carry out educational programs and compliance inspection to assure the implementation and operation of integrated pest management programs in schools and day care centers as mandated by the West Virginia Legislature.

3. Objectives of these rules:

To meet the mandates of House Bill 2471 as passed by the West Virginia Legislature in 1995. The regulations establish integrated pest management programs in schools and day care centers as a means of reducing the use of pesticides in controlling pest populations.

Rule Title: Intregrated Pest Management Programs for Schools and Day Care Centers.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The rule will result in an increased workload and increased demands on the West Virginia Department of Agriculture. It is expected these rules will result in increased costs for the State's Education Department.

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

The pest control industry will face increased expense in training their employees. The county School Boards will see increased maintainence and pest control fees. School and day care centers are expected to be safer environments for children.

C. Economic Impact on Citizens/Public at Large.

The impact on the citizens/public at large is expected to be negligible.

Date: 7/31/95

Signature of Agency Head or Authorized Reprerentative

Robert G. Morris

DATE: July 31, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Agriculture

LEGISLATIVE RULE TITLE: Integrated Pest Management Programs for
Schools and Day Care Centers

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

2. a. Date filed in State Register with Notice of Hearing

June 22, 1995

b. What other notice, including advertising, did you give of the hearing?

Notice was sent to all pesticide businesses.

A News Release to the newspaper was made
and paid advertisement was purchased.

c. Date of Hearing(s) Comment period ended July 24, 1995.

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)

July 31, 1995

f. Name and phone number(s) of agency person(s) to contact for additional information:

Robert G. Morris 558-2201

Robert E. Frame 558-2209

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached _____

Integrated Pest Management in Schools and Day Care Centers: Summary of Legislative and Emergency Rules

Emergency and Legislative Rules, Title 61, Series 12J, establishing procedures for integrated pest management programs in schools and day care centers have been filed by the West Virginia Department of Agriculture in order to implement House Bill 2471 passed during the 1995 Legislative Session.

Definitions. The rules define the terms "crack and crevice treatment," "broadcast," "least hazardous materials," "pesticide," "school," "space treatment," "spot treatment," and "re-entry period." The rules further explain the characteristics of integrated pest management in urban situations.

Integrated Pest Management Programs. The rules require schools and day care centers to develop and maintain integrated pest management programs containing at a minimum a policy statement, pest management objectives, education of building occupants in integrated pest management practices, inspection and monitoring activities, and an evaluation of those integrated pest management strategies in use in the facility.

In addition, each school and day care center is to maintain an integrated pest management file containing a copy of the integrated pest management plan, monitoring diagrams, treatment records with locations, labels of pesticide products used, and copies of material safety data sheets. Copies of pesticide labels and material safety data sheets are to be provided to employees and to parents or guardians of students or children upon request. Exceptions to these rules are made for such areas of a school as greenhouses, nursery plots, or agricultural field plantings.

Monitoring Program. The rules further specify the components of the monitoring program that are to be part of each facility's integrated pest management plan. These components include a floorplan of the facility indicating the number and location of each trap; weekly inspection of each trap with the date, the trap number and location, the trap condition, the numbers and species of pests trapped, any other evidence of pests, any need for pest management, and the name of the person performing the monitoring indicated on a Pest Surveillance Data Sheet; replacement of the traps every two months, when the adhesive is no longer tacky or the trap is full; and removal and disposition of the pests trapped after counting and identification.

Least Hazardous Control Methods. When monitoring indicates that the level of pest infestation exceeds threshold levels for the facility, the rules outline a hierarchy of pest control methods to be implemented, beginning with nonchemical control methods such as sanitation and

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TITLE 61
LEGISLATIVE RULES
WEST VIRGINIA DEPARTMENT OF AGRICULTURE
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 12J

INTEGRATED PEST MANAGEMENT PROGRAMS IN SCHOOLS
AND DAY CARE CENTERS

61-12J-1 General

1.1 Scope - These legislative rules establish procedures to provide for integrated pest management programs in schools and day care centers.

1.2 Authority - WV Code §19-16A-4

1.3 Filing Date -

1.4 Effective Date -

61-12J-2 Definitions

2.1 "Consumer information sheet" means a fact sheet that is designed for distribution to consumers and contains information on the toxicity of the end use concentration of a pesticide product. In the case of ready-to-use products, "consumer information sheets" may be the same as "material safety data sheets."

2.1.2 "Crack and crevice treatment" means the application of small amounts of insecticides into openings commonly found at expansion joints, between different elements of construction, and between equipment and floors or walls.

2.2.3 "Broadcast" means the application of pesticides over an area such as a lawn, field, room, crawl space, or other such surface. The term does not include crack and crevice or spot applications made to selected plants, insects, soil, or surfaces.

2.4 "Day care center" means a completed structure utilized as a facility for the care of seven or more children on a non-residential basis.

2.3.5 "Least hazardous materials" means the use of pest control practices and methods, including the use of chemicals in a manner to cause the least practical exposure ~~or harm~~ to the occupants of a structure. The "least hazardous materials" takes into account the pest control method, toxicity of the product and

the exposure to the occupants to the practice or methods employed to control pests, such as the use of a non-volatile material formulation and/or application method as opposed to a broadcast application that creates to potential for exposure.

2.6 "Material safety data sheet" means a fact sheet that is designed for distribution to chemical manufacturing plant workers and refers to the toxicity of the concentrate of a pesticide product. In the case of ready-to-use products, "material safety data sheets" may be the same as "consumer information sheets."

2.4.7 "Pesticide" means, for the purposes of this integrated pest management rule, the use of insecticides and herbicides that are sprayed into or around a building and the adjacent play grounds utilized by a school or day care center.

2.5.8 "School" means a completed structure utilized as a public or private school, grades kindergarten through twelfth grade.

2.6.9 "Re-entry period" means the time that must elapse from the completion of a pesticide application until students or school and day care employees may enter the building to conduct scheduled activities.

2.7.10 "Space treatment" means the application of a pesticide that is intended to discharge the pesticide into the air throughout and entire room or area.

2.8.11 "Spot treatment" means the application of a pesticide to a limited area where pests are likely to occur, such as floors, walls, bases or underside of equipment, turf or ground. A "spot" shall not be more than 2 square feet and shall not be more than 20 percent of a surface area.

61-12J-3 Integrated Pest Management

3.1 Integrated Pest Management is a system of controlling pests in which pests are identified, action thresholds are considered, all possible control options are evaluated and selected controls are implemented. Control options, which include biological, chemical, cultural, manual, and mechanical methods, are used to prevent or remedy unacceptable pest activity or damage. Choice of control options is based on effectiveness, environmental impact, site characteristics, worker/public health and safety, and economics. The goal of an integrated pest management system is to manage pests and the environment to balance benefits of control, costs, public health and environmental quality. Integrated pest management takes into account site-specific factors and takes advantage of all pest management options.

3.2 Pesticides shall not be applied unless monitoring as specified in Section 6 of this rule indicates pests are present.

61-12J-4 Integrated Pest Management Programs for Schools

4.1 All schools covered by this rule shall develop and maintain an integrated pest management program utilizing the best management practices contained in "Integrated Pest Management in Schools and Other Public Institutions, Best Management Practices - 1995", published by the West Virginia Department of Agriculture or the most recent revision.

4.2 At a minimum, the integrated pest management program for a school shall contain:

4.2.1 a policy statement;

4.2.2 pest management objectives;

4.2.3 education of the building occupants in integrated pest management practices;

4.2.4 inspection activities;

4.2.5 monitoring activities; and

4.2.6 an evaluation of the integrated pest management strategies in practice.

4.3 At the inception of the integrated pest management program, the school shall make a survey of the facility and record the structural maintenance, cultural or sanitation practices that need correcting in order to insure the success of an integrated pest management program. This record shall be updated every six months with the items corrected so noted on the record with the date of correction.

4.4 Pest management objectives and pest threshold levels will vary for each school facility and the occupants of the facility. In order to provide a cross representation of input to the integrated pest management program from the school's occupants and the school community, the Local School Improvement Council as created by §18-5A-2 shall review and approve the school's integrated pest management plan.

4.5 The completed integrated pest management plan shall be filed with the Commissioner for compliance inspection. When any changes are made to the program, the revised integrated pest management plan shall be submitted to the Commissioner prior to the initiation of the new plan.

