



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

ARCH A. MOORE, JR.
Governor

August 4, 1986

RONALD R. POTESTA
Director

MICHAEL A. FOTOS
Deputy Director

NOTICE OF AGENCY ADOPTION

RULE TITLE: Issuance of Permits to Kill Deer or Other Wildlife
Causing Damage to Cultivated Crops, Fruit Trees or Commercial
Nurseries, West Virginia Administrative Regulations,
Chapter 20, Article 2, Series IV-E

RULE TYPE: Interpretive

The attached rule constitutes the official rule adopted by
the West Virginia Department of Natural Resources on the 4th
day of August, 1986 and filed pursuant to law with the West
Virginia Secretary of State.


Ronald R. Potesta
Director

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SECRETARY OF STATE

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PREAMBLE
FOR
RULES RELATING TO CROP DAMAGE PERMITS

PROGRAM: Hunting.

REGULATIONS: West Virginia Code, Chapter 20, Article 2, Procedural Rules for Obtaining Permits to Kill Deer or Other Wildlife Causing Damage to Cultivated Crops (Series 83) and Interpretive Rules for Obtaining Permits to Kill Deer or Other Wildlife Causing Damage to Cultivated Crops (Series 84).

AUTHORITY: West Virginia Code, Chapter 20, Article 15 and Chapter 29A, Article 3.

ACTION: Proposed Rules

TOPIC: Rules for obtaining permits to kill deer or other wildlife causing damage to cultivated crops.

SUMMARY: The Department is proposing regulations concerning interpretations and the procedures an owner must follow to obtain a "crop damage permit" and the Department's methodology for issuance. This rulemaking is being taken pursuant to court order (Burns v. Hertig 84-C15; Tucker County Circuit Court, May 20, 1985). It replaces previous Administrative procedures issued by the Department.

DATES: Comments will be accepted until Monday, February 12, 1986 at 5:00 p.m. Public hearings will be held in Charleston on February 4 at 7:00 p.m. in the Director's Conference Room 674, 1800 Washington Street, East, Charleston, West Virginia and at the Elkins Operations Center, Ward Road, Elkins, West Virginia on February 11 at 7:00 p.m.

CONTACT: All comments should be submitted to the attention of Mr. Ron Shipley, Special Assistant to the Director, Director's Office of Regulatory Affairs, West Virginia Department of Natural Resources, 1800 Washington Street, East, Charleston, West Virginia 25305.

PUBLIC HEARING: Public hearings will be held in Charleston on February 4 at 7:00 p.m. in the Director's Conference Room 674, 1800 Washington Street, East, Charleston, West Virginia and the Elkins Operations Center, Ward Road, Elkins, West Virginia on February 11 at 7:00 p.m.

SUPPLEMENTARY INFORMATION: The Department is proposing to promulgate both an interpretive and a procedural rule for implementing the provisions of West Virginia Code Section 20-2-15 relating to crop damage by game animals, game birds and/or furbearers. This will be the first time rules have been promulgated on this code section under the revised Administrative Procedures Act, Chapter 29A, Article 3 of the West Virginia Code. Previously this procedure was covered by the Department's Administrative Procedures, Series VII - General Departmental Policies. The filing of both a procedural rule and an interpretive rule, instead of a combined procedural and interpretive rule, is required by the Secretary of State's policy to not accept combined rules.

The Department's proposed rulemaking is prompted by Judge Hott's decision in the case of Burns v. Hertig, DNR Director et al. Under W. Va. Code Section 20-2-15 the Department must issue special hunting permits to landowners if they sustain "substantial" crop damage from game animals. In his decision the Judge ruled that the current Administrative Procedures did not establish any guidelines to determine how much damage is necessary to trigger this "substantial damage" provision. Consequently, the Judge required DNR to "...establish reasonable standards and guidelines to assist the local conservation officers in determining when there is "substantial damage" under Code 20-2-15, and {he} shall also clarify the "Procedures for Controlling Wildlife Damages", to make it clear what damage triggers the duty of the Conservation Officer to determine the number of animals to be removed or destroyed."

The proposed regulations provide guidance to the conservation officers and defines substantial damage for three categories of crops: (1) cultivated crops; (2) gardens and ornamentals; (3) orchards and Christmas trees.

West Virginia Interpretive Rules
Department of Natural Resources
Chapter 20-2
Series 84

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SECRETARY OF STATE

Section 1. Scope and Authority

1.1 Scope and Purpose. The purpose of these regulations is to provide interpretations of the Director's authority governing issuance of permits to kill deer or other wildlife causing damage to cultivated crops.

1.2 Authority. These regulations are promulgated under the authority of the West Virginia Code Chapter 20, Article 2, Section 15 and Chapter 29A, Article 3.

1.3 Effective Date. These regulations will be effective 30 days after filing.

1.4 Filing Date. These regulations were filed on _____.

Section 2. Applicability

2.1 Landowners, lessees or tenants may protect their personal property and/or crops from destruction, damage or loss from the direct or indirect feeding, nesting, burrowing, building, trampling, or other damage-causing activities of game animals, game birds and/or furbearers, as provided by 20-2-15, Code of West Virginia.

2.2. Crops shall include cultivated crops, hayfields, Christmas trees, shrubs, ornamentals, orchards, and nurseries.

Section 3. Exceptions

3.1 Damage caused by bear or migratory birds is not covered by these provisions.

3.2 Permits will not be issued for damage to trees grown for reforestation.

Section 4. Authorized Persons

4.1 Persons authorized to take wildlife under these provisions shall include only the landowner, lessee, or tenants or persons previously designated by the owner and approved by the conservation officer or his wildlife designee. Permittees may kill animals only in the immediate vicinity of the permittees' damaged crops.

Section 5. Disposition of Animals

5.1 Landowners, lessees or tenants may retain all animals taken.

5.2 All other animals may be picked up by the conservation officer or his wildlife designee or, with the prior approval of the conservation officer or his wildlife designee, be given away or buried by the permittee.