

## Form #3

FILED

2006 JUL 20 A 9:41

~~OFFICE WEST VIRGINIA~~  
~~SECRETARY OF STATE~~

AGENCY: WEST VIRGINIA DEPARTMENT OF AGRICULTURE TITLE NUMBER: 61

**CITE AUTHORITY:** W.Va Code 19-12

AMENDMENT TO AN EXISTING RULE: YES X NO       

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 14

TITLE OF RULE BEING AMENDED: West Virginia Plant Pest Act Rule

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.

Lee R. Dylan

Authorized Signature \_\_\_\_\_

\$6.60

## 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: July 18, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Agriculture  
Attention: Gary W. Gibson, Director  
Plant Industries Division  
1900 Kanawha Boulevard., East Charleston,  
WV 25305  
Telephone: (304) 558-2212

LEGISLATIVE RULE TITLE: West Virginia Plant Pest Act Rule

1. Authorizing statute(s) citation W.Va. Code 19-12

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

June 16, 2006

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

Letters announcing the proposed rule change and soliciting comments were mailed to those individuals and businesses affected by proposed rule change.

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

July 17, 2006

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 20, 2006

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

Gary W. Gibson, Director or Sherri F. Hutchinson, Assistant Director

Plant Industries Division

West Virginia Department of Agriculture

1900 Kanawha Boulevard, East

Charleston, WV 25305

Telephone: (304) 558-2212 Fax: (304) 558-2435

Email: ggibson@ag.state.wv.us or shutch@ag.state.wv.us

- 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)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 or comment period:

N/A

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 N/A



State of West Virginia

**DEPARTMENT OF AGRICULTURE**

**Gus R. Douglass, Commissioner**

**Janet L. Fisher**  
**Deputy Commissioner**

**Steve Hannah**  
**Deputy Commissioner**

**TITLE 61**

**SERIES 14**

**WEST VIRGINIA PLANT PEST ACT RULE**

**BRIEF SUMMARY OF PROPOSED RULE**

Increases the annual registration fees charged to nurseries and nursery dealers in the following manner:

Nursery registration fees will increase by ten dollars (\$10.00) to thirty dollars (\$30.00) annually.

Nursery dealer registration fees will increase from forty (\$40.00) to sixty dollars (\$60.00) per dealership for the first five (5) dealerships registered, and those firms operating more than five (5) dealerships will be charged eighty dollars (\$80.00) per dealership for each dealership above five (5) that they register.



State of West Virginia

**DEPARTMENT OF AGRICULTURE**  
**Gus R. Douglass, Commissioner**

**Janet L. Fisher**  
**Deputy Commissioner**

**Steve Hannah**  
**Deputy Commissioner**

**TITLE 61**  
**SERIES 14**  
**WEST VIRGINIA PLANT PEST ACT RULE**  
**STATEMENT OF CIRCUMSTANCES REQUIRING THIS RULE**

The introduction of serious foreign insects and plant diseases into the United States has increased the amount of regulatory and survey work needed to protect West Virginia's forests and agricultural crops.

Additional funding is necessary to maintain the nursery and nursery dealer inspection program at a level that will protect the State's agricultural interests from foreign and native plant pests. Much of the added pressure on the program is the result of potentially infected plant material being marketed at nursery dealerships.

## APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: WEST VIRGINIA PLANT PEST ACT RULE

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: WEST VIRGINIA DEPARTMENT OF AGRICULTURE

Address: Plant Industries Division  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0191

Phone Number: 558-2212 Gary W. Gibson Email: ggibson@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.

Approximately \$17,000.00 in state revenues will be generated.

There will be no cost to state government other than that required to reprint applications for registration and hard copies of the law.

**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	Current Increase/Decrease (use "-")	Next 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
Other	0.00	0.00	0.00
2. Estimated Total Revenues	24,700.00	41,300.00	41,300.00

Rule Title: \_\_\_\_\_

Rule Title:

WEST VIRGINIA PLANT PEST ACT RULE

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

The proposed increase in Nursery Registration Fees will generate approximately \$4,500.00 per year.

The proposed increase in Nursery Dealer Registration Fees will generate approximately \$36,700.00 per year.

The combined total of these fee increases will be approximately \$17,000.00.