4.6 Schools shall maintain an Integrated Pest Management file

for each school facility. The Integrated Pest Management file shall contain at a minimum the following items or documents:

4.6.1 the adopted integrated pest management plan;

4.6.2 monitoring diagrams of the facility;

4.6.3 treatment records of the facility, including ~~diagrams of a floorplan indicating~~ treatment locations;

4.6.4 labels of pesticide products used at the facility;
and

4.6.5 copies of consumer information sheets when available and material safety data sheets.

4.7 Upon request, copies of pesticide labels and consumer information sheets when available or material safety data sheets in the absence of consumer information sheets shall be provided to employees of the school facility or to parents or legal guardians of the school's students.

4.8 Exceptions - Areas of schools, such as but not limited to greenhouses, nursery plots or agricultural field plantings, utilized for vocational agricultural plots or research are exempt from the requirements of these rules.

61-12J-5 Integrated Pest Management Programs for Day Care Centers

5.1 All day care centers covered by this rule shall develop and maintain an integrated pest management program utilizing the best management practices contained in "Integrated Pest Management in Schools and Other Public Buildings, Best Management Practices - 1995", published by the West Virginia Department of Agriculture or the most recent revision.

5.2 At a minimum, the integrated pest management program for a day care center shall contain:

5.2.1 a policy statement;

5.2.2 pest management objectives;

5.2.3 education of the building occupants in integrated pest management practices;

5.2.4 inspection activities;

5.2.5 monitoring activities; and

5.2.5 an evaluation of the integrated pest management strategies in practice.

5.3 At the inception of the integrated pest management program, the day care center shall make a survey of the facility and record the structural maintenance, cultural or sanitation practices that need correcting in order to insure the success of and integrated pest management program. This record shall be updated every six months with the items corrected so noted on the record with the date of correction.

5.4 The completed integrated pest management plan shall be filed with the Commissioner for compliance inspection. When any changes are made to the program, the revised integrated pest management plan shall be submitted the Commissioner prior to the initiation of the new plan.

5.5 Day care center operators shall maintain an Integrated Pest Management file for each facility in operation. The Integrated Pest Management file shall contain at a minimum the following items or documents:

5.5.1 the approved integrated pest management plan;

5.5.2 monitoring diagrams for the facility;

5.5.3 treatment records for the facility, including diagrams of treatment locations;

5.5.4 labels of pesticide products used at the facility;
and

5.5.5 copies of consumer information sheets when available and material safety data sheets for the products used at the facility.

5.6 Copies of pesticide labels and consumer information sheets when available or material safety data sheets in the absence of consumer information sheets shall be given to child's parents or legal guardians upon request.

61-12J-6 Monitoring for Pest Infestations

6.2.1 Monitoring Program

~~6.2.1.1. An integrated pest management program consists of a cycle of inspecting, identifying, monitoring, evaluating and choosing the appropriate method of control. Routine inspection and accurate identification of pests are vital steps in integrated pest management to ensure that control methods will be effective. Once the pest has been identified and the source of its activity pinpointed, habitat modifications primarily exclusion, repair and sanitation efforts may greatly reduce the prevalence of the pest. The monitoring program shall include inspecting areas of the facility for pest evidence, entry points, food, water and harborage~~

sites, and estimating pest population levels. The information gained through monitoring ~~is~~ shall be evaluated to determine whether the action threshold has been exceeded and what can be done in the way of prevention.

6.2.1.2. A monitoring program shall be conducted in each facility on an ongoing basis. Sticky traps designed for cockroaches and other crawling insects shall be placed along wall/floor junctions, on vertical surfaces, behind appliances, in closets, cabinets and shelves, and/or in other areas where insects have been seen. ~~Three to 5 traps shall be used in each room or area monitored.~~

6.2.1.3. Components of the monitoring program shall include:

6.2.1.3.a. A floorplan of the facility showing the number and location of each trap.

6.2.1.3.b. Weekly Periodic inspection of each trap at no greater than monthly intervals with the following information recorded on a Pest Surveillance Data Sheet:

6.2.1.3.b.A. Trap number and location;

6.2.1.3.b.B. Date checked;

6.2.1.3.b.C. Trap condition (either OK or needs to be replaced);

6.2.1.3.b.D. Numbers and ~~species~~ kinds of insects, arthropods, rodents or other pests trapped;

6.2.1.3.b.E. Pest damage or other evidence of pests such as feces, cast skins, or rub marks;

6.2.1.3.b.F. Any need for pest management.

6.2.1.3.b.G. The name of the person performing the monitoring activity.

6.2.1.3.c. Replacement of the traps at least every 2 months or when the adhesive is no longer tacky or when trap is full, whichever comes first.

6.2.1.3.d. Removal and disposition of the ~~insects trapped~~ trap after catch numbers are recorded and identification is confirmed, to prevent counting specimens more than one time and to prevent their use as food by other insects or rodents.

6.3.2 When monitoring indicates the level of pest infestation meets or exceeds the threshold levels established for the facility

and pest type, the progressive levels of pest control techniques and chemical applications as outlined in Section 7, Use of the Least Hazardous Materials, shall be followed in controlling the pest population. If monitoring indicates that pest populations do not meet or exceed threshold levels, no pesticides shall be applied.

61-12J-7 Use of the Least Hazardous Materials - Re-entry Intervals

7.1 Level 1 - Non-chemical Control Methods

7.1.1 Pest-preventive measures shall be incorporated into existing structures. Such preventive measures reduce the need for pesticide applications, and include sanitation, such structural repairs as sealing cracks, and such physical and mechanical controls as screens, traps, and air doors. Consult the West Virginia Department of Agriculture's best management practices document "Integrated Pest Management in Schools and Other Public Institutions, Best Management Practices - 1995", or the most recent revision, for IPM strategies for specific sites. Note that every facility will experience slightly different combinations of pests.

7.2 Level 2 - Least Hazardous Materials

7.2.1. If non-chemical pest management methods alone are ineffective or impractical, it may be necessary to incorporate a pesticide into the integrated pest management program. Although all pesticides are inherently toxic, there are a number of pesticide materials that are determined to be of low impact to occupants because of their organic or biological nature, low toxicity, relative non-volatility, and/or low or non-existent exposure to the occupants due to the manner in which they are applied as baits, gels or dusts into cracks and crevices or wall voids.

7.2.2. The least hazardous pesticides are those with a Caution signal word (EPA toxicity categories III and IV) such as botanical pesticides - pyrethrins and the synthetic pyrethroids; the inorganic insecticides - boric acid, disodium octaborate tetrahydrate, silica gel, and diatomaceous earth; insecticidal soaps; insect growth regulators; biological control agents - fungi, bacteria, nematodes; baits in tamper-resistant containers or for crack and crevice or void placement only.

7.2.3 There is no re-entry interval for these products due to their level of safety.

7.3 Level 3 - Crack and Crevice and Spot Treatments

7.3.1. Products with an EPA Caution signal word but not listed under Level 2 and applied as crack and crevice or spot treatments.

7.3.2 Products applied by these methods provide for reduced, minimal use of liquid materials that may present some, but limited volatility of the pesticide applied. Exposure to occupants is minimal.

7.3.3 The re-entry interval for which students and employees are remain out of the facility after the conclusion of treatment is four hours or the time period specified on the pesticide label as registered by the United States Environmental Protection Agency, which ever is greater.

7.4 Level 4 - Broadcast Applications and Space Treatments

7.4.1. Products with a Caution signal word applied by broadcast application or as a space treatment or products with a Warning or Danger signal word applied by any application method.

7.4.2 Products applied by these methods create the greatest opportunities for exposure at the time of application due to drift or volatility. However products applied as fogging agents are usually of low mammalian toxicity and pose little exposure after label re-entry times specified by the United States Environmental Protection Agency.

7.4.3 The re-entry interval for which students and employees are to remain out of the facility after the conclusion of treatment is eight hours or the period specified on the label of the pesticide product as registered by the United States Environmental Protection Agency, which ever is greater.

61-12J-8 Prior Notification

8.1 Employees of Schools and Day Care Centers

8.1.a All schools and day care centers shall notify their employees at least 24 hours in advance of the application of pesticides in levels 3 and 4 as detailed in Section 4, Use of the Least Hazardous Materials, of this rule.

