WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION

Form #3

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2012 AUG 31 P1:12:42

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: 19-9-2; 19-9-10

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ___

TITLE OF RULE BEING AMENDED: Poultry Litter and Manure Movement Into Primary Breeder Rearing Areas

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 28

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.

Gus R. Douglas

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: August 31, 2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:(*Agency Name, Address & Phone No.*) West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305
304-558-3200

LEGISLATIVE RULE TITLE: Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas

1. Authorizing statute(s) citation WV Code 19-9-2; 19-9-10

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

   Public Comment Period was filed July 11, 2012 and Public Hearing filed July 24, 2(

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

   These notices were advertised on the WV Department of Agriculture website as well as newspaper in the areas of the hearings.

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

   Public Hearing and comment period ended August 22, 2012

   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)

August 31, 2012

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

Jodee Martin, Executive Assistant
West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305
304-558-3200 (p) 304-558-2203 (f)
jodeemartin@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)

Jerry Ours, Poultry Specialist
West Virginia Department of Agriculture
Moorefield Ag Complex
60B Moorefield Industrial Park Road
Moorefield, WV 26836

Dr. Jewell Plumley, State Veterinarian
West Virginia Dept. of Agriculture
Moorefield Ag Complex
60B Moorefield Industrial Park Road
Moorefield, WV 26836

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.

August 20, 2012 Hardy County Public Hearing - Moorefield Ag Complex
60B Moorefield Industrial Park Rd, Moorefield, WV 26836 at 6:00 p.m.

August 21, 2012 Greenbrier County Public Hearing - Greenbrier County Courthouse, 200 Court Street, Lewisburg, WV 24901
After hearing comments from stakeholders regarding the three-mile radius, and the sixty day composting period we have made changes to the rule.

b. Date of hearing or comment period:

Hardy Co. Public Hearing Aug. 20, 2012, Greenbrier Co. Hearing Aug. 21, 2012

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

August 31, 2012

d. Attach findings and determinations and reasons:

Attached X

Poultry Litter and Manure Movement Into Primary Breeder Rearing Areas
Public Hearing – Hardy County
August 20, 2012 at 6:00 p.m.
Moorefield Ag Complex
60 B Moorefield Industrial Park Road
Moorefield, WV 26836

Present – WVDA Staff: Janet L. Fisher, Deputy Commissioner; Steve Miller, Assistant Commissioner; Dr. Jewell Plumley, DVM, State Veterinarian; Jerry Ours, Poultry Specialist; Josh Hardy, Lab Supervisor; Jodee Martin, Recorder

Speakers – Dr. John Tomlinson, DVM; Rem Perkins, Farmer; Mike Weaver, CPGAVA; David Parker, Hampshire County Commission; Dallas Sions, Farmer; Will Taylor, Farmer; Bob Edson, DVM,VP Aviagen

Steve Miller, Assistant Commissioner of the West Virginia Department of Agriculture (WVDA), began by thanking everyone for coming to the meeting. He introduced WVDA staff. All people in attendance were asked to sign a sign-in sheet. Those in attendance who wished to speak were encouraged to sign a separate sheet for speakers. Copies of the rule were made available to all.

Jerry Ours explained the rule. The purpose of the rule is to establish guidelines for the transport of poultry litter and swine manure into commercial areas where primary poultry breeder operations are located. Area, as defined in the rule, is the land that is within a three-mile radius of the poultry house engaged in rearing of commercial primary breeder stock. Definitions for all the terms are within the rule. The meat of the rule states that no person shall transport, move or sell poultry litter which is regulated material at this time by this legislative rule, into any area engaged in the production of commercial primary poultry breeder stock unless the poultry litter being transported has been property composted for sixty (60) days. No personal shall move or sell swine manure into the area engaged in the production of primary commercial poultry due to the additional disease risk. Additional requirements stated in the rule are: No person shall move or sell poultry litter into the area engaged in production of commercial primary poultry breeder stock unless the poultry litter being transported has been certified by the state veterinarian to (a) have originated from a flock that has tested negative for avian influenza (AI) pre-movement; (b) have originated from a flock that is mycoplasma free; (c) has been tested at an approved laboratory facility using approved methodology for the absence of salmonella. Also, no person shall move or sell poultry litter into an area engaged in production of commercial primary breeder stock without having in his or her possession a certificate from the state veterinarian stating that poultry litter transported has been tested within thirty (30) days of movement. The main thing is composting for a period of sixty (60) days and having tested negative for AI, mycoplasma, and salmonella within thirty (30) days of movement.

With the preliminaries addressed Assistant Commissioner Steve Miller called the hearing to order. This is a public hearing Proposed Rule for Title 61 legislative rule, Department of Agriculture, Series 28, titled Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas. Mr. Miller stated that this was not a forum for debate. Each speaker will be allowed to speak one time only. Each Speaker will be allotted ten minutes to present their comments. Each speaker's comments must be submitted in writing to be included into the record. These proceedings will be recorded and all speakers were asked to sign in upon entering this evening. I will call your name in the order that you signed in. Please state your name and your affiliation. The comment period will end on Wednesday, August 22, 2012 at 4:00 p.m. If anyone needs our fax number we will provide that to you. It is 304-558-2203. At this time we will begin with comments.

