

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #3

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2005 JUL 29 P 12:01

OFFICE 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

AMENDMENT TO AN EXISTING RULE: YES  NO

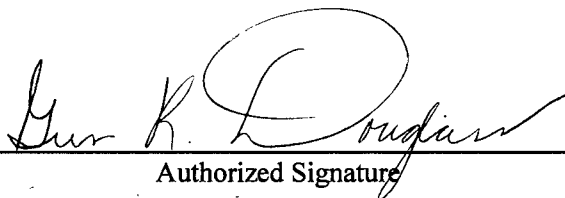
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 12J

TITLE OF RULE BEING AMENDED: Integrated Pest Management Programs in Schools and  
Day Care Centers/Facilities

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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

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SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #3

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2005 JUL 29 A 9:36

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Authorized Signature

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: 07/29/2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* West Virginia Department of Agriculture

1900 Kanawha Blvd. East

Charleston WV 25305-0190

LEGISLATIVE RULE TITLE: Integrated Pest Management Programs in Schools and Day Care Centers/Facilities

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

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

06/07/2005

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

Mailed/e-mailed copy of proposed rule to constituency groups and pesticide application businesses.

c. Date of Public Hearing(s) *or* Public Comment Period ended:

07/15/2005

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)

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f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Grant Bishop, Assistant Director    gbishop@ag.state.wv.us

Pesticide Regulatory Programs

WVDA

1900 Kanawha Blvd., East

Charleston WV 25305-0190

304-558-2209

304-558-2228 fax

g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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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.

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b. Date of hearing or comment period:

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

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d. Attach findings and determinations and reasons:

Attached 

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State of West Virginia  
**DEPARTMENT OF AGRICULTURE**  
Gus R. Douglass, Commissioner

Janet L. Fisher  
Deputy Commissioner

Steve Hannah  
Deputy Commissioner

**Summary**

West Virginia Rules for Integrated Pest Management  
Programs in Schools and Day Care Centers/Facilities

§61-12J

Amendments to Existing Rule

The proposed amendments to Title 61, Series 12J, Integrated Pest Management Programs in Schools and Day Care Centers/Facilities adds language to include both licensed day care centers and family day care facilities. Other proposed amendments clarify the documentation required by schools and day care centers/facilities. Schools and day care centers/facilities covered by the rules will be required to set action thresholds for common pests. The Integrated Pest Management files for these institutions will be required to be placed in a central location, and must contain Sanitation and Maintenance Surveys and Pest Surveillance Data Sheets. Amendments have also been made to the language clarifying the requirement for parental and employee notification.

## **Statement of Circumstances**

### **West Virginia Rules for Integrated Pest Management Programs in Schools and Day Care Centers/Facilities**

#### **§61-12J**

#### **Amendments to Existing Rule**

Several changes are being proposed to Title 61, Series 12J, Integrated Pest Management Programs in Schools and Day Care Centers/Facilities. Each will enable the West Virginia Department of Agriculture to conduct its school and day care integrated pest management compliance assistance and enforcement activities in a more efficient manner, while improving the health and safety of students and staff of West Virginia schools and child care establishments.

One proposed amendment adds language to include both licensed day care centers and family day care facilities. This change is necessary because the classification of "family day care facility" was created by the West Virginia Department of Health and Human Resources after the rules for Integrated Pest Management Programs in Schools and Day Care Centers were in place. The school and day care rules therefore only mentioned "day care centers," effectively excluding "family day care facilities" from coverage. Because the intent of the legislation passed in 1995 was to protect all children in school and day care from the adverse effects of pesticides, the language in the rules should be updated to include all establishments providing child care.

The second proposed change requires schools and day care centers/facilities to set action thresholds for common pests. This change will permit pest control vendors from allowing populations of key pests from growing to unacceptable levels before control measure are implemented.