8.2.a.1.b. School administrators shall notify their employees through routine announcement or individual notice to each employee of a facility where pesticides are to being applied.

8.2 Parents or Legal Guardians of Students of Schools

8.2.a At the beginning of each school year, or at the time a student in enrolled into the school, school administrators shall notify the parents or guardians of the right to be informed of the application of level 3 or 4 pesticides in levels 3 and 4 as detailed in Section 4, Use of the Least Hazardous Materials, of this rule.

8.2.b The notification to the parents or guardians shall contain a registration form, whereby the parent or guardian can request to be notified by the school administrator of the application of level 3 or 4 pesticides.

8.2.c The administrator of the school shall provide notification to the parent or guardian requesting such notification at least 24 hours in advance of the ~~pesticide~~ application of level 3 or 4 pesticides.

8.3 Parents or Legal Guardians of Children in Day Care Centers

8.3.a At the time a day care center operator signs a contract or other agreement for the care of a child, the operator shall notify the parent or guardian of the right to be informed of the application of a level 3 or 4 pesticide ~~in levels 3 and 4~~ as detailed in Section 4, Use of the Least Hazardous Materials, of this rule.

8.3.b The day care center operator shall post and make available to the parent or guardian, notification of the application of level 3 or 4 pesticides at least 24 hours in advance of any pesticide application. Such notification shall be placed at the register where the parent or guardian signs the child into and out of the day care center.

61-12J-9 Application of Pesticides to Schools and Day Care Centers

9.1 Pesticide applications shall not be made in the presence of students, children in day care centers or employees of schools ~~or and day care centers employees~~, except for school or day care center employees who are certified pesticide applicators, except that pesticides may be applied to a localized area of infestation when students, children or school and day care center employees are present if the infestation causes an imminent threat of bodily harm.

9.2 All pest control methods or practices shall be conducted in conformance to the Use of the Least Hazardous Materials as outlined in Section 7 of this rule.

9.3 All pesticide applications made to schools and day care centers shall be applied in accordance with the integrated pest management plan filed with the Commissioner.

9.4 All pesticide applications shall only be made by certified commercial pesticide applicators or certified public applicators certified in General Pest Control, or registered technicians under the supervision of a certified pesticide applicators as outlined in Title 61 Series 12A Certified Pesticide Applicator Rules.

9.5 The commissioner shall require all certified pesticide applicators applying pesticides or supervising the application of pesticides, or persons providing services as a consultant to complete a specialized training program in urban integrated pest management.

9.5.1 The specialized urban integrated pest management program must be approved by the commissioner.

9.5.2 Pesticide applicators certified in the General Pest Control sub-category as detailed in Title 61 Series 12A, Certified Pesticide Applicator Rules who complete the specialized training program in urban integrated pest management prior to July 1, 1996 shall be determined to be certified in Urban Integrated Pest Management.

9.5.3 After July 1, 1996, the commissioner shall require all certified pesticide applicators applying pesticides or supervising the application of pesticides in a school or day care center, or persons providing services as a consultant to schools and day care centers to be examined and certified in the sub categories of General Pest Control and Urban Integrated Pest Management as outlined in Title 61 Series 12A Certified Pesticide Applicator Rules.

61-12J-10 Record Keeping

10.1 All documents of required to be in the Integrated Pest Management Files for schools and day care centers as detailed in Section 4.6 and Section 5.5, respectively, of this rule shall be kept for a period of two years.

10.2 The records required for the Integrated Pest Management of schools and day care centers shall be made available upon request to the commissioner to verify the maintenance of the integrated pest management program.

61-12J-11 Implementation

11.1 All schools and day care centers covered by this rule will be notified of these emergency rules and timetable for compliance as required by §18-5-9b and §49-2B-17 by August 15, 1995.

11.2 The commissioner shall make available to all schools and day care centers a copy of the integrated pest management materials titled " Integrated Pest Management in School and other Public Institutions, Best Management Practices - 1995" and "Integrated Pest Management in Schools and Other Public Institutions, A Guide for Commercial Applicators".

11.3 All schools and day care centers covered by this rule

shall submit an initial draft of their integrated pest management plans to the commissioner for review by February 1, 1996. The commissioner shall review the plans and offer comments when they appear warranted.

11.4 All schools and day care centers covered by this rule shall submit their completed integrated pest management program to the commissioner by August 1, 19956.

11.5 All pesticide applications made to schools and day care centers shall be made in accordance with these rules and the integrated pest management programs on file with the commissioner after September 1, 19956.



SIERRA CLUB

WEST VIRGINIA CHAPTER

P.O. Box 4142
Morgantown, WV 26504

July 24, 1995

Bob Frame
West Virginia Department of Agriculture
Plant Industries Division
Pesticide Regulatory Programs
1900 Kanawha Blvd., East
Charleston, WV 25305-0190

Dear Mr. Frame:

Please consider the following comments on the proposed pesticide rules Title 61, Series 12 A and Series 12 J.

1. I support the creation of a new category for certification for Urban Integrated pest Management applicators. While creation of a new category for certification goes beyond the original scope and intent of HB 2471, it is within the authority of the Commissioner and it establishes a useful and creative approach to implementing the intent of the bill.

2. I believe there is a problem with the proposed deletion of the agricultural fumigation category (section 5.2). Since section 5.1 covers agricultural pest control for private applicators for all restricted use materials except fumigants, the only alternative for fumigant applicator certification is through the commercial applicator category in section 4.2.h.C. Since this category is oriented to industrial, institutional, structural, or health-related pests, I question whether this category is appropriate for private agricultural applicators using fumigants for agricultural crops. While it is not widespread, a number of fumigants are occasionally used for orchard replant sites, tree nurseries, and high value crops. Since these are still legal uses, and since the compounds are highly toxic, special certification requirements for their agricultural uses are appropriate. I would urge that the category be retained. I also urge that the standards under section 6.2.b. be retained.

Series 12 J

3. My copy of the rules is missing Section 6.1. Is this a typographical error or a substantive omission?

4. The discussion in section 6.2.a is useful for an educational program but should be condensed or revised to more explicitly describe the minimum requirements for compliance with the rule. Alternatively, this information could be moved to a general policy and purpose section to more clearly differentiate those components that are required actions versus those that merely explain the intent of an IPM program.

5. Section 6.2.b. needs to be edited to more clearly identify the minimum requirements for a monitoring program. For instance, this section specifies that only monitoring of crawling insects is required. Language about appropriate monitoring requirements for flying insects, weeds, rodents, or other pests is needed in order to identify appropriate thresholds for treatment for these pests. In addition, the specification of a

"Not blind opposition to progress, but opposition to blind progress."

range (three to five traps shall be used in each room) implies that using six traps would be a violation of the rules. While this is probably wasteful and unnecessary, it shouldn't be illegal, particularly for those pests where sticky traps provide a safe and reliable control.

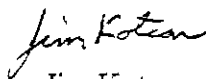
6. Section 7 continues the emphasis on indoor crawling insect problems. While these are likely to be one important focus of an IPM program, herbicides and insecticides used outdoors or for other types of pest problems should be explicitly included in the hazard ranking system.

7. I strongly support the employee and parental notification portions of this rule. Informed parents are the strongest mechanism available for limiting the use of pesticides in schools to the safest possible options. I believe that parental notification, especially in day care centers, is also an important educational step to increase awareness of pesticide safety in the home for young children and new parents. Since young children spend a disproportionate amount of time crawling on the floor and placing things in their mouth, the added protection provided by these rules is clearly warranted. Obviously, the WVDA will not have the resources, nor is it necessary, to closely monitor every pesticide application in schools and day care centers. Parental notification and the required record keeping therefore become the all-important tools for enforcement of this rule.

8. Section 9.4 allows application of pesticides by certified "public" applicators, but no such category exists in Series 12 A. Does this refer to Series 12 A, section 4.2.h.A., or should it include the new section 4.2.h.E., Urban IPM?

In conclusion, I wish to commend you for an excellent draft of this rule. I strongly support it. While there may be some need to clarify the monitoring and record-keeping portions to minimize the expense and regulatory burden of this rule, I believe the basic structure is sound, efficient, and will markedly increase the safety and environmental quality of schools and daycare centers. Thank you for the opportunity to comment on this rule and please let me know of the outcome as it moves through the process.