Speaker # 1 – Dr. John Tomlinson:

My name is Dr. John Tomlinson and I am a practicing veterinarian and a cattle producer in Greenbrier County. We drove here this evening so that we could make sure that our side of the story and buyers of poultry litter would be heard. I spoke in Charleston recently about this emergency rule. There are some critical areas. Obviously, it is the area of how we will use our land. Eighteen thousand acres as utilized around each of these primary breeding sites. Over the past two years we have imported 5,000 tons of poultry litter from some of the people who are actually in this room. Sales for this coming year for beef clients and dairy clients are likely to be up to 10,000 tons. Obviously with what has occurred with granular fertilizer the value of poultry litter to us is infinite. It is clear to our 1,500 farm families and beef producers in Greenbrier and Monroe counties that granular fertilizer will not become cheaper. In my county, as I have shown you on the handout, we currently have around 50,000 cows. We also have around 50,000 acres of both hay and crop ground that we can use this organic fertility amendment for. Aviagen is represented by Dr. Edson as a corporate turkey breeder. They have 22 sites across Greenbrier and Monroe counties. This emergency rule and regulation will affect 18,000 acres around each of these primary turkey buildings that are randomly placed throughout these two counties, effectively eliminating that market for our poultry litter. The reason that further regulation of this litter and how it is handled by our producers is so detrimental, is, if this emergency mandate that is written declares that you as a breeder, or the litter provider, will store your litter for two months prior to having it tested. It is very unclear as to how we will define this. How will the litter have to be further divided to confirm that it could be tested negative for these diseases. When we first found out about this emergency rule, the emergency rule was going to be ninety (90) days. Even at sixty (60 days it effectively eliminates us from this competitive market place for obvious reasons. Storage for sixty (60) days, and then testing, which could last for one week, two weeks, then a certificate, there would be litter right behind in the litter shed on the free litter. The litter that has already been tested, and tested negative. Sixty (60) days as being a practical argument is absurd. I've talked to many of my vendors, and they do not think it is practical, and they think it is doomed to fail as it is written at sixty (60) days. The litter within the 28,000 acre

zone around these sites eliminates the majority of Greenbrier and Monroe counties. It is very clear to us this is an issue of regulation. The WVDA is reaching out to tell me as a beef producer and my clients how we will use our land, how we will use our fertility amendments, and how you will handle your litter. I think it is fairly clear on an election year, regulation is one of our chief concerns for production. My own farm savings for granular fertilizer last year is $69,000. For those of you in the litter shed that have forgotten what granular fertilizer cost, it is extraordinary. So we have been provided the ability, domestically right here in West Virginia, to make relationships and purchase this fertility at a 70% discount. My primary turkey breeder wrote this emergency rule to dictate how I can use that on my farm. If you want me to be passionate, I am working for John Tomlinson and my children. Sixty nine thousand dollars is more than my neighbors have made in the past two years on the sale of their goods. I am reaching out to these people and saying you have got to adopt these practices for fertility. It is organic, we are not depending on petroleum. You all are setting here as the victims for sale, and do not even know it. We drove three hours to make sure that you understand just how imperative this is. We have a market for this product that is untapped, and I have 50,000 acres. How this is being handled is deplorable. We were not contacted. It was clear that we were using a lot of this litter, and we found out through the newspaper that they were going to have an emergency mandate to stop our import of the litter, rather than a phone call from WVDA to tell us they are getting ready to drop the hammer and shut us down.

Speaker # 2 – Rem Perkins, Organic Farmer

This litter is necessary for organic farming. I do not agree with the sixty (60) day time period on this rule. I feel like science should tell time on this, so that we know it has been tested clean and able to be shipped. I understand Aviagen and where they are coming from. I do not understand how Aviagen can dictate to land owners about land they do not even own. I do not agree with the sixty (60) day composting time period. Thank you.

Speaker # 3 –Mike Weaver, Broiler and Grower, President of the Contract Poultry Growers Association of the Virginias

I sympathize with Aviagen and their bio-security issues, but I feel that the WVDA is being unreasonable. This rule will restrict farmers. Aviagen pays no taxes and insurance. If there hasn't been any problems in 26 years, why is it a problem now? This will cause loss of income due to the purchase of commercial fertilizer. It is very costly. I do not agree with the sixty (60) days. I feel like it is an unworkable restriction.

Speaker # 4 – Dave Parker, Hampshire County Commission, Farmer

I agree with the other speakers. I feel like another right is being taken away from me as a farmer. I do not understand the pathogen problems. The sixty (60) days is just too long, and I feel it is just another hoop to jump through, including all we have had to deal with in the Chesapeake Bay. This is just big government putting their thumb on the little man.

Speaker # 5 – Dallas Sions, Farmer

I have had diseased flocks and have lost as much as 50%. Dealing with EPA and all this is just a lot. I know diseases come and go.

Speaker # 6 – Will Taylor, Farmer

The sixty (60) days is not going to work. With EPA it is just too much. There should be a way to work this out.

Speaker # 7 – Dr. Bob Edson, VP for Aviagen

This rule is being proposed to keep Agriculture intact. It is not against poultry litter in any county. What we are asking for is that bio-security be located and protected, and not to bring anything in contact with them that we do not have to. An outbreak of AI would likely put Aviagen out of business. I have seen this happen in other places. The reason we asked for controls and regulations of the litter coming from other areas within and outside our state is that litter was brought in and spread next to our farms without any notice and without controls. We need to try to come to a compromise and talk about the sixty (60) days, and also have a discussion about the distance. We need to compromise and work together.

Mr. Miller concluded the meeting by thanking all speakers and those in attendance to the hearing. He assured them that the WVDA would take into consideration all the comments from the hearings.

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

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

August 29, 2012

Dr. John Tomlinson
Fairlea Animal Hospital
RR 2 Box 174
Lewisburg, WV 24901

Dear Dr. Tomlinson:

Thank you for your comments regarding the proposed legislative rule Title 61, Series 28, Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas.

Much consideration is being given to compromise and find a solution that is acceptable for all parties involved. The West Virginia Department of Agriculture is addressing several of the major concerns that you have regarding the sixty (60) day composting period, as well as the three-mile radius.

All testing cost for the first year will be absorbed by the department to try and keep cost at a minimum to farmers. The testing will be performed in the department's laboratories. Also, we anticipate that any farm located within the area engaged in the production of commercial primary poultry breeder stock may acquire poultry litter being produced by the primary poultry breeder facility within the area.