Another amendment will require the Integrated Pest Management files for these institutions to be placed in a central location and to contain Sanitation and Maintenance Surveys and Pest Surveillance Data Sheets. This provision should increase efficiency

for pest control vendors and simplify compliance assistance and enforcement activities by the West Virginia Department of Agriculture.

The final amendment clarifies the language requirement for notification of pesticide application, by specifically requiring parental and employee notification for applications made over a weekend or on a holiday break. Currently this requirement is implied, but not specifically required, leading to some confusion for school and day care administrators as well as pest control vendors.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Integrated Pest Management Programs in Schools and Day Care Centers/Facilities

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Department of Agriculture

Address: 1900 Kanawha Boulevard East

Charleston WV 25305-0190

Grant Bishop

Phone Number: 304-558-2209

Email: gbishop@ag.state.wv.us

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

None.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Equipment	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title:

Integrated Pest Management Programs in Schools and Day Care Centers/Facilitie

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The proposed changes add language to include both licensed day care centers and family day care facilities. Other proposed changes clarify the documentation required by schools, day care centers and day care facilities, in order to simplify compliance. These changes are not anticipated to have a fiscal impact.

Date: 6/7/05

Signature of Agency Head or Authorized Representative

Chris R. Douglas

TITLE 61  
LEGISLATIVE RULES  
WEST VIRGINIA DEPARTMENT OF AGRICULTURE

FILED

2005 JUL 29 A 9:36

SERIES 12J

OFFICE WEST VIRGINIA  
SECRETARY OF STATE  
INTEGRATED PEST MANAGEMENT PROGRAMS IN SCHOOLS  
AND DAY CARE CENTERS/FACILITIES

**61-12J-1 General**

1.1. Scope - This legislative rule establishes procedures to provide for integrated pest management programs in schools, day care centers and family day care facilities.

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."

2.2. "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.

2.3. "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~~ used for the care of ~~seven~~ thirteen or more children on a non-residential basis.

2.5 "Family day care facility" means a completed structure used to provide non-residential child care for seven to twelve children.

~~2.5.6.~~ "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 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 potential for exposure.

~~2.6.7.~~ “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.”

~~2.7.8.~~ “Pesticide” means, for the purposes of this rule, the use of insecticides and herbicides that are sprayed into or around a building and the adjacent play school grounds utilized by a school or day care center.

~~2.8.9.~~ “School” means a completed structure utilized ~~as a~~ for public or private school education, grades kindergarten through twelfth grade.

~~2.10.~~ “School grounds” means the area outside of the school buildings controlled, managed, or owned by the school or school district, including lawns, playgrounds, sports fields, and any other property or facility controlled, managed, or owned by a school.

~~2.9.11.~~ “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.

~~2.10.12.~~ “Space treatment” means the application of a pesticide that is intended to discharge the pesticide into the air throughout an entire room or area.

~~2.11.13.~~ “Spot treatment” means the application of a pesticide to a limited area where pests are likely to occur, such as floors, walls, bases or the 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. Schools and day care centers or family day care facilities covered by this rule shall not apply pesticides 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," published by the West Virginia Department of Agriculture may be used in the development of the program.

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.

4.2.7. action thresholds for common pests.

4.3. At the inception of the integrated pest management program, the school should 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 should be updated periodically prior to the beginning of each school year with a follow-up inspection within six months, with the items to be corrected noted on the record.

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 West Virginia Code §18-5A-2 may comment on the school's integrated pest management plan.

4.5. Schools covered by this rule shall file completed integrated pest management plans with the Commissioner for compliance inspection. When any changes are made to the program, they shall submit the revised integrated pest management plan to the Commissioner prior to the initiation of the new plan.

4.6. Schools shall maintain an Integrated Pest Management file for in the main office in 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. sanitation and maintenance surveys;

4.6.2-3. monitoring diagrams of the facility;

4.6.4. pest surveillance data sheets;

4.6.3-5. treatment records of the facility, including a floorplan indicating treatment locations;

4.6.4-6. labels of pesticide products used at the facility; and

4.6.5-7. copies of consumer information sheets when available and material safety data sheets.

