

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Agriculture TITLE NUMBER: 61

RULE TYPE: Procedural; CITE AUTHORITY 19-16A-4

AMENDMENT TO AN EXISTING RULE: YES___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 22A

TITLE OF RULE BEING PROPOSED: Best Management Practices for Temporary
Operational Areas of Non-Bulk Pesticides

DATE OF PUBLIC HEARING: Tuesday, July 21, 1992 TIME: 11:00 AM

LOCATION OF PUBLIC HEARING: West Virginia Department of Agriculture
J. T. Johnson Conference Room, Building 2
Guthrie Agricultural Center
Charleston, WV 25312

COMMENTS LIMITED TO: ORAL___, WRITTEN___, BOTH X

Written comments will be accepted until Friday, July 31, 1992.

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

Robert Frame

Director, Pesticide Division
West Virginia Dept. of Agriculture

1900 Kanawha Blvd., East

Charleston, WV 25305

The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



2.80

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule title: Best Management Practice for Temporary Operation Areas of Non-Bulk Pesticides

Type of Rule: Legislative Interpretive Procedural

Agency Dept. of Agriculture Address Pesticide Division
1900 Kanawha Blvd. E., Charleston, WV 25305-0190

1. Effect of Proposed Rule:	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

This rule is a best management practice designed to provide guidance to users of non-bulk quantities of pesticides at temporary operational sites. As such, costs are not expected to increase the current pesticide regulatory program budget.

3. Objectives of these rules:

The objective of this rule is to provide voluntary groundwater protection measures to quantities of pesticides at temporary operational areas to protect the groundwaters of the state.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There may be increased cost to some agencies of the state in that the implementation of these measures can be costly. The estimated costs could run from \$1,000 upwards per installation or activity. As there are no known sites that have been retrofitted to meet these guidelines any total cost estimate could be inaccurate.

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

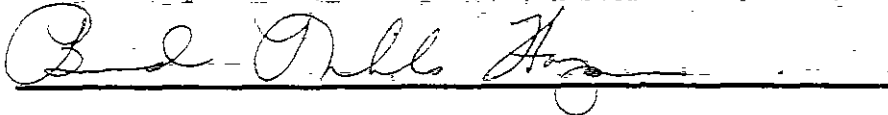
Political sub-division, pesticide application businesses and farmers will be impacted by these regulations. Cost estimate for compliance are unknown based on the various types of existing operations. However, the cheapest known portable containment device is priced at \$1,000.00

C. Economic Impact on Citizens/Public at Large.

The economic impact on the citizens of the state is that facilities desiring to upgrade will likely increase prices. Public services may decrease due to the need to direct resources to comply with the regulations.

Date: June 5, 1992

Signature of Agency Head or Authorized Representative



Title 61
WEST VIRGINIA PROCEDURAL RULE
State Department of Agriculture

SERIES 22 A

Title: Best Management Practices for Temporary Operational Areas of Non-bulk Pesticides

§61-22A-1 General

1.1 Scope - This best management practice establishes the guidelines governing the operation of locations used for the storage and mixing and loading of non-bulk pesticides in temporary operational areas.

1.2 Authority - West Virginia Code 19-16A-4

1.3 Filing Date -

1.4 Effective Date -

§61-22A-2 Definitions

2.1 "Bulk Pesticide " means any registered pesticide which is transported or held in an individual container in undivided quantities of greater than fifty-five (55) U.S. gallons liquid measure or one hundred (100) pounds net dry weight.

2.2 "Discharge" means any spill, leak, deposit, dumping or emptying, either accidental or otherwise, that results in a release of pesticide into an uncontained portion of an operational area. Discharge does not include lawful transfer, mixing, loading, unloading, repackaging or refilling of a pesticide provided such transfer, mixing, loading, unloading, repackaging, refilling or other similar activity, if carried out within an operational area containment. In addition, discharge does not include lawful distribution, use, disposal or application of a pesticide.

2.3 "Non-bulk Pesticide" means any liquid or non-liquid pesticides distributed, sold, offered for sale, packaged or repackaged in containers of less than 56 U.S. gallons liquid or 100 pounds net dry weight and includes all pesticides not meeting the definition of bulk pesticides.