The additional funding generated by this action will be used to pay for laboratory testing of insect and plant disease samples collected during inspections of nurseries and nursery dealerships and to help support the operations of the Plant Pest Regulatory Program.

**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.

None

Date: 6-16-06

Signature of Agency Head or Authorized Representative

Steve Warner



**TITLE 61  
LEGISLATIVE RULES  
DEPARTMENT OF AGRICULTURE**

**FILED**

2006 JUL 20 A 9 41

**SERIES 14  
WEST VIRGINIA PLANT PEST ACT RULE**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§61-14-1. General.**

1.1. Scope. -- This legislative rule establishes general operating procedures for the Plant Industries Division.

1.2. Authority. -- W. Va. Code §19-12-3, 5, 6, and 16

1.3. Filing Date. --

1.4. Effective Date.

**§61-14-2. Definitions.**

2.1 "Act" means the West Virginia Plant Pest Act (West Virginia Code 19-12-1 et seq.).

2.2 "Administrative Hearing Officer" means a person contracted by the Commissioner to preside over a formal hearing.

2.3 "Commissioner" means the Commissioner of the West Virginia Department of Agriculture or his authorized representative.

2.4 "Compliance Officer" means a person appointed by the Commissioner to preside over an informal hearing arising as a result of this Rule.

2.5 "Consent Agreement" means a document executed between the Commissioner and another party affirming the level of a proposed penalty for an alleged violation or violations.

2.6 "Enforcement Officer" means a person appointed by the Commissioner to carry out the review of alleged violations, assessment of the penalty and the procedure contained in this Rule.

2.7 "Infected" or "Infested" means contaminated with a pest, or so exposed, that it would be reasonable to believe that infection or an infestation exists.

2.8 "Insect, Noxious Weed and Plant Pest Dissemination Violation" means any violation of West Virginia Code 19-12-14, which requires that a permit be issued for the introduction or distribution of live insects, noxious weeds or plant pests.

2.9 "Inspection Violation" means any violation of West Virginia Code §§19-12-11, 19-12-8 or 19-12-10 or Section 8 of this Rule related to the discharge of an inspector's duties.

2.10 "Plant Certification Violation" means any violation of Sections 9 or 10 of this Rule that relate to the certification of plant material.

2.11 "Quarantine Violation" means any violation of the White Pine Blister Rust Quarantine, Black Stem Rust Quarantine, West Virginia Gypsy Moth Quarantine, or any other plant protection quarantine or administrative order established under authority of West Virginia Code 19-12-6.

2.12 "Registration Violation" means any violation of West Virginia Code 19-12-9 or Sections 2, 3, 4, 5, or 9 of this Rule related to the requirements for registering a nursery or nursery dealer.

2.13 "Violator" means the person who is alleged to have violated West Virginia Code 19-12-1 et seq., or any rule, order or permit condition imposed pursuant to West Virginia Code 19-12-1 et seq..

### **§61-14-3. Sale of Nursery Stock.**

3.1. No nurseryman within the State shall sell or offer for sale any nursery stock or deliver any nursery stock within or without the State until it has been inspected and a certificate issued.

3.2. The commissioner shall for each certificate of registration issued and for each renewal thereof, collect an annual registration fee in the amount of thirty dollars (\$30.00) for each nurseryman and sixty dollars (\$60.00) for each dealership up to and including five (5) dealerships and eighty dollars (\$80.00) for each dealership thereafter. All certificates of registration shall expire on the thirtieth day of June next after issue.

### **§61-14-4. Display of Certificates.**

4.1. The certificate of registration issued to any nursery that has been inspected and found to be apparently free of dangerously injurious insects and plant diseases shall be conspicuously displayed to the public at the location where the nursery stock is being offered for sale.

### **§61-14-5. Multiple Sales Locations.**

5.1. A registered nursery with one or more sales locations separated from the parent nursery is not required to register each sales location, but shall have a copy of the registration displayed at each separate sales location.

#### **§1-14-6. Revealing of Sources and Posting Certificates.**

6.1. All dealers in nursery stock must inform the Commissioner of the sources of his or her nursery stock and the Commissioner must be satisfied that nursery stock obtained from these sources is free of dangerously injurious insects and plant diseases before a dealer's certificate is issued. The dealer may make amendments to the original list of sources at any time prior to the purchase of stock.