4.7. Upon request, schools covered by this rule shall provide copies of pesticide labels and consumer information sheets when available or material safety data sheets in the absence of consumer information sheets 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 this rule.

#### **61-12J-5 Integrated Pest Management Programs for Day Care Centers and Family Day Care Facilities**

5.1. All day care centers and family day care facilities 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," published by the West Virginia Department of Agriculture may be used in the development of the program.

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

5.2.1. a policy statement;

5.2.2. pest management objectives;

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

5.2.4. inspection activities;

5.2.5. monitoring activities; and

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

5.2.7. action thresholds for common pests.

5.3. At the inception of the integrated pest management program, the day care should 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 should be updated periodically with the items to be corrected noted on the record.

5.4. All day care centers or family day care facilities covered by this rule shall file completed integrated pest management plans with the Commissioner for compliance inspection. When any changes are made to the program, they shall submit the revised integrated pest management plan to the Commissioner prior to the initiation of the new plan.

5.5. Day care center or family day care facility operators shall maintain an Integrated Pest Management file in a central location at for each center or 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. sanitation and maintenance surveys;

5.5.2.3. monitoring diagrams for the day care center or family day care facility;

5.5.4. pest surveillance data sheets;

5.5.3.5. treatment records for the day care center or family day care facility, including diagrams of treatment locations;

5.5.4.6. labels of pesticide products used at the day care center or family day care facility; and

5.5.5.7. copies of consumer information sheets when available and material safety data sheets for the products used at the day care center or family day care facility.

5.6. Day care centers and family day care facilities covered by this rule shall provide copies of pesticide labels and consumer information sheets when available or material safety data

sheets in the absence of consumer information sheets to a child's parents or legal guardians upon request.

## **61-12J-6 Monitoring for Pest Infestations**

### **6.1. Monitoring Program**

6.1.1. Each school and day care center or family day care facility shall have a monitoring program. 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. Each school and day care center or family day care facility shall evaluate the information gained through monitoring to determine whether the action threshold has been exceeded and what can be done in the way of prevention.

6.1.2. Each school and day care center or family day care facility shall conduct a monitoring program in suspect areas of their 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 in other areas where insects have been seen.

6.1.3. Components of the monitoring program shall include:

6.1.3.a. A floorplan of the day care center or family day care facility showing the number and accurate location of each trap;

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

6.1.3.b.A. The trap number and its location;

6.1.3.b.B. The date checked;

6.1.3.b.C. The trap's condition (either OK or needs to be replaced);

6.1.3.b.D. The numbers and kinds of insects, arthropods, rodents  
or other pests trapped;

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

6.1.3.b.F. Any need for pest management; and

6.1.3.b.G. The name of the person performing the monitoring  
activity;

6.1.3.c. Removal and ~~disposition~~ disposal of the 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.

6.1.3.d. Replacement of the traps when the adhesive is no longer tacky. ~~or when the trap is full, whichever comes first, and~~

6.2. When monitoring indicates the level of pest infestation meets or exceeds the threshold levels established for the ~~facility~~ institution and pest type, the progressive levels of pest control techniques and chemical applications as outlined in Section 7 of this rule 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. In an integrated pest management program, persons responsible for pest management should evaluate all possible control options. Control options range from non-chemical methods to least hazardous pesticides to pesticides with a higher degree of risk to human health. In keeping with the legislative mandate for integrated pest management, the pest control contractor shall, after monitoring for pest infestations, proceed in controlling pests using the least hazardous method that is both practical and effective as outlined in this section.