Again, thank you for your comments. I look forward to working with you on these important issues.

Sincerely,

Gus R. Douglass
Commissioner

GRD/jfm

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

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

August 29, 2012

Mr. Rem Perkins
HC 68 Box 108
Frankford, WV 24938

Dear Mr. Perkins:

Thank you for your comments regarding the proposed legislative rule Title 61, Series 28, Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas.

Much consideration is being given to compromise and find a solution that is acceptable for all parties involved. The West Virginia Department of Agriculture is addressing several of the major concerns that you have regarding the sixty (60) day composting period, as well as the three-mile radius.

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Sincerely,

Gus R. Douglass
Commissioner

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

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

August 29, 2012

Mr. Mike Weaver
Post Office Box 504
Franklin, WV 24934

Dear Mr. Weaver:

Thank you for your comments regarding the proposed legislative rule Title 61, Series 28, Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas.

Much consideration is being given to compromise and find a solution that is acceptable for all parties involved. The West Virginia Department of Agriculture is addressing several of the major concerns that you have regarding the sixty (60) day composting period, as well as the three-mile radius.

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Sincerely,

Gus R. Douglass
Commissioner

GRD/jfm

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Martin, Jodee

From: Gothard, Robin on behalf of Douglass, Gus
Sent: Tuesday, August 28, 2012 11:38 AM
To: Fisher, Janet; Tabb, Bob; Miller, Steve
Cc: Morgan, Regina; Martin, Jodee; Staley, Pam; Davidson, Buddy; Plumley, Jewell
Subject: FW: Poultry litter movement regulation
Attachments: Litter Movement letter WVDA.doc

I'm sure you all have seen this – but just in case...Robin

From: Mike Weaver [mailto:mbweaver@frontier.com]
Sent: Wednesday, August 22, 2012 8:01 AM
To: Douglass, Gus
Cc: Pendleton Times; Moorefield Examiner; Grant County Press; kward@wvgazette.com
Subject: Poultry litter movement regulation

Gus,

Attached and below please find a letter in opposition to the proposed litter movement regulation as it is proposed from Contract Poultry Growers Association of the Virginias.

Feel free to call if you have questions or we may be of assistance.

Contract Poultry Growers Association of the Virginias

P.O. Box 504
Franklin, West Virginia 26807

August 22, 2012

To: Commissioner Gus Douglas

From: Contract Poultry Growers Association of the Virginias

Subject: Emergency Legislative Rule: Poultry Litter and Manure Movement into Primary Poultry Breeder Areas

Dear Sir,

It has come to our attention after attending the public meeting in Moorefield on the above mentioned Legislative Rule that there are many aspects of this situation that have apparently not been taken into consideration by WVDA.

Contract Poultry Growers Association of the Virginias (CPGAVA) would like to bring these issues to your attention and at our regular monthly meeting last night voted to go on record as opposing this rule as it is currently written.

Many questions remain to be answered as to the impact of this rule which include, but are not limited to, the following:

Restricting the farmers in the proposed three mile radius of these turkey farms from using their land as they see fit. This is essentially a "taking" of their land without any compensation. Your representatives at the meeting had no idea just how many farmers in Greenbriar and Monroe Counties would be affected by this ban. An independent estimate set the number at 1,200.

Loss of income and or added expense due to the cost of commercial fertilizer as compared to poultry litter. Nutrient levels in poultry litter can result in a 40-60% reduction in the cost of commercial fertilizer for farmers who use litter. Certainly you are aware of the increases in the cost of commercial fertilizer in the past couple of years and your Department should be working to help farmers reduce those cost when possible not cause an increase.

Due to current and increasing restrictions on the use of poultry litter in West Virginia's primary poultry production area, that being the Chesapeake Bay watershed, is it wise to restrict the use of litter in another area where thousands of tons per year are currently being used? Farmers in the area in question are steadily increasing the use of litter from the primary production area thereby helping meet our WIP goal for Chesapeake Bay. Application of litter in the primary production area has been cut by two thirds on some farms already. Moving it out of our area just makes sense and if we can help another farmer by doing so it is that much better.

The 60 day requirement for housing the litter before transport is unworkable. The normal clean out routine of removing litter from broiler houses occurs every 6-7 weeks. This means that new litter is added to our litter sheds at that time and few, if any, farms have the capacity to segregate different batches of litter.

Why does this have to be an "Emergency Listing" and why wasn't this action made public with a reasonable amount of time for public comment and/or considered by the Legislature?
Mr. Bob Edson, a Vice President for Avigen the company who stands to benefit from this action, attended the meeting last night. Mr. Edson admitted that Avigen had been in business in the area for 26 years and has never had a disease problem.

Should WVDA be implementing a restriction such as this, essentially a law that carries fines and even jail time, which will benefit only one business entity?

For these reasons and others we respectfully request that you reconsider the immediate imposition of this rule.

CPGAVA is ready and willing to assist in any way we can and to work with your department, Avigen, and all other concerned parties to facilitate a workable solution for this issue.

Please contact Mike Weaver, President, Contract Poultry Growers Association of the Virginias at 304-249-5347 if we may be of assistance.

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

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

August 29, 2012

Mr. David Parker
Hampshire County Commission
Post Office Box 883
Romney, WV 26757

Dear Mr. Parker:

Thank you for your comments regarding the proposed legislative rule Title 61, Series 28, Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas.

Much consideration is being given to compromise and find a solution that is acceptable for all parties involved. The West Virginia Department of Agriculture is addressing several of the major concerns that you have regarding the sixty (60) day composting period, as well as the three-mile radius.

All testing cost for the first year will be absorbed by the department to try and keep cost at a minimum to farmers. The testing will be performed in the department's laboratories. Also, we anticipate that any farm located within the area engaged in the production of commercial primary poultry breeder stock may acquire poultry litter being produced by the primary poultry breeder facility within the area.