6.2. It is unlawful for any dealer in nursery stock within the State to offer for sale any nursery stock unless a copy of the current dealer's certificate of registration is conspicuously displayed to the public at the place of business and unless the certificate of inspection or tag which accompanied the order from the registered nursery is available for inspection upon request.

#### **§61-14-7. Reciprocal Registration.**

7.1. All nurserymen, dealers, or other persons residing or doing business outside of West Virginia who desire to ship nursery stock into the State must be registered with the department of agriculture in the state in which their business is located. The West Virginia Department of Agriculture will accept as proof of registration the directory of certified nurseries and dealers published by their resident state department of agriculture, provided their state accepts West Virginia's directory on a reciprocal basis. In those instances where there is no reciprocity, the out-of-state business must file a copy of their current, valid certificate of registration with the Commissioner, prior to shipment.

#### **§61-14-8. Hinderance To Nursery Inspection.**

8.1. When such conditions as the presence of trash, weeds, crowding of stock or other conditions prevent a thorough examination of a nursery, the Commissioner shall provide the nurseryman with a written statement describing the procedures necessary to correct the problem which prevented a thorough examination of the nursery. After receiving a written response from the nurseryman that the corrective procedures have been carried out, the Commissioner shall cause an inspection to be made.

#### **§61-14-9. Collection Of Native Nursery Stock.**

9.1. Any person collecting native nursery stock in West Virginia shall apply for and receive a dealer's certificate of registration prior to actually digging and/or selling any collected stock, unless that person is already certified as a nurseryman.

9.2. Any person who anticipates the digging and/or offering for sale of collected native nursery stock shall make proper application to the Commissioner for inspection, prior to collecting each individual shipment. The Commissioner shall designate a time or times and a place or places where the dug plants are to be assembled for inspection. Uninspected plants shall not be moved from the property where they are collected without a specific written directive from the Commissioner designating the place to which the plants are to be moved for inspection. Notice shall be given to the Commissioner when the plants

are assembled. It is a violation to transport native nursery stock without first obtaining a written directive from the Commissioner making provisions for inspection.

9.3. The Commissioner shall issue a certificate of inspection to the collector for the movement and sale of each shipment of collected plants found to be free of plant pests. This certificate shall cover only the plants inspected and passed at the time of inspection. Plants not passing inspection shall be destroyed or treated as directed by the Commissioner.

#### **§61-14-10. Vegetable Plants.**

10.1. All vegetable plants shipped into the State of West Virginia must be certified to have been grown under an official certification program of the State of origin, or to have been inspected and certified to be apparently free of injurious insects, nematodes, and plant diseases on the basis of an inspection no more than three (3) days prior to removal from the soil.

#### **§61-14-11. Assessment of Civil Penalties and Procedures for Consent Agreements and Negotiated Settlements.**

##### **11.1. Procedure**

11.1.a. The civil penalty assessment procedures in this section are designed to include most violations of West Virginia Code 19-12-1 et seq. committed by nurseries and nursery dealers. However, there may be situations which arise that are not adequately covered by this section. In such cases, the enforcement officer shall determine an appropriate course of action and make a recommendation for that action to the Commissioner. After review of the circumstances, the Commissioner may concur with the recommendation or give direction for other appropriate action as prescribed under the authority of West Virginia Code 19-12-1 et seq.

11.1.b. The time interval between the first offense and each repeated offense, beyond which the Commissioner will take no enforcement action and clear the violator's records, will be limited to two years for all inspection and plant certification violations. There is no time limit for registration, quarantine, administrative order, and insect, noxious weed and plant pest dissemination violations.

11.1.c. The enforcement officer reviewing a case shall prepare a finding of facts surrounding any discovered violation of West Virginia Code 19-12-1 et seq. Once a violation is discovered the enforcement officer shall determine:

11.1.c.A. The appropriateness of a civil penalty or criminal enforcement action; and

11.1.c.B. The character of the violation and the appropriate enforcement level as stated in the schedule of penalties contained in Table 61-14-A of this Rule. The violations are categorized into the following types:

- 11.1.c.B.(a) Registration Violations;
- 11.1.c.B.(b) Inspection Violations;
- 11.1.c.B.(c) Plant Certification Violations;
- 11.1.c.B.(d) Quarantine Violations; and
- 11.1.c.B.(e) Insect, Noxious Weed and Plant  
Pest Dissemination Violations.