#### 7.1.1. Level 1 - Non-chemical Control Methods

7.1.1.a. Pest-preventive measures should be incorporated into existing structures. These 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. A school or day care center shall consult the West Virginia Department of Agriculture's best management practices document "Integrated Pest Management in Schools and Other Public Institutions, Best Management Practices" for integrated pest management strategies for specific sites. Every facility will experience slightly different combinations of pests.

#### 7.1.2. Level 2 - Least Hazardous Materials

7.1.2.a. If non-chemical pest management methods alone are ineffective or impractical, it may be necessary for a school or day care center or family day care facility 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.

7.1.2.b. The least hazardous pesticides are those with a Caution signal word (EPA toxicity categories III and IV) including such as botanical pesticides--pyrethrins and the synthetic pyrethroids; the inorganic dusts insecticides - pyrethrin and pyrethroid, boric acid,

disodium octaborate tetrahydrate, silica gel, and diatomaceous earth; insecticidal soaps; insect growth regulators; biological control agents — fungi, bacteria, nematodes; or materials formulated as baits in tamper-resistant containers or for crack and crevice or void placement only.

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

#### 7.1.3. Level 3 - Crack and Crevice and Spot Treatments

7.1.3.a. Schools and day care centers or family day care facilities shall apply products with an EPA Caution signal word but not listed under Level 2 as crack and crevice or spot treatments.

7.1.3.b. 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.

7.1.3.c. The re-entry interval for which students and employees shall remain out of the treated area 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.

#### 7.1.4. Level 4 - Broadcast Applications and Space Treatments

7.1.4.a. 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.

7.1.4.b. 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.

7.1.4.c. The re-entry interval for which students and employees are to remain out of the treated area 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, except when the air in the treated area can be purged by the heating, cooling and ventilation system, the period of reentry shall be 4 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 or Family Day Care Facilities

8.1.1. All schools and day care centers or family day care facilities shall notify their employees through routine announcement or individual notice at least 24 hours in advance of all the applications of pesticides in levels 3 and 4 as detailed in Section 7 4 of this rule, including applications made after school hours, on a weekend or during a holiday break.

~~8.1.2. At the beginning of the school year, school administrators shall notify their employees through routine announcement or individual notice to each employee of a facility where pesticides are to be applied. The notice shall instruct the employee of the location of posting of the treatment schedule and notification of any necessary unscheduled treatments. School administrators shall also notify their employees of the treatment schedule at faculty senate meetings.~~

## 8.2. Parents or Legal Guardians of Students of Schools

8.2.1. At the beginning of each school year, or at the time a student is enrolled into the school, school administrators shall notify the parents or legal guardians of the right to be informed of the application of level 3 or 4 pesticides as detailed in Section 7 4 of this rule.

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

8.2.3. The administrator of the school shall provide notification to the parent or legal guardian requesting notification at least 24 hours in advance of all the applications of level 3 or 4 pesticides, including applications made over a weekend or during a holiday break.

## 8.3. Parents or Legal Guardians of Children in Day Care Centers or Family Day Care Facilities

8.3.1. At the time a day care center or family day care facility operator signs a contract or other agreement for the care of a child, the operator shall notify the parent or legal guardian of the right to be informed of the application of a level 3 or 4 pesticide as detailed in Section 7 4 of this rule.

8.3.2. The day care center or family day care facility operator shall post and make available to the parent or legal guardian, notification of the all applications of level 3 or 4 pesticides at least 24 hours in advance of any pesticide application, including applications made over a weekend or during a holiday break. The notification shall be placed at the register where the parent or legal guardian signs the child into and out of the day care center or family day care facility.

## **61-12J-9 Application of Pesticides to Schools and Day Care Centers and Family Day Care Facilities**

9.1. Pesticide applications shall not be made in the presence of students, children in day care centers or family day care facilities or employees of schools and day care centers or family

day care facilities, except for school or day care center or family day care facility employees who are certified pesticide applicators. Pesticides may be applied to a localized area of infestation when students, children or school and day care center or family day care facility 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 or family day care facilities 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 or registered technicians under the supervision of a certified pesticide applicator as outlined in West Virginia Department of Agriculture Certified Pesticide Applicator Rules, 61 CSR 12A.