Again, thank you for your comments. I look forward to working with you on these important issues.

Sincerely,

Gus R. Douglass
Commissioner

GRD/jfm

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DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

August 29, 2012

Mr. Dallas Sions
HC 66, Box 108
Junction, WV 26852

Dear Mr. Sions:

Thank you for your comments regarding the proposed legislative rule Title 61, Series 28, Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas.

Much consideration is being given to compromise and find a solution that is acceptable for all parties involved. The West Virginia Department of Agriculture is addressing several of the major concerns that you have regarding the sixty (60) day composting period, as well as the three-mile radius.

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Sincerely,

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

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

August 29, 2012

Mr. Will Taylor

Address Unknown At This Time

Dear Mr. Taylor:

Thank you for your comments regarding the proposed legislative rule Title 61, Series 28, Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas.

Much consideration is being given to compromise and find a solution that is acceptable for all parties involved. The West Virginia Department of Agriculture is addressing several of the major concerns that you have regarding the sixty (60) day composting period, as well as the three-mile radius.

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Sincerely,

Gus R. Douglass
Commissioner

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DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

August 29, 2012

Dr. Robert Edson
17 Coleman Drive
Lewisburg, WV 24901

Dear Dr. Edson:

Thank you for your comments regarding the proposed legislative rule Title 61, Series 28, Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas.

Much consideration is being given to compromise and find a solution that is acceptable for all parties involved. The West Virginia Department of Agriculture is addressing several of the major concerns that you have regarding the sixty (60) day composting period, as well as the three-mile radius.

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Again, thank you for your comments. I look forward to working with you on these important issues.

Sincerely,

Gus R. Douglass
Commissioner

GRD/jfm

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Thank you Commissioner Douglas, Deputy Commissioners Fisher and Miller, State Veterinarian Plumley and Poultry Specialist Ours for this opportunity to participate in this public hearing related to the movement of poultry litter into the Greenbrier and Monroe county areas.

I'm Bob Edson, VP of Operations for Aviagen Turkeys, Inc. We are a Turkey Primary Breeder. As such we provide the seed stock (with our sister company in the UK) for 2/3's of the world's turkey breeding flocks. Part of our considerable responsibility in that role is to provide efficient and healthy animals to our customers for breeding purposes. Some of our customers are Jennie-O Turkey Store, Butterball Turkey Company, Cargill, Foster Farms, and Perdue Farms

Today we're here as part of the West Virginia Ag Community and as a part of the communities at large in Greenbrier, Fayette and Monroe counties.

We have been here 26 years, and we employ about 180 people, most locally. You have heard about us as BUTA, Nicholas and Aviagen. Our operations are typical of primary breeders – they are very high security. All are shower in-shower out. You have to be away from poultry and pigs for 3 – 5 days to visit one of our farms. We take Biosecurity very seriously.

We are not here to oppose anyone doing business in these counties. We are not here to oppose Dr. Tomlinson bringing in 5,000 – 10,000 tons of litter per year to enrich soils in our counties. You should know that we produce 10,000 to 12,000 tons of litter per year from our own operations, and we are pleased to see it used in local agriculture.

About 5,000 tons of the total Aviagen litter production come from and are used or sold by eight of our contract operations, all local farmers. You will hear from one

of them tonight who uses annually about 1100 tons of our litter on his organic cropland.

Unfortunately Aviagen and Aviagen contractors do not produce enough litter to supply all who might want it, so we understand that some needs to be "imported". We just hope this will be done with consideration for the biological safety of our operations.

What we are asking the Dept of Agriculture for is some level of protection for our Primary Breeding facilities. The good health or our flocks is the most important asset we have, and it must be preserved.

Certain disease agents, when introduced, would make our products unacceptable in both domestic and international markets:

Salmonella

Influenza

Mycoplasma

One outbreak of Avian Influenza in Greenbrier County would likely put Aviagen Turkeys out of business due to the loss of our export markets. This will likely also affect exports by other large integrated poultry companies such as Tyson, Pilgrims and Perdue.

All of these diseases can be spread by litter and pests that may inhabit litter (litter beetles, flies, and fly larvae). Under favorable conditions litter beetles can be disseminated over 3 miles from the source.

These diseases can also be spread over long distances by the airborne route. I have personally seen Avian Mycoplasmas spread by airborne methods for distances greater than one mile. Corona virus can be spread over long distances by flies moving from one area to another.

The reason we first asked for some control and regulation of the litter coming from other areas within and outside our state is that litter was brought in and spread next to our farms without any notice and without any controls.

If this continues there can be only one result – a disease outbreak, sooner or later that will put us out of business. I have seen it happen in other places, and it can happen here.

For many years no litter was allowed into our production area. Then as financial gain was possible it began to move into our area. We are not asking for it to be kept out altogether – just that it be kept away from our high-security farms.

Some will say that one-time testing should satisfy our concerns, and that the litter should be allowed to be spread anywhere. We do not agree.

The testing, good as it may be, cannot guarantee freedom from these pathogens. The rule as currently written requires only one sample. Compare this to the 200 – 250 samples we take per month on each of our farms, and the 1,000's of blood samples we take each year to confirm freedom from disease.

Last night Dr. Tomlinson made the point that keeping imported litter away from our facilities (the 3-mile radius zone) would eliminate its use form a majority of the areas in our 3 counties. A 3-mile radius around each of our farms, given location and overlaps and lack of agricultural ground would amount to less than 20% of the county areas.

Dr. Tomlinson and the poultrymen from the northern part of the state (and possibly elsewhere) will say that the 60 days for composting is too long. I disagree. The chicken litter will not compost as rapidly and thoroughly as turkey litter because it has very little carbon source (wood shavings) in it compared to turkey litter. We feel the 60 day compost requirement should remain as-is, and there should be documentation of the effectiveness of the process (time/temperature records).

