

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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Nov 5 2 22 PM '92

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Agriculture TITLE NUMBER: 61

CITE AUTHORITY: 20-5M-5-C

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES , NO

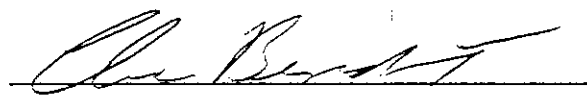
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 22B

TITLE OF RULE BEING ADOPTED: Best Management Practices for Fertilizers
and Manures

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS December 6, 1992



4.20

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

TITLE 61, SERIES 22B

BEST MANAGEMENT PRACTICES FOR FERTILIZERS AND MANURES

Type of rule: Procedural

Agency: West Virginia Department of Agriculture
 Compliance Division
 1900 Kanawha Boulevard, E.
 Charleston, West Virginia 25305

Effect of Proposed Rule Estimated Total Cost	ANNUAL		FISCAL YEAR		
	Increase \$	Decrease \$	Current \$	Next \$	Thereafter \$
Personal Services	27,000	0	0	27,000	27,000
Current Expense	1,000	0	0	1,000	1,000
Repairs and Alterations	0	0	0	0	0
Equipment	0	0	0	0	0
Other	0	0	0	0	0

NOTE: These estimates for personal services and current expense are shared with the fiscal expenditures for Title 61, Series 6A. The additional field position and additional expenses will be shared by the two programs. It is anticipated that travel for enforcement will be combined with travel for the purpose of educating the public.

2. Explanation of above estimates:

The estimates are based on the assumption that one additional field position will be needed. These estimates are very rough as the Department has no experience with enforcement of this type.

3. Objectives of these rules:

The objective of this rule is to provide for a voluntary program of education and practice for all persons who apply fertilizers or manures in this state with the intent to prevent groundwater pollution from these sources.

The rule is being filed as part of the Department of Agriculture program to comply with the Groundwater Protection Act passed by the West Virginia Legislature.

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government.

The impact on state government will be that as outlined in the chart above.

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

There will be no economic impact on political subdivisions. The farm supply industry and others who market fertilizer in this state may see a reduction in sales due to more efficient use of fertilizers. Users of fertilizers will be asked to be more careful in their application of fertilizers and manures. Some individuals may have too much manure produced on their farm to be used on the acreage that they have and may need to resort to expensive means to dispose of the manure.

C. Economic Impact on Citizens/Public at Large.

The economic impact on citizens and the public at large will be minor.

Date: September 15, 1992



Signature of Agency Head or Authorized Representative

BEST MANAGEMENT PRACTICES FOR FERTILIZERS AND MANURES

TITLE 61, SERIES 22B

Summary of the Rule

The objective of this rule is to provide for a voluntary program of education and practice for all persons who apply fertilizers or manures in this state with the intent to prevent groundwater pollution from these sources.

The rule lists current good conservation practices that any person applying fertilizers or manures should use.

Circumstances requiring this rule

The rule is being filed as part of the Department of Agriculture program to comply with the Groundwater Protection Act passed by the West Virginia Legislature. This law required that the Department of Agriculture promulgate regulations for the use and application of fertilizers.

TITLE 61
PROCEDURAL RULE
STATE DEPARTMENT OF AGRICULTURE

SERIES 22B
BEST MANAGEMENT PRACTICES FOR FERTILIZERS AND MANURES

§61-22B-1. General.

1.1. Scope - The rules establish voluntary best management practices to prevent or minimize the entry of nutrients from fertilizers and manures into groundwater while maintaining and improving the soil and plant resources of this state.

1.2. Authority - Code of West Virginia 20-5M-5-c.

1.3. Filing Date -

1.4. Effective Date -

1.5. This is a new procedural rule.

§61-22B-2. Definitions.

2.1. "Best Management Practices" means activities, procedures and practices to prevent or remedy the introduction of fertilizer or manure residues into groundwater to the extent technically feasible and economically practical. Best Management Practices are designed to maintain the health and long-term productivity of the soil, water and related plant and animal resources and to minimize the threat of soil, waste and nutrient contamination to the waters of the state.

2.2. "Commissioner" means the commissioner of agriculture of the state of West Virginia or his or her duly authorized agent.

2.3. "Fertigation" means the application of fertilizers or manures by an irrigation system.

2.4. "Fertilizer" means any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth. The term fertilizer does not include

agricultural liming materials, wood ashes, gypsum, unmanipulated animal or vegetable manures and other products exempted by regulation of the commissioner.

2.5. "Manure" means any substance composed of excreta of animals, other than man, and may include bedding or other materials normally associated with the substance as well as water associated with or added to the substance.

2.6. "Non-point source" means a diffuse source of substances that have the potential to impair the beneficial uses of groundwater resulting from activities over a relatively large area, the effects of which must normally be addressed or controlled by a management or conservation practice.

2.7. "Point source" means a source of substances that have the potential to impair the beneficial uses of groundwater resulting from an activity over a small area and generally is limited to mixing, loading and storage sites or feedlots. A source is not considered a point source until a discharge of substances occurs.

2.8. "25-year 24-hour rainfall event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service, U.S. Department of Commerce, in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

§61-22B-3. Protection of groundwater from point sources.