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. Any specialized urban integrated pest management programs not offered by the commissioner must be approved by the commissioner.

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

9.5.3. After September 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 family day care facility, or persons providing services as a consultant to schools and day care centers or family day care facilities to be examined and certified in the sub categories of General Pest Control and Urban Integrated Pest Management as outlined in 61 CSR 12A Certified Pesticide Applicator Rules.

#### **61-12J-10 Record Keeping**

10.1. Schools and day care centers or family day care facilities covered by this rule shall keep for a period of two years all documents required to be in the Integrated Pest Management Files as detailed in Section 4.6 and Section 5.5, respectively, of this rule.

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

10.3. Pesticide application records as required in Section 4.5.5. and Section 5.5.5 of this rule shall contain all information required in Section 7.2. of Title 61, Series 12B, Licensing of Pesticide Businesses.

### **61-12J-11 Implementation**

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

11.2. All schools and day care centers or family day care facilities 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.

11.3. All schools and day care centers or family day care facilities covered by this rule shall submit their completed integrated pest management program to the commissioner by August 1, 1996.

11.4. All pesticide applications made to schools and day care centers or family day care facilities shall be made in accordance with this rule and the integrated pest management programs on file with the commissioner after September 1, 1996.

# West Virginia Vegetation Management Association

**B. Scott Bennett**  
APCo  
President

**Keith Lynch, Secretary- Treasurer**  
WV DOT  
HC 65 Box 280  
Mt. Zion, WV 26151

**Gerald Lewis**  
UAP Timberland  
Vice-President

June 28, 2005

Mr. Grant Bishop, Assistant Director  
West Virginia Department of Agriculture  
Pesticide Regulatory Programs  
1900 Kanawha Blvd. East  
Charleston, WV 25305-0190

Dear Grant,

Please find enclosed, and per your request, a response to the "Draft" version of the changes to Title 61 Legislative Rule of the West Virginia Department of Agriculture from the West Virginia Vegetation Management Association. Please contact myself or any member of the board you may be in contact with in order to provide our organization any further direction as to how we may continue our involvement in this process.

On behalf of the board and the Association, I thank you for inviting our comments. Further, I thank you, and the Commissioner, for your continued support of our organization. Let us know if we can be of any assistance.

Sincerely,



B. Scott Bennett, President  
West Virginia Vegetation Management Association

cc: Keith Lynch, Secretary

THE WEST VIRGINIA VEGETATION MANAGEMENT ASSOCIATION'S  
COMMENTS TO THE "DRAFT" CHANGES OF  
TITLE 61 LEGISLATIVE RULE  
WEST VIRGINIA DEPARTMENT OF AGRICULTURE

*The views and opinions presented herein are those of the Board of Directors of the West Virginia Vegetation Management Association, acting officials elected as representatives for the Association by the Association. These views and opinions may or may not be shared by the members of the Association individually.*

## Introduction:

The West Virginia Vegetation Management Association (initially called the West Virginia Weed Control Association) was formed in the spring of 1965, when it held its first meeting. Utility vegetation managers perceived a need for an annual meeting where the complex problems of vegetation management could be discussed. It was expected that information on new herbicides and new control methods would be shared, and this Association would become a mechanism through which information could be disseminated to the public concerning herbicides, their safety, and use.

Therefore, the purpose of the West Virginia Vegetation Management Association is to collect and distribute accurate, current information on integrated vegetation management (IVM) strategy and research. To assist in vegetation management recommendations made to state and federal agencies. To encourage IVM practices, including the proper use and application of herbicides as an aid in fostering mutual understanding and respect among those engaged in vegetation management research, regulation, manufacturing, distribution and use of pesticides in the state of West Virginia.