Our conclusion and our belief as poultry health specialists is that here should be *imported-litter-free zones* around our farms. This means no imported litter whatsoever within each zone. Litter allowed into our general production area – **the 3 counties** – should all be tested and found negative for the pathogens of concern before it comes into these counties. We believe that a 3-mile radius around each facility is appropriate.

We recognize that the regulation and policing of the litter importation process will be difficult. We certainly do not want to play that role. We hope that through cooperation and appropriate compromise we can make this a worthwhile and safe endeavor for all involved.

Submitted by

Bob Edson, Vice President of Operations for Aviagen Turkeys, Inc.

August 22, 2012

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

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

August 29, 2012

Ms. Amy Scott
Box 12
Dunmore, WV 24934

Dear Ms. Scott:

Thank you for your comments regarding the proposed legislative rule Title 61, Series 28, Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas.

Much consideration is being given to compromise and find a solution that is acceptable for all parties involved. The West Virginia Department of Agriculture is addressing several of the major concerns that you have regarding the sixty (60) day composting period, as well as the three-mile radius.

All testing cost for the first year will be absorbed by the department to try and keep cost at a minimum to farmers. The testing will be performed in the department's laboratories. Also, we anticipate that any farm located within the area engaged in the production of commercial primary poultry breeder stock may acquire poultry litter being produced by the primary poultry breeder facility within the area.

Again, thank you for your comments. I look forward to working with you on these important issues.

Sincerely,

Gus R. Douglass
Commissioner

GRD/jfm

State Capitol • 1900 Kanawha Boulevard, East • Charleston, West Virginia 25305-0170 • 304/558-3550

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Comments on the proposed rule change to require farmers within 3 miles of a poultry farm to test for pathogens and certify their compost is disease free prior to moving the compost.

Amy Scott Box 12 Dunmore, WV 24934 (304) 456-5307.

As I stated in the hearing held at the Greenbriar County courthouse on August 21st, epidemiologists will tell you that confined populations, ie. concentrated populations will have an increased risk of transmission of disease. The international agribusiness venture Aviagen is aware of this, but continues to concentrate large populations of fowls for their corporate profit. The overuse of antibiotics by the poultry industry has resulted in studies by Centers for Disease Control and Prevention showing a connection between recurrent UTI's in women and antibiotic resistent bacteria found in chickens. The Agricultural Secretary also referred to wild fowl as posing a threat to the poultry operations, in addition to composted litter from surrounding farms. The obvious solution would be to stop utilizing a poor farming practice, ie: concentrating large numbers of fowls in small areas. For centuries fowls were not raised in the surroundings seen in these commercial farms. However, the corporate profits of Aviagen are based on this model.

As the Agricultural Secretary stated, he and the state of West Virginia went to a lot of effort to attract these agribusiness enterprises to the state; time, money, and legislation have been devoted to their interests and it is naive to think the state would select the obvious solution to the spread of disease in Aviagen's poultry.

Yet the state would consider making criminals of farmers who move composted litter ON THEIR OWN PROPERTY IN THE NORMAL OPERATION OF THEIR OWN FARM, completely unrelated to a neighboring farm. It would require testing of litter prior to any transfer of material. Organic farming is becoming more commonplace due to the benefits of maintaining the ecosystem, but this rule would have severe consequences for organic farming.

I believe it is inherently wrong to pass the business costs of an international company - a privately held, family run holding company out of Germany -- to small independent farmers whose farming practices are ecologically sound and gaining support in Europe and the US. Yet, that is exactly what is proposed.

The Secretary of Agriculture stated that he wished to find middleground. At the hearing on August 21st I could offer none, but after mulling over the situation on the long drive home, I believe I can offer some compromises.

It is still unfair and arbitrary to insist that independent farmers be required to sample and certify that their composted litter is disease-free prior to moving their litter on their own property, an operation in no way connected to the operations of nearby poultry farms. However, the interests of preventing disease, the state may prevail in a court test of this provision. In view of the fact that the beneficiary of this rule is the poultry farms, with no effort on their part, it is only proper that they bear the costs, monetary and time wise, for the sampling and testing. The rule should include the stipulation that the nearest poultry farm owner must pay for the sampling and testing of litter on the nearby independent farm. Furthermore, the sampling and testing should be done at the convenience of the farmer moving the litter. Culturing of bacteria can take days, adding to the burden of independent farmers, so they should not be further inconvenienced by a delay

in sampling and testing.

As the department has listed very definite fines and consequences for independent farmers who do not comply with the rule, definite responsibility and cost provisions should be added for the poultry farms. If this is omitted from the rule, it will be obvious that the purpose of the rule has been to transfer the cost of doing business from Avizgen and other poultry producers to other farmers. Such special treatment is morally reprehensible and does not benefit society as a whole.

As a side note, organic farming with promotion of local produce available to the public, benefits society. Truck farming does the same. West Virginia benefits from our own farmers selling direct to the public. My husband and I buy our beef from local farmers. The farmers are better paid and the profits stay in the state. When one factors in the effects of corporate poultry farming - overuse of antibiotics leading to antibiotic resistant organisms; use of legal and illegal aliens in processing poultry, creating low paying, poor work-environment jobs; profits being shipped overseas; and the moral questions surrounding treatment of farm animals, corporate poultry farms are not such a beneficial paradigm for farming.