2.4 "Operational Area" means in the case of non-bulk pesticides storage or handling facilities or locations, and area or areas where the contents of pesticide containers are transferred between containers, including transfer to application equipment, loaded, unloaded, mixed, repackaged, refilled or where pesticides

are cleaned, washed or rinsed from containers or application, handling, storage or transportation equipment. An operational area does not include a facility or location that receives and/or distributes pesticides in the manufacturer's original unbroken container and where such containers remain sealed or other wise unopened or areas not falling within the definition of permanent or temporary operational areas defined in this rule.

2.5 "Operational Area Containment" means in the case of non-bulk pesticide storage or handling facilities or location, any structure or system effectively designed and constructed to intercept and contain discharges, including container or equipment wash water, rinsates, and rainwater, and to prevent escape, run-off and leaching from an operational area.

2.6 "Permanent Operational Area" means an operational area where either concentrate or diluted pesticides in excess of 300 U.S. gallons of liquid or 3,000 pounds of net dry weight or where a total of 1,500 pounds of pesticides as active ingredients are transferred, loaded, unloaded, mixed, repackaged, refilled, or cleaned, washed or rinsed from containers or application, handling, storage or transportation equipment over a 30 day period either consecutive or cumulative during a calendar year. Permanent non-bulk operational areas are addressed by legislative rule WV61CSR 12H.

2.7 "Temporary Operational Area" means an operational area that is not a permanent operational area. A temporary operational area does not include the operational area activities carried out within the field or site of application provided these activities occur no more than twice per calendar year at the same location for a period not exceeding 24 hours total and does not include the area in and around a private dwelling where a resident of that dwelling is conducting incidental activities associated with pesticide use in and around such dwelling that otherwise fall within the scope and definition of an operational area.

§61-22A-3 Recommendations for Temporary Operational Areas

3.1 General. The commissioner recommends that any person storing, mixing, or repackaging pesticides, or refilling pesticide containers perform these activities in the following manner.

3.1.a All operational area activities should be conducted or carried out within operational area containment. Such containment should be properly maintained at all times when operational activities are occurring.

3.1.b Operational area activities should be carried out on an impervious surface, such as a concrete pad or other similar pad approved by the Commissioner, that is suitably coated with a material to retard absorption of discharges and to facilitate recovery of any discharged materials.

3.1.c The operational area containment should be constructed of materials and in a manner that will withstand the weight and movement of any equipment that may be placed or parked within the operational area containment.

3.1.d The operational area containment should be designed to catch and contain any discharges that are occurring in the operational area and should be constructed of materials and in a manner that will contain reasonably foreseeable discharges.

3.1.d.A For liquid pesticides, including container and equipment rinsates and those mixed with a liquid or dry carrier, the operational area containment should be curbed or sloped to contain discharges so as to facilitate recovery of discharged materials. Discharges should be immediately recovered from the operational area containment. Rainfall or other liquids should not be allowed to flow either onto or out of the operational area containment unless a suitable recovery or storage facility is provided to collect, divert or manage the rainfall. The operational area containment should be capable of holding 125% of the capacity of the single largest container or vehicle operated within the operational area. A minimum containment capacity of 250 U.S. gallons should be provided.

3.1.d.B For non-liquid pesticides, the operational area containment should extend beneath any conveyers or augers used in operational area activities unless such conveyers or augers are fully enclosed and constructed to prevent discharge. Operational area containment should be of adequate dimension (area) to contain reasonably foreseeable discharges from the largest container or equipment operated within the operational area containment. The operational area containment for non-liquid pesticides may consist of a tarpaulin made of nonabsorbent materials which is of adequate thickness and construction to withstand all foreseeable loading conditions, and is generally compatible with the materials stored or placed thereon. Discharges should be immediately recovered from the operational area containment. Rainfall or other liquids should not be allowed to flow either onto or out of the operational area containment unless a suitable recovery or storage facility is provided to collect, divert or manage rainfall.

3.1.e Underground storage of recovered discharges from the operational area containment is highly discouraged and may be regulated by underground storage laws.. This does not preclude the use of approved sumps, which meet applicable state and federal requirements, that are incorporated into the design of the operational area and are maintained and operated according to a plan approved by the commissioner.

3.2 Ground Operations. The commissioner recommends the following additional specifications should apply for ground operational area activities conducted or carried out within a temporary operational area:

3.2.a For containers or equipment with holding capacity of 10 gallons or less volume, or 50 pounds of net dry weight or less, the operational area containment should contain 100% of these capacities.

3.2.b For containers or equipment with liquid material holding capacity of greater than 10 gallons volume, the operational area containment should contain a minimum volume of 25 gallons plus 10% of the total capacity of the container or equipment. All discharges should be immediately recovered.