11.1.d. Upon establishing a level of violation, the enforcement officer shall refer to the schedule of penalty levels contained in Table 61-14-A of this rule to determine a monetary assessment. In determining the level of penalty, the enforcement officer shall consider the following factors:

- 11.1.d.A. The gravity of the violation;
- 11.1.d.B. The degree of the violator's culpability;
- 11.1.d.C. The degree of effort put forth by the violator to comply with West Virginia Code 19-12-1 et seq. and Rules promulgated under the Act; and
- 11.1.d.D. The violator's history of prior violations.

11.1.e. Any denial, suspension, revocation or modification by the Commissioner of a permit, compliance agreement or certificate of registration shall be based on satisfactory evidence that the action taken will help protect the State's agricultural interests from plant pests and/or noxious weeds or that any of the provisions of the permit, compliance agreement, West Virginia Code 19-12-1 et seq., or its Rules have been violated.

11.1.f. Any consent agreement or negotiated settlement agreed upon and signed by the violating party and the duly appointed representative of the Commissioner is a penalty levied through an administrative hearing for the purpose of collection and for the purposes of such other action as determined proper and included in the consent agreement or negotiated settlement.

## **11.2 Consent Agreements and Negotiated Settlements.**

11.2.a. Consent agreements or negotiated settlements are intended as a mechanism to settle violations without expensive costs to both parties for administrative or criminal hearings. The violations cited in the notice of violation are capable of being recognized by the violator and the penalty settlement can be accomplished without a hearing. The enforcement officer shall provide the violator a written notice of violation, by

certified mail or personal service, which includes a finding of fact and a proposed level of enforcement action. If the violator agrees with the proposed level of action, he or she shall sign a consent agreement form and return it with payment of the assessed penalty.

**11.2.b. Negotiated Settlement - Right to informal hearing.** In the event that the violator disagrees with the findings of the investigation and/or the level of enforcement action, the violator has twenty (20) calendar days from receipt of the notice of civil penalty to request a hearing. The violator has the option of requesting an informal hearing or may request a formal hearing as prescribed under Sub-division 11.2.g. of this rule. During an informal hearing the violator may submit to the compliance officer any mitigating circumstances as to why the compliance officer should alter the investigative findings or level of enforcement action.

**11.2.c. Notice and Scheduling of Informal Hearing.** If the violator requests an informal hearing within the twenty-day period, the compliance officer shall schedule a hearing in accordance with the following procedures:

**11.2.c.A.** The compliance officer shall notify any authorized representative of the Commissioner who was involved in the investigation of the violation bringing about the informal hearing, and the violator of the time and place of the informal hearing. In scheduling the location of the informal hearing, the compliance officer shall consider the location of the violation and the violator. The compliance officer may schedule the hearing anywhere in the State of West Virginia;

**11.2.c.B.** The compliance officer shall notify the parties at least fifteen (15) calendar days prior to the time of the hearing; and

**11.2.c.C.** The compliance officer may continue the informal hearing only for good cause shown.

**11.2.d. Informal Hearing Procedures.** An informal hearing, as provided by this Rule, is intended to be an informal discussion of the facts which gave rise to the issuance of a notice of violation. The compliance officer shall conduct the hearing in the following manner:

**11.2.d.A.** The compliance officer shall not strictly apply The West Virginia Rules of Civil Procedure and West Virginia Rules of Evidence;

**11.2.d.B.** The compliance officer shall not discuss the case "ex parte" with either the enforcement officer or other department employees involved in the case;

**11.2.d.C.** A record of the informal hearing is not required, but any party may request that a record be made at that party's expense. Any other party to the hearing may obtain copies of the record at their expense; and

**11.2.d.D.** At any formal review proceedings which may occur later, no evidence, as to any statement made by one party at the informal hearing, may be

introduced as evidence by another party, nor may any statement be used to impeach a witness, unless the statement is or was available as competent evidence independent of its introduction during the informal hearing.

**11.2.e. Negotiated Settlement** - Any settlement of the alleged violation based on agreement between the compliance officer and the violator is a negotiated settlement. The violator and the compliance officer shall sign the negotiated settlement document.

**11.2.f. Written Decision**

**11.2.f.A.** If the violator and the compliance officer are unable to reach an agreement, the compliance officer shall recommend a penalty to the Commissioner.