Sincerely,

Public Hearing for Poultry Litter and Manure Movement Into Primary Breeder Rearing Areas
Greenbrier County Courthouse/Greenbrier County
August 21, 2012 at 6:00 p.m.
200 Court Street
Lewisburg, WV 24901

Present: WVDA Staff

Gus R. Douglass/Commissioner, Janet L. Fisher/Deputy Commissioner, Steve Miller/Assistant Commissioner, Dr. Jewell Plumley/State Veterinarian, Jerry Ours/Poultry Specialist, Buddy Davidson/Communications, Jodee Martin/Recorder

Speakers:

The Honorable Ron Miller, Senate of West Virginia; Amy Scott, RN; Danny Dodrill; Dr. John Tomlinson; Dennis Burns, Greenbrier Conservation Agency; Bill Nicholas; Dr. Bob Edson; Jerry Ours; Dr. Jewell Plumley; Rem Perkins;

Attendees: Dale Walker, WVPA; Amy Scott; John McCutcheon, WVU; Tina Avery, Register Herald; Sandi Hoffman, Aviagen Turkey; Rem Perkins, Farmer; Keith Payne, Aviagen Turkey; Michael McCormick, Farmer; David Hill, Farmer; Kelsey Borza, WVNS; Oscar Ginger; Max Nelson; Gary L. Truex, VCD; Tom Vance, NRCS; Kenneth Holloway; Sam Tuckwiller; Dr. Bob Edson, VP Aviagen Turkey; Curt Brammer, Aviagen Turkey; Mary Perkins; Jack; BenTuckwiller; Charlie Long; Annie Perkins; Dave Campbell; Brandon Myers; Jerry Yates, WVU; Earl Tuckwiller; Jay Bennett; Melissa Coffman; Maggie Bernedelts

There were names that were not legible.

Commissioner Douglass opens up with welcoming remarks. Commissioner Douglass introduced The Honorable Ron Miller, State Senator.

Senator Miller: Thank you Commissioner. It is a pleasure to be here. My goal is as the State Senator, not just the Senator representing this area, but a representative of this state. We have a goal. We have A, and we have C, and we need to get to B. That is my goal is to get to B. To know my input into this, and I want to make this very clear to you, and most of you know this. This is an emergency rule hearing that we are having here tonight. In West Virginia we operate three types of government: 1) Constitutional law, in which you decide as the public, you vote on amendments. 2) Statutory law, that we as legislators put together or anything that you read in the code that is law that we vote on and pass into the Senate and the House. 3) Rule – Making and this is something of a different animal. There are basically three types of rules: Emergency, Permanent Rule, and a rule that I didn't even know that existed, and it is called Interpretative Rules. These are departments that will interpret the law and will create a rule by interpretation. The Department Agriculture doesn't have any interpretive rules that they use. Tonight you will

be discussing an emergency rule. As a legislator, the WVDA came to us and we have had two meetings with the Senate and House Ag Committees to talk about this rule. There was some input from legislators and give and take on that. This is a rule that an agency files. I wasn't sure when the permanent rule was filed, but the permanent rule was filed at the same time the emergency rule was filed. We will hear in the Legislature the permanent rule. We have nothing to do with the emergency rule. They will read your public comments and do whatever they need to do with those. When it comes to the permanent rule after 15 months, actually emergency rule lasts 15 months. They will present the permanent rule to Rule Making Review, which is a long process. Rule Making Review will ask questions and vote on it and offer changes on it. Then it will go to the full body of the Legislature, and I will see it as Ag Chair. At this point we will consider that rule, and decide in Ag Committee, then to Judiciary and it will be voted on and submitted. These comments that you make tonight will go into the emergency rule. The truth is that when we were given this rule because that is something new to us, and we kept going to our lawyer for direction. This is not about legislative debate, you are commenting on this tonight. I am interested in your take in this. I appreciate both sides coming to Charleston. People came to Charleston to let us hear their side of the story. It is my understanding that the Department of Agriculture did not have to come here; they also were in Moorefield last night. They could have asked you come to Charleston. Thank you.

Commissioner Douglass asked if there were any other representatives from State, County or City government. Being none, he then introduced WVDA staff. Commissioner Douglass asked Jerry Ours, WVDA to explain the proposed rule.

Jerry Ours: The proposed rule is Title 61, Series 28, entitled Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas. The purpose of this article is to establish guidelines for the transport of poultry litter and swine manure into areas where commercial primary poultry breeder operations are located. Some of the definitions are in the handout such as area means any land within a three- mile radius of a poultry house engaged in the rearing of primary breeder stock. The rule itself says that no person shall move, transport or sell poultry litter which is a regulated material as defined in this legislative rule into any area engaged in the production of commercial primary poultry breeder stock, unless the poultry litter being transported has been properly composted for a period of sixty (60) days. No person shall move or sell swine manure into the area engaged in the production of commercial primary breeder stock due to the additional disease risk. Some of the requirements of the three- mile area: No person shall move or sell poultry litter into an area engaged in the production of commercial primary breeder stock unless the poultry litter being transported has been certified by the state veterinarian to have: a) originated from a flock that has tested negative for Avian Influenza (AI) pre-movement b) originated from a flock that is mycoplasma free; c) been tested in an approved laboratory facility using approved methodology for the absence of salmonella. No person shall move or sell poultry litter into any area engaged in the production of commercial

primary poultry breeder stock without having in his or her possession a certificate from the state veterinarian stating that the poultry litter being transported has been tested within thirty days of the movement. This rule will affect areas within a three-mile radius of the primary rearing facility. It doesn't affect the whole county, it is just the three-mile radius.