Sincerely,



Jim Kotcon

State Government Programs Chair

cc:

Norm Steenstra, WV Citizen Action Group
Tom Degen, WV Environmental Council
Gus Douglas, Commissioner, WVDA
Bob Morris, Assistant Commissioner, WVDA
Perry Bryant, WVEA
Chuck Chambers, Speaker, WV House of Delegates
Delegate Dale Manuel
Senator Rebecca White
Senator David Grubb
Senator John Yoder
Senator Joe Manchin
Senator Don Macnaughtan

Perhaps selected individuals listed in each school's IPM program could be allowed to accompany the applicator when necessary. Actually taking this a bit further, many thousands of commercial establishments are treated every day with employees present some requiring prenotification some not. Should the employee group be included in this rule's requirements? Pre notification would still be completed for the employees and they could elect not to be present during applications.

Again with regard to reentry intervals should employees who have been pre-notified of an application remain out (except where product labels require it) the minimum reentry time? Is there a difference between this employee and one working in a restaurant facility where ongoing pest control may be taking place? It may be an advantage in some cases for maintenance personnel, administrators, food service directors etc. to observe and communicate with the applicator when applications are made as long as all labelled safety requirements are met.

Again, I appreciate the opportunity to offer some comments and would welcome discussion regarding these or any other issues relative to House Bill 2471.

Sincerely'



Chris Anfinsen
Technical Specialist, Terminix International



Responsible Industry for a Sound Environment

E. Allen James
Executive Director

July 21, 1995

Mr. Robert E. Frame, Assistant Director
Plant Industries Division
Department of Agriculture
State of West Virginia
1900 Kanawha Boulevard, East
Charleston, WV 25305-0170

**Re: Comments on proposed Integrated Pest Management Programs in Schools
and Day Care Centers - Title 61, Series 12J**

Dear Mr. Frame:

Thank you for the opportunity to offer comments on the proposed emergency and legislative regulations. We are responding on behalf of the following RISE member companies and associate member professional applicator associations, although individual companies and/or associations may also submit their own comments. The listed companies and associations concur in the comments contained herein.

Member Companies:

Ciba Crop Protection
DowElanco
DuPont Agricultural Products
FMC Corporation

Associations:

West Virginia Chemical Industry Committee
National Pest Control Association
Professional Lawn Care Association of America

RISE (Responsible Industry for a Sound Environment) is a national association representing manufacturers, formulators, distributors and other groups supplying pesticide products and services in and around schools and day care centers. These member companies and associations support the development of responsible and effective Integrated Pest Management (IPM) Programs for schools and day care centers. We commend the Department for the excellent proposal upon which we will comment.

RISE • 1156 15th Street, N.W. • Suite 400 • Washington, D.C. 20005 • (202) 872-3860 • fax (202) 463-0474



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General Comments:

1. IPM is a system of controlling pests as fully defined in Title 61-12J-3. We support this definition. However, to be most effective, all control methods should be considered for each pest situation, and the most effective control method or methods should be selected. Depending upon the specific situation, it may not be possible to follow the progressive plan as required in 6.3, to avoid potential for rapidly escalating infestations or damage. Thus, the progressive plan should be a recommendation, where practical, but the management of each situation and selection of appropriate pest control method(s) must remain with the trained applicator at the site for the most effective and environmentally responsible results, with the minimum potential for risk to applicators and occupants.
2. In item 7.3.c and 7.4.c we have recommended that reentry intervals following product applications be based upon specific product label instructions. However, it may be desirable to include a recommendation that pesticide applications be planned to occur when the school facility or day care center is generally expected not to have students or other occupants present in the site of application.

Specific Comments:

2.3. -- "Least hazardous materials."

We recommend that the words "...or harm..." be deleted from the end of line three (3) of the paragraph. There is no reason to believe that the application of pesticides according to the product label will lead "to harm" as insinuated in the paragraph as currently written. By deleting these words the paragraph has clearer and more accurate meaning.

4.6.f -- Copies of material safety data sheets.

It should be noted that material safety data sheets (MSDS) are prepared for occupational exposure in a manufacturing environment, and that end use application will generally be at a much diluted rate of pesticide product. MSDS are developed for OSHA to provide precautionary statements to the plant worker, and may be misleading for parents, building employees or occupants.

Therefore, it is our recommendation that the following statement be added to the end of the sentence "..., **or consumer information sheets when available.**" The consumer information sheet for each product or group of similar products could be developed by the Department of Agriculture, to provide a cautionary statement that the intended use of material safety data sheets is for concentrated products, before dilution by the applicator, and that the precautions included on the MSDS may not be applicable to the diluted product, as applied. Other states have developed consumer information sheets to provide a more appropriate explanation of product dilution, application rates and potential for exposure.

4.7. --

If our suggestion that if 4.6.f. is accepted, then the same statement be inserted in this paragraph following the word "sheets..." in line two.. The sentence would read:

"Upon request, copies of pesticide labels and/or material safety data sheets, or consumer information sheets when available, shall be provided to employees of the school facility or to parents or legal guardians of the school's students."
(underlined words indicate new language.)

5.5.e. and 5.6 --

The recommendations made for 4.6.f. and 4.7 apply to 5.5.e and 5.6.

6.3 --

We strongly recommend that this section be deleted in its entirety for the reasons cited in our General Comments. The decision of what pest control method{s} should be used for a particular situation must be left to the judgement of the trained applicator for timely and effective IPM implementation.

However, an alternative sentence could be inserted for 6.3:

"When monitoring indicates the level of pest infestation meets or exceeds the threshold levels established for the facility and pest type, all possible control options are evaluated and selected controls are implemented." This substitution is fully consistent with the definition of IPM provided in 3.1.

7.3.c. --

We recommend that the words ..."four hours or" ... be deleted from line three and that the words ..."whichever is greater" ... be deleted from line five. It may be appropriate to require that students and employees not be present during product application. However, the Environmental Protection Agency has made a determination that reentry intervals included on product labels provide adequate protection from exposure following product applications. The reentry period of four hours seems arbitrary and is unnecessarily restrictive.

7.4.c --

For the same reasons cited in 7.3.c we recommend that the words ..."eight hours or" ..., and the words ..."whichever is greater," be deleted from this paragraph.

9.2. --

We recommend that this paragraph be deleted, and subsequent paragraphs be renumbered.

For reasons cited previously, it is imperative for the success of an IPM program that the trained applicator have the option to select from among all control methods, depending upon the specific pest and site conditions. The requirement that an applicator shall follow a

progressive process of pest control will likely lead to more serious problems, and a failed IPM program. The trained applicator must be free to use profession judgement as to the appropriate control method to use in each situation.

9.5, including a, b & c. -

We recommend that this entire section be deleted.

It is our suggestion that training in urban IPM be provided within the existing category of Commercial Applicators under 61-12A Certified Pesticide Applicator Rules, 4.2.h.A. - General, and that a new category 4.2.h.E. not be established. The establishment of an additional category is unnecessary and burdensome, and the training objectives can be achieved by including IPM program techniques in the "General" category 4.2.h.A.

Comments on proposed changes to Title 61 - Series 12 A -- Certified Pesticide Applicator Rules

4.2.h.A General.

Training under this category should include Urban Integrated Pest Management. The hours of required training need not change, but the current training could be amended to include Urban Integrated Pest Management as part of to content.

4.2.h.E. Urban Integrated Pest Management.

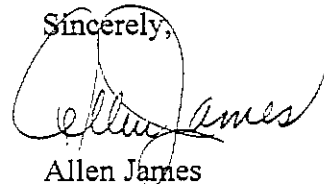
We recommend that this paragraph be deleted, based upon our recommendations made in 4.2.h.A.

6.3.h.E. Urban Integrated Pest Management.

We recommend that this paragraph be deleted, based upon our recommendations made in 4.2.h.A. The information contained in this paragraph could be incorporated into the existing training provided under 4.2.h.A.

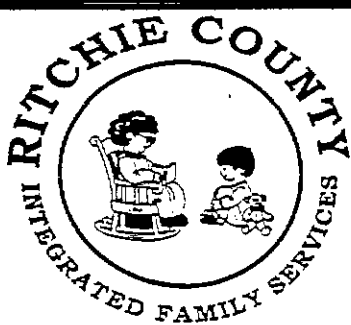
We appreciate the opportunity to comment on this proposal. Please feel free to contact me should you have any questions.