**11.2.f.B.** Within thirty (30) calendar days following the informal hearing, the Commissioner shall issue and furnish to the violator a written decision affirming, decreasing, or dismissing the initial civil administrative penalty assessment and give the reasons for his or her decision.

**11.2.g. Contested Cases, Right to a Formal Hearing.**

**11.2.g.A.** As provided in Sub-division 11.2.B. of this Rule or within thirty (30) calendar days after notification of a written decision rendered as a result of an informal hearing, the violator may request a formal hearing before the Commissioner. An administrative hearing officer shall conduct the hearing and the hearing shall comply with the Administrative Procedures Act, West Virginia Code §29A-5-1 et seq.

**11.2.g.B.** If no hearing is requested, the compliance officer's decision becomes a final order after the expiration of the thirty-day period and the civil administrative penalty is due and payable.

# TABLE 61-14-A

## SCHEDULE OF PENALTIES

### Registration Violations

**Violation** - Exposing or offering for sale, selling, delivering, or giving away plants or parts of plants commonly known as nursery stock without having first secured from the Commissioner a certificate of registration. Nursery - (West Virginia Code 19-12-9 and Section 3 of this Rule). Nursery Dealer - (West Virginia Code 19-12-9).

Level of Violation	Level of Penalty
First Offense, No Prior Knowledge	Written Notice
First Offense, Prior Knowledge	\$50 - \$100
Second Offense	\$100 - \$250
Third offense and each repeat offense thereafter.	\$500

**Violation** - Failure to post the certificate of registration in a conspicuous location at the place of business. Nursery - (Section 4 of this Rule). Nursery Dealer - (Section 6 of this Rule).

Level of Violation	Level of Penalty
First Offense	Written Notice
Second Offense	\$25 - \$50
Third Offense and each repeat offense thereafter.	\$50 - \$100

**Violation** - Failure of a Nursery Dealer to inform the West Virginia Department of Agriculture about the source(s) of their nursery stock. (Section 6 of this Rule).

Level of Violation	Level of Penalty
First Offense. Adverse effects not probable.	Written Notice
First Offense. Adverse effects probable or demonstrated.	\$100 - \$250
Second offense and each repeat offense thereafter. Adverse effects not probable.	\$100 - \$250
Second Offense and each repeat offense thereafter. Adverse effects probable or demonstrated.	\$500 - \$1000



## **Inspection Violations**

**Violation** - Interfering with an inspector's ability to perform their duties. (West Virginia Code 19-12-8).

Level of Violation	Level of Penalty
First Offense	Written Notice
Second Offense	\$100 - \$250
Third Offense and each repeat offense thereafter.	\$500 - \$1000

**Violation** - Failure to comply with a plant pest control order. (West Virginia Code 19-12-10).

Level of Violation	Level of Penalty
First Offense. Adverse effects not probable.	Written Notice
First Offense. Adverse effects probable or demonstrated.	\$100 - \$250
Second Offense and each repeat offense thereafter. Adverse effects not probable.	\$250 - \$500
Second Offense and each repeat offense thereafter. Adverse effects probable or demonstrated.	\$500 - \$1000

**Violation** - Maintaining conditions which prevent a thorough plant pest examination. (Section 8 of this Rule).

Level of Violation	Level of Penalty
First Offense	Written Notice
Second Offense	\$50 - \$100
Third Offense and each offense thereafter.	\$100

## **Gary Gibson**

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**From:** Frank Pelurie [fpelurie6033@charter.net]  
**Sent:** Wednesday, July 12, 2006 6:10 PM  
**To:** Gary Gibson  
**Subject:** Increase of 2007-2008 Nursery Fees

While most people are never happy about increased fees, the service provided is well worth the proposed \$30.

Frank Pelurie

## Gary Gibson

---

**From:** Gary Gibson [ggibson@ag.state.wv.us]  
**Sent:** Thursday, July 13, 2006 7:26 AM  
**To:** 'Frank Pelurie'  
**Subject:** RE: Increase of 2007-2008 Nursery Fees

Dear Frank,

Thank you for commenting on the proposed fee increase. Your comments will be kept on file.