Commissioner Douglass: It is not easy. This is a instance which we have to stay up with the challenges of our environment. This rule is brought about by the changing times we have in this country and in the state of West Virginia. The challenges upon livestock and industry are big. During the State Fair this year I had to turn away several exhibits, especially from the state of Ohio. We did not want their swine here, due to the problems that have developed in that state. I would rather be pro-active instead of re-active. I consider it a lot cheaper to operate in this fashion. We had to turn horses away that didn't meet our requirements here. We also had to turn away goats, and this was for the safety of our industry. Fortunately, we are disease free at this stage of the game. History has me as being present here when British United Turkeys (BUTA) decided to locate here. We were very active in promoting this major international industry located here. They were concerned about the safety of their birds. This is the reason that they looked at Greenbrier County. Finally, that is why they put their money here. At that time, I had a gentleman's agreement with them that I would not actively try to attract another major industry in this area, or in close proximity. The only major problem that I have had to this point was with DNR, and we cooperated together. We didn't need any more ponds, or wetlands wherein in ducks, geese, or other wildlife could threaten that environment. At this time we have Aviagen that has purchased BUTA. They have further expanded their interests in international trade. One of the major players across this nation in providing the heritage that you find on the market. As time went on, and it does move on, we find that the broiler industry has made many major changes, and have had to do so due to Avian Influenza. There are other diseases as well. At one time poultry litter was trash, so to speak, and had very little value and piling up in the eastern part of the state. Suddenly, with the price of synthetic plant foods, poultry litter has become valuable. We are trying to utilize that in many different fashions, but there is a problem with that such as diseases. My staff and I have been searching for a middle ground, and that is what we are here for. We want to hear your comments before we make a final decision before we make a proposed regulation that we have put together with the counsel of Senator Miller and the Legislature. We did make some minor changes in that respect. All comments here will be recorded. This is a public hearing on the proposed rule on the Title 61 Legislative Rule, Department of Agriculture, Series 28, Poultry Litter and Manure Movement Into Primary Poultry Breeder Areas. This is not a forum for major questions and answers. I want to hear your comments. Each speaker will be allowed to speak one time only for five minutes. We would like to have all the comments spoken here tonight to be submitted in writing to be admitted into the record. This is not something new in the country. Other states have adopted similar rules, such as one in Georgia that is very similar to the one we have here tonight.

Speaker # 1 – Amy Scott, Registered Nurse: My name is Amy Scott and I am a registered nurse. My husband and I own a small farm in Pocahontas County. When I read the article that was in the paper, in which this public hearing was announced, I was quite concerned. As a nurse, any epidemiologist knows that any time you put a concentrated population in a small area you will end up with an increased risk of disease and the transmission of disease. Due to that, antibiotics are commonly used in the poultry industry to control these diseases. There have been studies that have linked them to recurrent Urinary Tract Infections in women. There is no definitive link between the two because in order to do that you would be unethical because you would have to expose people. This rule bothers me because it transfers business cost from the actual business to other farmers. Aviagen is listed as a poultry breeding company headquartered in Huntsville, Alabama. A short internet search also mentioned it is privately owned by the EW Group, which soundly runs a holding company in Germany since 2005. They employed 4,800 people worldwide, and have operations in Oceana according to the internet. Their motto is "Think Globally and Act Locally". This is a perfect case. They are not raising chickens for West Virginia they are raising chickens for the rest of the world, and turkeys for the rest of the world. It is a big operation, and they have come to our state, which is good, but the profitability of raising as many poultry as you can in a small building raises the possibility of disease. Rather than bearing the cost of having to keep the cost of keeping the population disease free, you are expanding that to other farmers. You will make criminals of farmers who are doing their own practices on their own property if it is within the three miles that you want. I have a problem with that. I have a problem with transferring all those cost to other people. The state has done that in other cases, such as mountain top mining. Selenium was a trace mineral was found in overburden, and when it was released into the watershed it can cause birth defects and all sorts of other problems. The coal industry would have had to address that if the selenium limit had not been raised by the state. The state did that. Then any excess of selenium released by the coal industry they don't have to deal with it. Small water companies have to clean that up, because that is part of the Clean Water Act. They have limits for their water. You have fines and misdemeanors for people if they don't bear the cost of taking their composted litter to a laboratory to have it tested to prove what they are doing on their property, doesn't affect somebody else on their property. I have a problem with that. I think we should encourage agri-business, but I think the future of West Virginia is what is in this newspaper. Which is a local farmers selling to local people. Organic farming is getting to be bigger industry, and you don't have the problems and you are not causing other people to bear the cost of a multinational, rather international business.

Speaker # 2 – Danny Dodrill, Beef Producer: I would like to speak and go on the record as a local beef producer and hay producer as well as an employee of Aviagen Turkey. The intended message is to represent a large population in our area as producers along with 160 co-workers of a moderately large employer of Greenbrier Valley. My main goal this evening to emphasize

three things: 1) We need to recognize the need for alternatives to chemical fertilizer and the value of poultry litter; 2) We need to recognize the need for a justifiable set of regulations to prevent the spread of disease and contamination; 3) The most important reason, it only takes one. We need to recognize the need for alternative chemical fertilizers and the value of poultry litter. I did some research today. 19-19-19 costs $660. If you apply 200 pounds of that per acre you are looking at $66 per acre just for the product and to apply to an acre of your ground. I can't give you commercial statistics, but with the notes that I have with turkey and poultry litter that we produce with Aviagen you can get a 60-48-32 for about $20 or $25 an acre. Should the local producer's be able to use poultry litter as a fertilizer for crop and hay production? I say, absolutely. This by-product not only allows the poultry producer to remove it from their respective sites, but it also provides benefits for farmers such as myself, and all of you represented here today. We need to recognize the need for a justifiable set of regulations to prevent the spread of diseases. In every role in the company, not only mine, but every employee, bio-security is taught and practiced daily. This business fully relies on disease-free turkeys to sell into the global primary breeding market, as well as the local market. I want you to recognize Aviagen is a local producer, but it also is one of only three global companies that sell the products that we provide. Basically, 50% of the world's consumption originates in the Greenbrier Valley in West Virginia. When Avian Influenza, swine flu, or one of the multitudes of infectious diseases reaches this operation, Aviagen Turkey's will be no more. Production for the global market will cease, and product for the identified infected area will be quarantined, and neither will be exported or shipped to domestic customers. How does that affect me and my 160 fellow co-workers? The job market in the Greenbrier Valley becomes saturated with unemployed workers. We will lose our livelihood, our families lose their wellbeing. If there is anyone here tonight that doesn't care if we close, or hope we take this operation somewhere else, I really hope that you reconsider thinking differently. Can poultry litter really be disease free? I don't think so. There are two means of litter sampling basically, a jar that is about 3X3, or a swab, a small swab. Aviagen accumulates about 45,000 or more cultures a year. Do we catch it all? I hope so, but there is no guarantee. It would be unimaginable if this operation loses all genetic traits. It takes hundreds of years to recover. Is there common ground? Most definitely there is common ground. The majority of us stand in the middle of the continuum. Can local producers use poultry litter as an alternative to chemical fertilizer? I hope that they can. It only takes one, one infectious disease that is not picked up by a sample. It can walk, crawl, blow, or fly across the fence from the nearby property. I want to turn the role around to the cattle producers here. How would you feel if a neighbor brought in cow manure from a disease, such as mad cow, or pink eye and infected your herd? I am a farmer, and I spend many hours a day in agriculture. I work for Aviagen to provide for my family. I am part of you, I am a beef producer, and a hay producer. I am a proud citizen of the Greenbrier Valley. I firmly believe that there is no one in the room that is working harder than the Department of Agriculture to resolve this issue.