Sincerely,



Allen James

RISE is the national association representing the manufacturers, formulators, distributors and other industry leaders involved with pesticide products used in turf, ornamental, pest control, vegetation management and other non-food/fiber applications.



Ritchie County Integrated Family Services, Inc.

Corner S. Court Street & Edgeview Lane

Post Office Box 195

Harrisville, WV 26362

Leala M. Lindsay, Executive Director

Phone: (304)643-4941 Fax: (304)643-4757 TDD: (304)643-4941

West Virginia Department of Agriculture
Plant Industries Division
Pesticide Regulatory Programs
1900 Kanawha Blvd. E.
Charleston, WV 25305-0190

RE: House Bill 2471: Integrated Pest management in Schools
and Day Care Centers

House Bill 2471 will have negative impact on Day Care Centers in this State, resulting in added expenses which can be ill afforded.

Ritchie County Integrated Family Services operates Inter-generational Day Care. Since we opened in February 1994 families of children and adults who need supervision have come to rely on our dependable service to allow them to work and support their families. This reliable service may be in jeopardy once House Bill 2471 is implemented as one of the provisions of this legislation requires centers to be vacated for specified periods of time after pesticides are applied.

Day Care Centers are operated on very limited budgets. Under this legislation we will be required to arrange for training for a staff person to be certified as a pesticide applicator or contract with one. The added paperwork will result in taking staff time away from children or adding more time to a staff person, either option would be detrimental to our Day Care Centers.

The placement of pest traps in Day Care Centers that care for young mobile children does not seem prudent. I feel confident children are will supervised in the Day Care Centers in this State, however children are also quick and resourceful.

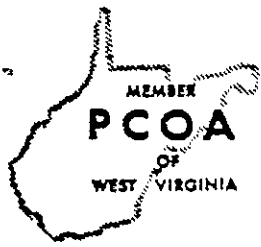
It is our hope that Day Care Centers will be excluded from these regulations as they are not in the best interests of Day Care Centers or the families they serve. Families cannot afford additional rate increases and Day Care Centers cannot afford to absorb the added expense.

Respectfully,

Cindy L. Summers

Cindy L. Summers, Asst. Director
Ritchie Co. Family Services

Board of Directors: Raymond W. Jones, Clyde Post, John R. "Shorty" Bumgardner, Marianne Culling, Jeanette Been, Barbara Bonnell, Lillian Cunningham, Roberta Finch, Lois Fox, Ruth Hayhurst, Rev. James Kelly, Lucille Stevens, Edwin VonHagel



**PEST CONTROL OPERATORS ASSOCIATION
OF
WEST VIRGINIA**



JOHNNY RASCHELLA, Secretary-Treasurer

P. O. Box 22, Belington, W. Va. 26250

July 21, 1995

Mr. Robert Frame
Assistant Director
Plant Pesticide Division
WV Dept. of Agriculture
1900 Kanawha Blvd.
Charleston, WV 25305

Dear Bob:

On behalf of the Pest Control Operators Association of West Virginia (PCOA of WV) I would like to thank you for taking the time to solicit industry suggestions and comments and for allowing us to express our views and concerns regarding the West Virginia Department of Agriculture's proposed emergency rule, "Integrated Pest Management Programs in Schools and Day Care Centers." Some of our concerns are as follows:

Integrated Pest Management Programs for Schools.

Section 4.4.

The PCOA of WV has some serious concerns about who will create threshold levels. What are the qualifications and credentials of these individuals? What is an appropriate threshold level? Is one bee sting too many for an individual with an allergy to bee stings? Who will bear the burden of liability; the pest control operator, the school principal, the West Virginia Department of Agriculture, or the state's school board? We suggest that the Department clearly define Section 4.4. We further suggest that it be made clear that there is no threshold level for certain pests, and that those individuals approving threshold levels should first consult with a pest control professional. We feel that it would be inappropriate to assume that the local School Improvement Council members will have the educational background on insect biology and/or an entomologist on its panel.

Section 4.6.f.

We suggest that you rewrite Sections 4.6.f and 5.5.e to show that Material Safety Data Sheets refer to concentrates and not to the diluted product which will actually be used. As currently written, these sections may mislead the public.

One form of IPM often neglected is Architectural IPM. The PCOA of WV suggests that the Department either include language in the regulation or the materials it distributes urging school boards to consult with pest control operators during the construction of new schools.

Integrated Pest Management.

Section 3.2.

As the statutory language notes, "pesticides shall only be applied when monitoring indicates that pest infestations are present." This statement appears at the beginning of the regulation in Section 3.2, and we feel that it should also be placed in Section 6 so that there will be no misunderstanding by those applying pesticides in schools.

Monitoring for Pest Infestations.

Section 6.2.b.

The PCOA of WV suggests that you allow the pest control operator to make a professional judgment as to how many sticky traps to use in each area rather than mandating how many traps to use. This will allow more flexibility to the monitoring program. Mandating the number of traps per area does not appear to serve any meaningful purpose.

Section 6.3.

The PCOA of WV does not see the need for requiring pest control operators to go progressively through each pest control level as outlined in Section 7. The statute already requires monitoring before the application of pesticides. Mandating pest control operators to go through each step is burdensome and inefficient. We suggest that the Department strike Section 6.3 and give the pest control professional the ability to make a determination as to what method of pest control is the most effective.

Use of Least Hazardous Materials—Re-entry Times.

The PCOA of WV believes that label re-entry periods are "appropriate" and should be the only applicable re-entry periods, particularly for crack and crevice and spot treatments. Pesticide labels are the law, are based on scientific data, and are approved by the Environmental Protection Agency. We question how the Department concluded that four-hour and eight-hour re-entry periods were "appropriate" since the Department has not indicated that it has any additional information to warrant extended re-entry periods.

Definitions.

Section 2.3.

The United States Environmental Protection Agency approves the products our industry uses and the manner in which they may be applied. In Section 2.3, we feel that the words "or harm" are misleading. If a product is applied according to label directions, building occupants should not be harmed, therefore, we suggest that the words "to harm" be stricken so as to not unnecessarily worry those reading this regulation. The PCOA of WV cautions the Department about distributing materials that include definitions of terms that conflict with the definitions in the proposed regulation.

Mr. Robert Frame
July 21, 1995
Page 3

Application of Pesticides to Schools and Day Care Centers.

We would like to restate our opposition to the Department's intention of requiring those applying pesticides in schools to receive additional training hours, be examined, and be certified in a newly created subcategory, Urban Integrated Pest Management. We feel strongly that the industry is already practicing IPM. In the past five years, the industry has made great strides in implementing Integrated Pest Management programs. This is evident in our new training materials, the content of technical sessions, at our professional meetings, and in practice. The state's initiative to create a subcategory for certification, IPM in Schools, implies that the industry does not practice IPM in the existing categories of certification while, in fact, our association has promoted IPM techniques for several years. Additional hours and training requirements are not necessary.

We see this as an extra licensing burden, dictating additional hours and training requirements which are not necessary, with which West Virginia pest control operators will have to comply. In addition, the creation of a new subcategory for certification will not necessarily ensure that the client will have an IPM program.

We feel that, instead of creating a new subcategory for certification, everyone's interests would be best served through a collaboration between the PCOA of WV and the Department to incorporate more IPM into the current General Pest Control Category and dropping the consideration of an extra subcategory.

We feel that creating a new subcategory for IPM certification is not necessarily the responsible way to go. We believe that if we all work together, we can come up with an acceptable plan which will continue to include the necessary training through the PCOA of WV. We would like to continue to discuss ideas for the promotion of IPM and ways to ensure that it is practiced on a regular basis. Please don't hesitate to contact me if you have any other questions or if I can be of any further assistance.

Sincerely,



Sue Spiroff
President, PCOA/WV

cc: Gus R. Douglass, Commissioner of Agriculture
Robert Morris, Asst. Commissioner of Agriculture
Dr. Charles Coffman

July 20, 1995

Robert Frame, Assistant Director
Plant Industries Division
West Virginia Department of Agriculture
Pesticide Regulatory Programs
1900 Kanawha Blvd. E.
Charleston, WV 25305-0190

Dear Bob:

The National Pest Control Association wishes to take this opportunity to submit comments in response to the West Virginia Department of Agriculture's proposed emergency rule, "Integrated Pest Management Programs in Schools and Day Care Centers." We understand the short time frame the Department has to implement this rule and we appreciate your taking the time to solicit industry's thoughts and suggestions.