3.2.c For containers or equipment with non-liquid material holding capacity of greater than 50 pounds net dry weight, the operational area containment surface should be of adequate dimension (area) to contain reasonably foreseeable discharges from the container or equipment and provide containment for discharges that may occur at various points along conveyers or handling equipment and provide containment for discharges that may occur at various points along conveyers or handling equipment. All discharges should be immediately recovered. Tarpaulins or other suitable synthetic materials may be utilized for non-liquid materials provided they are made of non absorbent materials which are of adequate thickness and construction to withstand all foreseeable loading conditions and are generally compatible with the materials to be contained.

3.2.d Operational area containment provided at temporary operational areas may be portable and should be capable of allowing discharges to be immediately and fully recovered, to the extent practicable, and be easily cleaned or washed after use.

3.2.e Rainfall or other liquids should not be allowed to flow either onto or out of the temporary operational area containment while it is in use. Suitable protective measures should be implemented to protect non-liquid materials stored out-of-doors from rainfall.

3.3 Aerial Operations. The commissioner recommends the following additional specifications should apply for aerial operational area activities conducted or carried out within a temporary operational areas.

3.3.a All operational area activities, including those associated with non-aircraft pesticide handling equipment, should be conducted or carried out within operational area containment. Such containment may be permanent or portable and should meet all of the following requirements:

3.3.b Operational area containment should contain any discharge that may occur from any portion of the aircraft's pesticide application system.

3.3.c The capacity of the operational area containment should be at least 125% the maximum volume of the aircraft's

pesticide application system capacity.

3.3.d The operational area containment should be constructed of concrete, steel or synthetic materials that are resistant to corrosion, puncture or cracking, and that are chemically compatible with the pesticides handled within the operational area. A written confirmation of compatibility of synthetic materials should be kept at the operational area or at the nearest local office of the person responsible for operation of the aircraft.

3.3.e The operational area containment should be designed and constructed to withstand the weight and movement of any equipment that may be placed or parked within the operational area containment.

3.3.f Rainfall or other liquids should not be allowed to flow either onto or out of the operational area containment unless a suitable recovery or storage facility is provided to divert or to manage the rainfall.

\$61-22A-4 Recovery, Storage and Use of Discharges

4.1 All discharges within the operational area containment shall be immediately and fully recovered, to the extent practicable, using appropriate absorbent materials, pumps or other acceptable means. Operational area surfaces exposed to pesticides (concentrate or dilute) should be periodically cleaned with all rinsates recovered and properly stored or disposed of according to state requirements. Recovered discharges should not be stored below ground except as provided in 3.2.c, but could be stored in suitable containers above ground provided secondary containment provisions are considered. Recovered discharges may be used according to applicable product label (s) if appropriate.



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

State Capitol
Charleston, WV 25305

Cleve Benedict
Commissioner

June 15, 1992

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DEPT. OF AGRICULTURE
STATE CAPITOL

The Honorable Ken Hechler
Secretary of State
Ground Floor, W-157, State Capitol
Charleston, West Virginia 25305

Dear Mr. Hechler:

The Commissioner of Agriculture announces that he has scheduled public hearings for the proposed rules affecting groundwater in addition to the hearings listed on the "Notice of Public Hearing on a Proposed Rule" filed with you on June 5, 1992.

The additional hearings will all be held in Room 315/316 Percival Hall, Forestry Building, Evansdale Campus, West Virginia University, Morgantown, WV according to the following schedule:

- Non-Bulk Pesticide Rules for Permanent Operational Areas (61-12I)
Thursday July 23 3 PM
- General Groundwater Protection Rules for Fertilizer and Manures (61-6A)
Thursday July 23 5PM
- Primary and Secondary Containment of Fertilizers (61-6B)
Thursday July 23 7PM
- General Groundwater Protection Rules for Pesticides (61-12G)
Friday July 24 8AM
- Bulk Pesticide Operational Rules (61-12H)
Friday July 24 10AM
- Generic State Management Plan for Pesticides and Fertilizer in Groundwater (61-22)
Friday July 24 1PM
- Best Management Practices for Temporary Operational Areas of Non- Bulk Pesticides (61-22A) Friday July 24 2:30PM

Please publish this notice in the State Register.

Sincerely,

Barbara J. Smith
Director, Compliance Division
(304)-558-2226 FAX: - 3594

BJS:pfhear.hec