The West Virginia Vegetation Management Association meets annually in West Virginia at a predetermined location. The association extends open membership to the public. The association annually gives two student education assistance awards, the Dr. Kenneth Carvell student award and the Roger Latham Memorial award. The association's annual meeting provides recertification credits to herbicide applicator licenses in multiple states.

The West Virginia Vegetation Management Association applauds the efforts of the Pesticide Regulatory Program staff in their attempt to attain a fair and thorough rule to govern the safe use of pesticides as part of an Integrated Pest Management (IVM) program. To support in this effort, the West Virginia Vegetation Management Association is providing comment to the draft.

## Comments:

### 1. Regarding Series 12A-6.4 Registered Technicians, specifically 6.4.b

There is a proposed change in the rule whereas the Commissioner may not approve a training program for registered technicians that does not have the element of "*category specific on-the-job training of at least 40 hours provided by a certified commercial applicator*" (reference 6.4.b.J). Further, it is the understanding of the Association that this training must take place within 30 days of hiring.

It is the opinion of this Association that a rule of this nature would be an unrealistic expectation of contractors who employ large numbers of registered technicians. It would be extremely labor-intensive to deploy its certified commercial applicators on such a task, and the cost to train would be a continuing expense, considering the high employee turnover rate that exists with this type of work, a cost that could ultimately be transferred to the contractor's employer and/or the public itself. The Association suggests an extreme reduction in the hours needed for this training with the notion that subsequent on-the-job experience would provide for the reduction, or to extend the training period to a time period greater than 30 days.

### 2. Regarding Series 12A-6.4 Registered Technicians, specifically 6.4.d

There is a proposed addition to the rule that states, "*each registered technician shall accrue 10 continuing certification units (5 hours) of audience contact*". Further, it is the understanding of the Association that this would be over a 3-year period.

It is the opinion of this Association that a rule of this nature would be an unrealistic expectation of contractors who employ large numbers of registered technicians. Contractors of this size are currently under obligation, both internally and by their employers, to provide similar such training. The Association suggests an exemption for contractors with large numbers of technicians, or with vast area responsibilities. These exemption figures should somehow be connected with the number of employees supervised by a single commercial applicator.

### 3. Regarding Series 12J-4 Integrated Pest Management Program for Schools, specifically 4.7

There is no proposed change to the rule; however, it is the request of this Association that, while this process to supersede the entire rule is taking place, "utility right of ways" be named in the list of areas considered exempt from the requirements of the rule. It could be stated that in order to be exempt, the right of way must be maintained in accordance with all West Virginia Department of Agriculture rules and regulations.



State of West Virginia  
**DEPARTMENT OF AGRICULTURE**  
Gus R. Douglass, Commissioner

Janet L. Fisher  
Deputy Commissioner

Steve Hannah  
Deputy Commissioner

July 15, 2005

West Virginia Vegetation Management Association  
C/O Mr. B. Scott Bennett  
American Electric Power  
P.O. Box 1986  
Charleston, WV 25327-1986

In reply to: Your June 28, 2005 letter concerning proposed rule changes to Title 61 Series 12J  
Integrated Pest Management Programs in Schools and Day Care Centers/Facilities

Dear Scott,

Thank you for your comments on the proposed rule changes to the Integrated Pest Management Programs in Schools and Day Care Centers/Facilities and request for exemption from the requirements of the rule. The intent of this rule is to protect children from exposure to pesticides. With the potential for exposure from right of way applications it would be unwise to grant an exemption. As currently written, schools and day care centers shall be notified 24 hours prior to applications made to utility rights of way. The school or day care will then be able to notify staff and student/parents concerning the upcoming treatment, including reentry intervals. No changes to this part of the rule are being proposed.

Sincerely,

A handwritten signature in cursive script that reads "Grant Bishop".

Grant Bishop  
Assistant Director  
Regulatory and Environmental Affairs Division  
Pesticide Regulatory Programs Unit