I understand that you will be attending the St. Albans Parks & Recreation Committee meeting tomorrow evening. My wife Jeannie is on that committee and said that you will be there to discuss providing some rhododendrons and azaleas for the city parks. I plan on attending that meeting and look forward to meeting you.

Gary W. Gibson, Director  
Plant Industries Division  
West Virginia Department of Agriculture  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0191  
Telephone: (304) 558-2212  
Fax: (304) 558-2435

-----Original Message-----

From: Frank Pelurie [mailto:fpelurie6033@charter.net]  
Sent: Wednesday, July 12, 2006 6:10 PM  
To: Gary Gibson  
Subject: Increase of 2007-2008 Nursery Fees

While most people are never happy about increased fees, the service provided is well worth the proposed \$30.

Frank Pelurie

To: WV Dept. of Ag., Plant Industries Division

From: Melissa Brodsky, Owner, Honeybee Landscaping

Re: Fee Increase

I have included below a copy of an email I sent to [mburdette@ag.state.wv.us](mailto:mburdette@ag.state.wv.us) on June 5, 2006, several weeks before receiving the fee increase notification. I did not get a response to my email, and have sent it again today, as well as copied it to this letter in hopes of getting a better understanding of what it is that I am gaining by being in compliance with this registration.

Of course, now that the fee is being doubled I am even more concerned. If I am receiving promised information and information beneficial to the industry, I believe the fee, and possibly the increase, could be justified, but as you will read below, I have received only one single notification in the 2 years I have carried this registration....that hardly justifies a \$30 fee, let alone a \$30 increase as well!

In addition, what are the measures being taken against those in the industry that are not in compliance? I am aware of several "landscapers" that do not even know about this registration and therefore are not in compliance, as well as several that do know about it but refuse compliance because of the fee or other reasons.

Lastly, from the perspective of someone paying into the registration, but getting nothing out of it, I ask what type of justification to raise fees is it that "these fees are in line with the nursery and nursery dealer registration fees of surrounding states and are necessary to enable this agency to conduct an effective plant protection program"? ~Just because "Jimmy" does it, doesn't mean "Sally" should. I think the only justification should be found in the **results** of the increase; More information, better access to solutions, more enforcement for uniform compliance; more thorough contact with those of us that pay into this registration not because we have to, but because we are concerned, and more information regarding plant protection and what the registrant can do concerning the information....all things that were explained to me that my fee would cover, but that I have never seen. Without these actions or additions to these actions, there is no justification for the fee or the increase.

As per my email on June 5, 2006:

It is time once again to renew my Nursery Dealer License...I find myself wondering, however, just what my \$40.00 fee is for?

When I was advised that I needed to carry this license, I was told that the fee would be used to keep me informed and up-to-date on any information that is important to the industry such as quarantines, blights, infestations, etc... In the 2 years that I have carried this license, I have received one mailing, excepting the yearly notice to pay my \$40.00, of course!

I find this disturbing for several reasons. First, it seems I am paying \$40 for some type of filing fee, ~just what it would cost to gather my info every year, send out a notice, receive the paperwork and payment, and file it away for another year. Secondly, It seems that the nursery grower would be the one to need more information and has more

responsibility to keep the stock healthy, yet their fee is half the price of mine! Lastly, having received only one notification in 2 years, one would think that is indicative of little or no adverse activity affecting the growing industry, however, on this years renewal form I find a laundry list of notifications and alerts, ~this being the first I have heard of any of them!

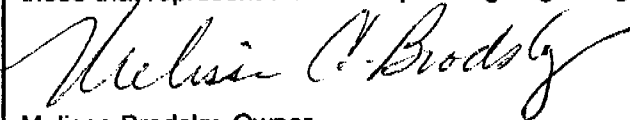
If I am paying \$40.00 a year, I would like to see some result for my investment. I don't need a piece of paper to tell me I can sell a shrub, which is what this "license" has amounted to. What I need is information to help me ensure the safety and health of the growing stock I re-sell to my customers! I was told there would be updates and notifications to justify my yearly fee to the Dept. of Ag.....Where is all of this?

This fee seems to be just a collection of funds because the Ag. Dept. can, not something that helps to regulate the industry....

Melissa Brodsky

Honeybee Landscaping

Thank you for the opportunity to address this issue. I look forward to hearing from those that represent the WV Dept. of Ag. regarding this matter as soon as possible.