3.1. Each person should store and handle fertilizers and manures in a manner to prevent pollution by minimizing losses to the groundwaters in this state.

3.2. Each person should store fertilizers inside a sound structure or device having a cover or roof top, sidewalls, and a base sufficient to prevent contact with precipitation and surface water. Each person should store manure in a facility that meets or exceeds the standards of the Soil Conservation Service Field Office Technical Guide. If these conditions are not met then no person should store fertilizer or manure:

3.2.a. without a tarpaulin or other suitable covering to prevent seepage or run-off to surface or groundwater;

3.2.b. on land within 100 feet of shallow wells, or wells that do not meet the Water Well Design Standards set by WV 64 CSR 46 et seq. (effective 6-8-84);

3.2.c. on land within 50 feet from surface water, including springs, ponds, wet areas or other collection points for surface water;

3.2.d. on land within 50 feet of an open portal of a sinkhole;

3.2.e. on land that has a slope greater than 15%, unless measures are taken to divert runoff of precipitation from the slopes above the storage area from the fertilizer or manure;

3.2.f. on land that has a seasonable groundwater table that is less than 2 feet from the surface;

3.2.g. on land that has less than 20 inches of soil over bedrock or an impervious pan; or

3.2.h. on land that has a reasonable expectation of having a flood event resulting from a 25 year - 24 hour frequency storm during the storage period.

3.3. Each person should conduct mixing and loading operations for liquid fertilizers or for fertilizers containing pesticides at least 100 feet from any wellhead or within a watertight loading pad.

3.4. When cleaning equipment used for storing or applying fertilizers or manures, each person should use extreme care that waste water or spillage from the operation is recovered and applied at normal agronomic rates or otherwise disposed of in a manner that will not contaminate groundwater.

3.5. All persons owning a dry or abandoned well in the area where fertilizers or manures are stored and used should plug the well according to the Water Well Design Standards WV 64 CSR 46 et seq. (effective 6-8-84).

3.6. All persons practicing fertigation should use a proper antibacksiphon device.

§61-22B-4. Protection of groundwater from non-point sources

4.1. No person should apply manure or fertilizers containing nitrogen to land:

4.1.a. with less than 10" of soil over fractured bedrock;

4.1.b. that is snow-covered and frozen, frozen or

saturated;

4.1.c. within 50 feet of a wellhead;

4.1.d. that is in imminent danger of being inundated by floodwater; or

4.1.e. that drains into a sinkhole with an open portal unless that sinkhole has a 20 foot vegetative buffer zone with at least 90% of the land in the buffer zone covered with vegetation.

4.2. No person should apply fertilizers containing nitrogen to land that has coarse textured soils when the application occurs in the fall, unless that application is made to support the growth of a fall cover crop.

4.3. Each person applying fertilizers or manures should:

4.3.a. utilize alternate crop rotations to reduce the amount of fertilizers or manures needed to maintain crop production and to utilize nitrogen residuals in the soil;

4.3.b. utilize practices to enhance soil condition that reduces nitrate leaching (such as practices to improve soil tilth and increase organic matter of the soil);

4.3.c. utilize conservation tillage, grassed waterways, contouring, vegetative buffer zones or other effective conservation practices to reduce fertilizer or manure residue runoff into sinkholes, wells or other potential sites for groundwater contamination;

4.3.d. plan the application of fertilizers containing nitrogen so that the application is made as close as practically possible to the time when the crop requires the nitrogen;

4.3.e. apply fertilizers or manures based on a rate recommended after soil tests, plant tissue testing and/or manure content testing;

4.3.f. apply nitrogen from a combination of fertilizer and/or manure at rates that supply no more than 125% of the demonstrated need of the crop, based on soil test, plant tissue test or estimated from yield goal, previous crop, manure management, and soil properties as recommended by a laboratory or soils specialist/agronomist;

4.3.g. calibrate application equipment to assure proper application rates; and

4.3.h. avoid application to a field that has an average

slope of greater than 25% unless that application is needed to establish or maintain close-grown grasses and/or clovers for the control of erosion; provided that suitable procedures are used to prevent runoff containing these residues from moving into groundwater when application is made to slopes of greater than 25%.

Comments received

A public hearing to take testimony on this issue was held at 9PM on Wednesday October 21, 1992. Mr. James L. Louthan was the only person who attended the hearing. He did not wish to give a formal statement.

No written comments were received.

There was no agency response and this rule is being filed as originally proposed.



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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SECRETARY OF STATE

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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

TO: ^{MORRIS} Bob ~~Moore~~

AGENCY: Agriculture

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: April 19, 1993

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 22B TITLE: 61 Agriculture

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: [Signature]

TITLE OF PERSON SIGNING: Assistant Commissioner

DATE: 4-26-93

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

Technical
Clean Up



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

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(Plus all the volunteer
help we can get)

TO: DAVID E MILLER

AGENCY: AGRICULTURE

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: June 10, 1996

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 22B TITLE: 61 AGRICULTURE

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: David E Miller

TITLE OF PERSON SIGNING: Deputy Commissioner

DATE: 6/22/96

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.