NPCA believes the Department has come up with a good starting point - one we feel has the potential to be an effective school IPM program. Specifically, we applaud the Department for recognizing the differences between the various application techniques. Obviously, a broadcast application is much different than a crack and crevice treatment and the two should not be treated the same.

Furthermore, we believe the Department has created a sensible system for providing parents, students and teachers 24-hour advance notice of pesticide applications. The Department's proposal allows parents who wish to be informed of Level 3 and 4 applications to receive such information. At the same time, however, the proposal allows parents who do not feel such information is important or relevant to waive their right to be notified.

Although NPCA is pleased with the overall concept of the proposal, we do have some suggestions we feel might make the program even stronger. Our thoughts will appear in the order they appeared in the proposed rule, not necessarily in the order of importance.

61-12j-2 - Definitions

2.3. NPCA feels that one of the best ways to create a workable regulation is to define relevant terms in as clear and concise a manner as possible. Overall, we believe the Department has done this. Nevertheless, we do have one minor suggestion.

In your definition of "least hazardous material" you include the phrase "including the use of chemicals in a manner to cause the least practical exposure or harm to the occupants of a structure."

The products our industry uses have been approved by the U.S. Environmental Protection Agency. Not only does the Agency approve what products may be applied, it also dictates the manner in which they may be applied. Therefore, we feel the words "or harm" are misleading. If a product is applied according to label, occupants of the building should not be harmed. Therefore, we respectfully ask that the Department strike the words "to harm" since it may unnecessarily worry those reading this regulation.

61-12j-3 - Integrated Pest Management

3.2. As the statutory language notes, "pesticides shall only be applied when monitoring indicates that pest infestations are present." The Department has wisely placed this statement near the beginning of the regulation. Since this provision is an important component of the statute NPCA feels the department should also include this statement in Section 6 so there will be no misunderstandings by those applying pesticides in schools.

61-12j-4 - Integrated Pest Management Programs for Schools

4.4. NPCA has some serious concerns about who will create appropriate threshold levels. Although Local School Improvement Councils are a diverse group, NPCA is quite certain that most and maybe even none of the members of these panels are entomologists or have any educational background on insect biology. As a result, we are not sure these panels are qualified to come up with threshold levels in their current form. NPCA believes that these committees need to consult with a pest control operator, a Department official, an entomologist or a university extension service employee before approving threshold levels. For instance, it takes only a few cockroaches to act as allergens or potentially spread diseases. Also, we are not sure there is a threshold level for yellow jackets and other stinging insects in a school environment. These types of pests are life threatening to certain populations and even a single one endangers students. We ask that the Department create a subsection in this category that makes it clear there is no threshold level for certain pests, such as wasps, yellow jackets and ticks. Such a subsection will be consistent with both the statutory language and Section 9.1. of these proposed rules.

Additionally, who will be held liable if a student becomes ill from an insect bite, sting or disease, the Department, the drafters of the threshold level or the pest control operator? Liability is a key question and one that has not been addressed in this rule. We would ask that the Department consider including a subsection in this rule protecting pest control operators who act in accordance with these rules from liability suits.

4.6.f. Since almost all Material Safety Data Sheets refer to the toxicity of the concentrate and not the diluted product, we feel this document misleads the general public. After all, its target audience is the plant worker and the applicator. Therefore, we would ask that you rewrite 4.6.f. to read "copies of Material Safety Data Sheets or consumer information sheets when available." The Department could follow the lead of other states and develop a consumer information sheet. We would also suggest you make the same change for 5.5.e.

61-12j-6 - Monitoring for Pest Infestations

6.2.b. NPCA questions whether mandating the number of sticky traps used in each room or area is necessary. Although we agree with the Department that utilizing sticky traps is a key component of any monitoring program, we don't feel it is necessary to require three to five traps to be used in each room or area. Pest control operators should be given the opportunity to make judgements as to how many sticky traps should be used in an individual room or area. Requiring a certain number of sticky traps handcuffs pest control operator and does not serve any meaningful purpose. We would ask that you drop the last sentence in this subsection and grant the pest control operator the ability to make a professional judgement as to how many sticky traps to use.

6.3. NPCA does not see the need for requiring pest control operators to go progressively through each pest control level as outlined in Section 7. The statute already requires monitoring before the application of pesticides. Mandating pest control operators to go through each step progressively is burdensome and inefficient. If for instance, after conducting an appropriate monitoring program, a pest control operators feels the application of boric acid is necessary before making any structural or sanitation modifications, he or she should be allowed to proceed. As 6.3. reads, the above scenario would not be possible. We respectfully ask that the Department strike 6.3. and give the pest control professional the ability to make a determination as to what initial method of pest control is the most prudent.

61-12j-7 - Use of Least Hazardous Materials - Re-entry Intervals

7.2. Some of the labels for low toxic baits like Avert™ allow application in both crack and crevice and void areas. We would ask that the last phrase in the subsection read "baits in tamper-resistant containers or for crack and crevice or void placement only." This would make the proposed regulation a bit more consistent with label language, which, of course, greatly benefits the pesticide applicator.

7.3.c., 7.3.c. NPCA believes that label reentry periods are "appropriate" and should be the only applicable re-entry periods, particularly for crack and crevice and spot treatments. Even the Department admits that during crack and crevice and spot treatments "exposure is minimal."

Labels are based on scientific data and are approved by our nation's leading environmental agency. The Department does not indicate that it has any additional data that might warrant extended re-entry periods. The four-hour and eight hour re-entry periods seem a bit arbitrary and NPCA questions how the Department concluded that these time periods were "appropriate." Additional re-entry periods only serve to confuse applicators and raise unnecessary alarm. At the very least, we would hope the Department would drop its intention to require re-entry periods for crack and crevice applications.

61-12j-9 - Application of Pesticides to Schools and Day Care Centers

9.5., 9.5.a., 9.5.b., 9.5.c., NPCA applauds the Department for having already implemented regulations requiring those that apply pesticides in schools to have received some sort of minimum training before doing so. However, NPCA strongly objects to the Department's proposal to require those applying pesticides in schools to be examined and certified in a newly created subcategory, Urban Integrated Pest Management. We view this as simply another licensing burden with which West Virginia pest control operators will have to comply. Also, it is important to point out that the creation of another category does not guarantee applicators will practice IPM. It does, however, add additional fees and implies the industry has completely neglected to encourage the adoption of IPM.

The Department has already established a training threshold for certified applicators. The creation of an additional threshold seems a waste of time and resources. We respectfully ask the Department to strike 9.5., 9.5.a., 9.5.b., and 9.5.c., as well as 4.2.h.E. and 6.3.h.E. of your proposed revisions to the Certified Pesticide Applicator Rules.

Before it was a marketing buzz word, NPCA was pushing the IPM approach. The Pest Control Operators Association of West Virginia has also long endorsed and promoted IPM techniques and has an excellent working relationship with the university extension service. So, while we strongly support the Department's promotion of IPM, we take issue with the way in which it is proceeding. By virtue of approving the certification and recertification criteria for the General Pest Control category the Department already has the power to dictate standards for licensees. Additional hours and requirements are not necessary, just a little tinkering with the current General Pest Control category. NPCA believes that the Department should work closely with the Pest Control Operators Association of West Virginia on incorporating more IPM into the current General Pest Control Category and drop its consideration of an additional subcategory. If necessary, we would be glad to assist and provide input.

Implementation

11.2 NPCA cautions the Department about distributing materials that include definitions of terms that differ from the definitions in the proposed regulation. Specifically, if the publication "Integrated Pest Management in Schools and Other Public Institutions, A Guide for Commercial Applicator" is based on the EPA document "Urban Integrated Pest Management - A Guide For Commercial Applicators," we urge you to make sure the definitions in the distributed material don't conflict with those in the regulations.

Miscellaneous

In closing, we would also suggest that the Department encourage school boards to consult with pest control operators during the construction of new schools. Architectural IPM is one of the most effective and efficient methods of pest control but one that is often neglected.