Melissa Brodsky, Owner

Honeybee Landscaping

Rt. 4 Box 76A, Grafton, WV 26354

(304) 265-2260 (office & fax)



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

Janet L. Fisher  
Deputy Commissioner

Steve Hannah  
Deputy Commissioner

6/30/2006

Melissa Brodsky  
Honeybee Landscaping  
Rt. 4, Box 76A  
Grafton, WV 26354

Dear Ms. Brodsky,

This is in response to your recent letter about the proposed increase in the registration fees charged to nurseries and nursery dealers. I will try to address all of your concerns.

The West Virginia Department of Agriculture (WVDA) is charged with protecting the State's agricultural interests. Plant Industries Division, which I oversee, has the responsibility of protecting our forests and agricultural lands from serious plant pests, both endemic and non-native. The purpose for requiring nursery stock growers and distributors to register with the WVDA is so that we know who is producing trees and other hardy, woody-stemmed, perennial plants and who is obtaining them from other sources and redistributing them. Virtually every state has in affect agricultural laws that serve to protect their agricultural resources by regulating the movement of plant material. Some states, like Pennsylvania for example, regulate all plants; indoor plants as well as what we define as nursery stock. The State of Georgia even regulates the movement of non-living plant material such as "greenery", because they feel that cut foliage presents a high risk of spreading plant pests.

The registration fees charged to nurseries and nursery dealers is also something that varies from state-to-state. When I began working for the WVDA more than 33 years ago, the registration fees for nurseries and nursery dealers was \$10.00 and \$20.00 respectively. The fees help offset some of the expense of running our plant regulatory program. As a business owner, you have the ability (to a degree) of raising the price of your product in order to offset price increases for your planting stock, gasoline, labor, etc. As an agency of state government, the amount of funding the WVDA operates on is limited to what the State Legislature provides, plus any fee monies that are collected. The nursery/nursery dealer fees charged by the WVDA are in line with those of other states. Actually they are lower than many.

When I began working for this agency I asked why the registration fees were different for nurseries and nursery dealers. Our division director, a very knowledgeable man who had worked on some of the original nursery legislation, said that the system was meant to benefit the nursery crop grower. These people worked the land and took the risks that go along with producing a crop. Because of the desire to help the "farmer" the registration fees were lower for nurserymen, plus they were allowed to market the nursery stock they produced from as many locations as they wanted to by simply

posting their certificate of registration at the distribution site. Nursery dealers, those who acquired nursery stock and redistributed it, paid a higher fee and had to pay a registration fee for each nursery outlet they operated.

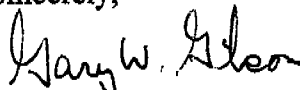
With regards to what you get for your registration fee, I guess that is a matter of perception. Some nursery dealers say they had to register because nurseries would not sell them nursery stock unless they were registered. As far as the distribution of information goes, we certainly cannot contact every establishment on a routine basis and ask them if they would like some kind of information. However, we do promote education within the nursery industry by providing educational speakers for organizations such as the West Virginia Nursery and Landscape Association, the West Virginia Christmas Tree Growers Association, garden clubs, schools, and a number of other groups. We also produce articles for the newsletters these groups generate. We send out new releases to the media regarding new (and sometimes well established) insects, plant diseases and weeds that threaten our crops and forests, and even the plants that make up your landscape. Each year we produce a calendar which we distribute to our cooperators illustrating some of the agricultural pests and pest detection programs we are working on.

One thing I have tried to avoid in this letter is saying that distributors of nursery stock must register because it is the law. It is a law and we have prosecuted many violators over the years. I believe in this law, because its purpose is to help protect West Virginia's crops and forests. In my eyes, those who willingly choose to violate it are a threat to our agricultural interests. If they do not respect our agricultural laws, what other activities do they engage in that threaten our forests, streams and lands?

Ms. Brodsky, I hope I provided you with some insight into one of the pieces of legislation that governs the business you are in. I also hope you will inform others in the landscaping and nursery marketing trade of these regulations and ask them to comply with West Virginia's nursery regulations by obtaining the proper registration from our office.

If you have additional questions about this matter, please contact me or Sherri Hutchinson at this address. I wish you the best of luck with your landscaping business.

Sincerely,



Gary W. Gibson, Director

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C: Sherri Hutchinson, Assistant Director