Page Five
July 20, 1995

NPCA feels that if pest control operators opinions were sought during the construction period many potential pest problems could be avoided. Thus, we respectfully ask that the Department either consider requiring school boards to consult with pest control operators or urban entomologists or recommend this in the materials it circulates to the school boards.

Again, NPCA wishes to commend the Department for its progress. Should you have any questions regarding our comments, please don't hesitate to call us at 1-800-678-6722.

Sincerely,



Gene Harrington
Manager of Government Affairs

cc: Gus Douglass, Commissioner of Agriculture
Robert Morris, Assistant Commissioner of Agriculture
Dr. Charles Coffman, Director of Plant Industries

P.O. Box 10249
Lynchburg, VA 24506
Phone: (804) 847-9051
Fax: (804) 847-2034

July 21, 1995

Robert E. Frame
WV Dept. of Agriculture
Plant Industries Division
Pesticide Regulatory Programs
1900 Kanawha Blvd. E.
Charleston, WV 25305-0190

Dear Bob:

I have itemized the comments solicited from our District Managers and Technical Director. If you have questions regarding these comments, please contact me at your convenience.

1. Section 61-12J-2, Definitions.
 - A. Since schools are defined for the purpose of termite pretreats, "day-care" facilities should be defined as well.
 - B. 2.4., The term "Fungicide" should be included in the pesticide definition since wood treatment may be required (i.e. Timbor & Bora-Care), and the third line should read "are placed or sprayed..." to cover the use of baits.
2. Section 61-12J-4, Integrated Pest Management Programs for Schools.
 - A. 4.2.c., "Education of building occupants" is an unclear statement. Does this indicate employees only, or all occupants including students must be educated? In either case, the statement should be clarified.
 - B. According to this paragraph, the school will be responsible for the initial survey and semi-annual inspection. Since this is the most crucial part of the program in terms of leading to its success or failure, the surveys/inspections should be performed by a person who knows the pests and their biology, and therefore, which sanitation and/or maintenance items are important. The PCO is the person.

- C. 4.4., Forth line. An apostrophe should be included in "school's".
- D. 4.6.c., "Diagrams of the treatment locations" should be defined. Specifically, would a generalized graph indicating the treatment area be sufficient (i.e., kitchen, mop room, etc.), or should each individual treatment location be diagrammed, such as a drawing of "bait placed under the movable table in right corner of kitchen". If each specific location is to be diagrammed, it will be extremely cumbersome and time consuming. It should be stated that there should/must be a diagram of monitor trap locations; possibly this is the real intention instead of treatment locations.
3. Section 61-12J-5, Integrated Pest Management Programs for Day Care Centers.
- A. Perhaps section 5.5.e. should read "copies of material safety data sheets and end-use dilution fact sheets if such exist for the products used at the facility".
- B. Section 5.6. indicates that pesticide labels and material safety data sheets will be given to parents at their request. Will it be permissible to distribute "fact sheets" as well? Fact sheets pertain to the diluted material, not the concentrate, as the MSDS does. The fact sheets would reflect more accurately the material being used. If this is permissible, the statement could read " Copies of pesticide labels, material safety data sheets, and other informative documents such as fact sheets, shall be given to the child's parents or legal guardians upon request". The objective is to supply the parents with accurate product information, and many MSDS sheets mislead the reader into thinking the product is much worse than it actually is.
4. 61-12J-6, Monitoring Program.
- A. 6.2.a., Third line. "choosing the appropriate method(s) of control".
- B. Section 6.2.a. indicates that "inspecting areas for pest evidence" is a necessary function of IPM, yet is not otherwise explained in the section detailing the components of a monitoring program (6.2.c.).

- C. 6.2.b., It may be preferable to say a minimum of 3 to 5 traps shall be used in each room as this would allow for more traps to be used in larger kitchens.
 - D. 6.2.b., Fifth line. "...cabinets and shelves, and/or in other areas..."
 - E. 6.2.c., As previously mentioned, general and/or spot inspections should be described as components of a monitoring program.
 - F. 6.2.a.B., Weekly inspections of glueboards may be too frequent. The number of inspections per month should be determined when the initial survey is complete and the school or day-care center sets a threshold limit. For example, if the threshold limit for a particular city school was one roach, frequent monitoring of glueboards may be justified. The frequency of glueboard inspections should be totally dependent upon the outcome of the survey results. This would also permit the school to adjust the frequency of inspections as needed. The weekly inspections would also be cumbersome to the Dept. of Agriculture, since it would receive a large number of glueboards each week for insect identification.
 - G. 6.2.a.B.(d)., Statement should read "Numbers and kinds of insects,...". It is not practical to identify most insects to species, furthermore, there are not enough qualified entomologists to identify all species collected down to the species level.
 - F. 6.2.a.D., Should possibly read "Removal and disposition of the trap after catch numbers are recorded..."
5. 61-12J-7, Use of the Least Hazardous Materials - Re-entry Intervals.
- A. 7.2.b., Third line. "botanical pesticides - pyrethrins..."
 - B. 7.2.b., Last line should also include void treatments. "crack and crevice and void placement only".
6. 61-12J-8, Prior Notification
- A. 8.1.a., Second line. "...in advance of the application of pesticides..."



- B. 8.2.a., Last line. "where pesticides are being applied." This indicates the pesticides are being applied at the same time notification is occurring. The word "being" should be replaced with "to be", which would indicate prior notification.
 - C. 8.2.b., Last line. "...application of level 3 or 4 pesticides."
 - D. 8.2.c., Last line. "...in advance of the level 3 or 4 pesticide application."
 - E. 8.3.b., Third line. "...application of level 3 or 4 pesticides...".
7. 61-12J-9, Application of Pesticides to Schools and Day Care Centers.
- A. 9.1., Second line. "...of students or children in day care centers".
 - B. 9.1., Third line. "...or day care centers, except for schools..." The word "employees" was intentionally omitted.

Your consideration of our comments is appreciated.

Sincerely,

DODSON BROS. EXTERMINATING CO., INC.
Mike Abston
Regulatory Affairs Supervisor

cc: Bert Dodson, Jr.
Don Sublett
Eric Smith
Mike Angove



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

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Robert G. Morris
Assistant Commissioner

SUMMARY OF COMMENTS
WEST VIRGINIA LEGISLATIVE RULE
TITLE 61 SERIES 12J

Integrated Pest Management Programs In Schools and Day Care Centers

In preparing the proposed rule, representatives of the West Virginia Department of Agriculture met and consulted with representatives of ten constituency groups. Those groups were the State Board of Education, the Department of Health and Human Resources, chemical manufacturers, Pest Control Operators Association of West Virginia, National Pest Association, representatives of day care center operators, the West Virginia Education Association, the West Virginia Federation of Teachers AFL-CIO, the Citizens Action Group, and the Sierra Club.

The proposed rule was filed on June 22, 1995 with the comment period ending on July 24, 1995 at 4:00 PM. Copies of the proposed rule and notice of comment period were mailed to all participants of meetings and to all persons expressing a desire for a copy of the rule. In addition the WVDA made a public news release of the comment period and the availability of the rule, purchased a legal advertisement in the Charleston Newspapers announcing the filing of the rule and comment period, and mailed a copy of a summary of the rule and notice of comment period to all Licensed Pesticide Application Businesses, County School Superintendents and day care center operators.

Comments were received from Ritchie County Integrated Family Services, Inc., Terminix International Company LP (TI), Dodson Brothers Exterminating Company, Inc. (DB), National Pest Control Association (NPCA), Pest Control Operators Association of West Virginia (PCOA), Sierra Club (SC) and Responsible Industry for a Sound Environment (RISE) and are summarized as follows.

Section 2 Definitions

RISE, NPCA and PCOA suggested that the words "or harm" be taken from the definition of Least Hazardous Materials as integrated pest management measures deal with reduced exposure and research and testing required by the United States Environmental Protection Agency for registration and approved labeling already sets the usage and exposure levels that are considered "safe" for the average person. The words "or harm" were deleted.

Dodson Brothers Exterminating Company suggested that since the term "school" was defined that the term "day care center" also be defined. A definition of day care center was added.

Dodson Brothers Exterminating Company suggested that the word "fungicide" be added to the definition of pesticide and that the words "are placed or sprayed" be added in the third line to cover the use of baits. Neither of the suggestions was incorporated. Fungicides are not used in indoor pest management and to include the word would open the definition to include disinfectant cleaners used for bathrooms to clean mildew from showers, sinks, walls, etc. The use of baits has been incorporated into the rule in Section 7 and it was felt that no further explanations are needed on baits.

Two other definitions were added to provide clarity in addressing other comments received on Sections 4 and 5. Those definitions are "consumer information sheets" and "material safety data sheets."

Section 3 Integrated Pest Management

Both NPCA and PCOA suggested that the wording used for subsection 3.2 be added to Section 6. Similar wording with the same meaning was added to the end of subsection 6.2.

Section 4 Integrated Pest Management Programs for Schools

Dodson Brothers Exterminating Company questioned sub section 4.2 as to the intent of education of the buildings occupants, whether this meant only employees or all occupants. No change was made because to have a successfully integrated pest management program, all occupants need to be educated in IPM practices.

DB also suggested that sub section 4.3 be changed, feeling that initial and semi-annual inspections of facilities to determine what maintenance, cultural or sanitation practices need correction should be made by a pest control operator and not school personnel. TI commented that the person making the inspection should be certified in the new Urban Integrated Pest Management category. The section does not limit the inspection to only school personnel and the school is free to use its certified or otherwise qualified people to perform the inspections or hire a certified pest control operator to perform the inspection for them. No change was made in order to allow this flexibility at the local level.

DB also requested that "diagrams of the treatment location" be clarified. Apparently they envisioned a drawing of each treatment site as opposed to the intent of documenting the locations on a floorplan to correspond with the monitoring program. A change was made to change the word diagram to floorplan.

NPCA and PCOA questioned the expertise of Local School Improvement Councils to set thresholds since members may have no training in entomology. The Local School Improvement Council is

free to use a pest control company or other qualified consultant or school staff in making the determinations of threshold levels for pests to be controlled. The purpose of using the Local School Improvement Council for this task is to put the decision making on the use of pesticides at the local level as opposed to a party with a financial interest or some individual not familiar with the school site and desires.

Sections 4 and 5 Comments on Material Safety Data Sheets

RISE, NPCA, PCOA and DB commented that material safety data sheets are prepared for the Occupational Safety and Health Administration to provide precautionary statements for a plant worker or for use in transportation accidents for concentrated materials. They felt the use of MSDS sheets by non professionals could be misleading. A suggested approach was that a consumer information sheet would be better when they are available. Consumer information sheets exist for some but not all pesticides used in a school or day care environment. The change made to the rule requires the distribution of consumer information sheets when available or material safety data sheets in the absence of consumer safety data sheets. In this way it is believed that manufacturers not having a consumer information sheet for their products will have an incentive to develop them for the public.

Section 6 Monitoring for Pest Infestations

NPCA, PCOA, DB and SC questioned the need to mandate the number of sticky traps to be used. The intent of listing a number was to provide an example and not a mandate and as such the reference to a mandated number of traps was deleted.

DB felt that inspecting areas for pest evidence was not adequately discussed in this section. No change was made as it is believed that the direction requiring the recording of pest damage or other evidence of pests such as feces, cast skins or rub marks is sufficient. Other instruction is probably more appropriate for an educational manual and not a rule.

DB and TI questioned the need for a frequency of weekly inspection of traps. Upon reviewing the question the rule was changed to reflect a requirement for "periodic inspection of each trap at no greater than monthly intervals". This change will provide for greater flexibility and cost savings in situations where pests infestations are light.

DB suggested the requirement for identification of "species " of insects caught in a monitoring program be changed to "kinds" of insects. a similar comment was made by TI. The suggested change was incorporated into the rule.

Section 7 Use of the Least Hazardous Materials - Re-entry Intervals

RISE, NPCA and PCOA oppose the concept of a mandated hierarchy of pest control methods as detailed in Section 7. They feel that the use of pest control materials should be left up to the pesticide applicator. This suggestion was not incorporated because §10-16A-4(14)(h)(1) of House Bill 2471 mandates that the use of the least hazardous materials be addressed in these rules. The mechanism used in Section 7 was the most effective and flexible that could be devised and is similar to that used by other states having a mandatory integrated pest management program in schools. Also, allowing the applicator to choose the appropriate method of control would likely perpetuate the practices that lead to the passage of House Bill 2471 creating a mandatory program.

RISE, NPCA and PCOA oppose the creation of a four and eight hour re-entry time period for pesticides in levels three and four, respectively. Their objection is based on the extensive review of data supporting the registration of the pesticide products and approval of labeling by the United States Environmental Protection Agency. The approval of registration of the products by the EPA provides for protection of the general public from exposure following product applications. The recommendation was not incorporated as suggested. The re-entry times established were based on a compromise between the greatest recognized label re-entry requirement of four hours or less for all products reviewed and the desire of some parties for a greater re-entry period of 12 to 24 hours. It is felt the four and eight hour time periods are increased safety measures for school and day care centers and at the same time are workable and not excessively restrictive in providing for pest control services.

Section 8 Prior Notification

DB suggested some minor grammatical changes that were incorporated as they did not change the intent of the section and may add to clarity.

Section 9 Application of Pesticides to Schools and Day Care Centers

TI notes that school personnel are often needed to allow access to locked closets, storage areas and other rooms. As the rule is written, maintenance personnel are allowed to provide access to these areas. They are only prohibited from being physically present in the room as it is being treated. The school personnel could open the rooms, proceed down the hallway to the next room and let the applicator close and lock the room upon completion of treatment.

TI questioned re-entry times and the appropriateness of requiring the exclusion of employees from treatment areas (except where pesticide labels require it) if they have been pre-notified. They also question if there is a difference between the school employee and one working in a restaurant facility where pest control practices are being performed.

RISE recommends the deletion of the requirement of the use of the least hazardous materials as detailed in Section 7 and that the applicator be free to chose the method of control. The suggestion was not adopted for the same reasons as noted under Section 7 comments.

RISE, NPCA and PCOA opposed the creation of a new category of certification titled "Urban Integrated Pest Management" They feel requirement is restrictive to the industry, pest control operators have sufficient training in integrated pest management and any needed training could be covered by annual workshops conducted by the PCOA. The SC supported the concept of the new category. It is felt the category should remain for several reasons.

1) Pest control operators have not historically demonstrated a knowledge of integrated pest management practices and if there is knowledge, they are not practicing integrated pest control as can be evidenced by the circumstances that lead to the passage of House Bill 2471 by the 1995 Legislature.

2) Annual training programs will not provide the needed training and assurances of knowledge in integrated pest management by applicators treating schools and day care centers by the end of the implementation period. The competency update training requirement is for 10 hours of training over a three year period. Many applicators attend only in their third year. As such, many applicators would not receive the training before the implementation of the rule. In order to insure all applicators treating schools and day care centers receive IPM training prior to the completion of implementation of the rule would require all applicators currently certified in category 8A - General Pest Control to attend a training program by September 1, 1996. We believe this approach is too restrictive and have chosen to retain the category so as to only impact the few pest control operators treating schools and day care centers as opposed to the entire industry.

3) It should also be noted that DB and TI, two major pest control firms commenting on the rule, did not voice opposition to this requirement. Also none of the 85% of the pest control firms operating in the state that are not members of NPCA nor the 60% of the firms not belonging to the PCOA voiced any opposition to the requirement.

Section 11 Implementation

NPCA cautioned against the distribution of materials that included definitions differing from those used in the rule. To our knowledge there are no differences in materials being developed by our agency. However as material is gathered from industry and other states there may be some differences that will have to be addressed in educational training programs.

Miscellaneous and General Comments

NPCA and PCOA addressed the need for architectural integrated pest management. This rule specifically addressed pest management in existing buildings. The concept of architectural integrated pest management is best left to educational programs for school administrators and other personnel for planning purposes.

The Ritchie County Integrated Family Services suggested that day care centers be excluded from the rule as it will excessively cut into limited budgets and degrade from the services provided to children. During meetings with day care center operators prior to the development of the rule, representatives of the industry commented of the tight operational budgets of day care centers and the potential impact of the rule. However as House Bill 2471 mandates the rule cover day care centers, we could not exempt them from the rule.