Speaker # 3 – Dr. John Tomlinson: My name is Dr. John Tomlinson and I am a local practitioner and beef producer here in the Greenbrier Valley. I handle a significant amount of poultry litter from the Eastern Panhandle for myself and my neighbors, and I use it as a fertility supplement. I have handed out some of these paper's, please make sure everyone has one, so that you can understand the scale of what this problem is. Poultry litter right now that we handle, that Eastern Panhandle producers are desperate to export, typically test 55-55-55 to 65-65-65 or higher. We get that here in the county for $40, and if you have your own truck you get it for $30 a ton. This product is an organic product in a market that our petroleum-based fertilizers, as Danny said today, I called Jim Fleshman, 19-19-19 is $685. Petroleum-based fertilizer is not going to get cheaper. This poultry litter amendment that we are using for fertility to grow cattle via forages is the future of our local agriculture. If you do not think that this is the case, you need to pay the fertilizer bill. Greenbrier Valley, in Greenbrier and Monroe counties, has 50,000 head right now. We have 50,000 acres for hay ground and crop ground. We have 1,200 families supported by agriculture. This is not Mingo County. Agriculture is what turns the wheels in Greenbrier and Monroe counties. Litter on my farm, and allowing me to grow better quality forages saved me $69,000 last year. Not $6,000, not $600 but $69,000 in savings. A 70% discount, look at your expenses. Your biggest expense for everything that you are doing is your fertility expense. This is another answer to curve that, an organic answer in that we don't depend on petroleum-based fertilizers. West Virginia Department of Agriculture proposes this regulation and I want you to hear what Ron Miller said. This is a temporary emergency rule swept through in the middle of the night, and that in 14 months is going to be permanent. They are going to tell you how and what you can use for fertility on your farm. The three mile radius that Jerry talks about is 18,000 acres around each site. That may not be a big deal to you, 18,000 acres, but if you start at Pumpkin Center, Savannah Lane, McKeever Road, Cornstalk, Muddycreek Mountain, Organ Cave, Orchard Gap Mills that is the best farmland we have in two counties. Eighteen thousand acres, really? That is ridiculous. Sixty days they propose litter to be stored in Moorefield, Petersburg in our seller's poultry litter shed. We went to the meeting in Moorefield last night, and those clients are livid that this is being considered. They do not have sixty days of storage. They made it crystal clear if we have to store our litter for sixty days, you are eliminated from the market. We will test the litter. I am fine with testing the litter. Avian Influenza, Mycoplasma, Salmonella comes up negative, then, ship the litter. In the Chesapeake Bay Watershed they are begging to get rid of this litter. We are desperate for a fertility alternative. This was put through by the Department of Agriculture in the middle of the night and by the grace of God, I was called on a Friday night to come talk about this or you wouldn't be here. You have read in the paper that there is an emergency rule mandating how you will farm. That is why you are here is because the Senate said that we are going to have these meetings. We are here while they try to sweep this under the rug, and make a permanent law that Ron Miller can hardly understand because it is never done. It is never done because it is an emergency rule, and the producers of Greenbrier County would oppose this. It is ridiculous.

Speaker # 4 - Dennis Burns : I have two very quick comments. In regards to the written emergency rule I think you need to better define what properly composted means. I am a compost producer. I compost horse manure and I sell that. The definition here in this rule states that basically I think, that anything that is stacked up for sixty days is composted. That is not true. The other comment that I would like to make is that I think this rule would be a little better accepted by the general public if you had something in here that referenced the scientific literature that designates the need for the three-mile quarantine. Just saying, that there is a three-mile quarantine without saying why, or referencing the scientific literature that demands that this is the reason behind that. I feel like the Department of Agriculture and the State of West Virginia could be facing a bit of a liability without having something to back that up. Thank you.

Speaker # 5 – Bill Nicholas: I have worked in the poultry industry and I have worked for BUTA and Aviagen. All this could have been taken care of right here in Greenbrier County. I know more about the whole situation. I did not leave Aviagen because of any of this, I left to better myself. What I am trying to say is that Aviagen produces turkeys here, and they produce dirty litter right here in this county. I ran the clean out for them for a while, and I understand more about the diseases than a lot of other people here. What happens to their litter when they ship it here and there? I think what is good for the goose is good for the gander. I am not trying to put anybody of out of business, but I think there is more to this than to rough shod. I know that Mr. Tomlinson tried to work out so that all this litter could be taken care of here in this county. It didn't happen. I think that everybody should know the whole story in this process before we go to putting emergency this and that in effect. I understand that they are a multi-million dollar company and that they have a lot to lose, but so does the little man. Everybody in this room has a stake. We need clean water, but we have all got to work together, instead of trying to shove all of this down our throats. I pulled time in the military, and if that man back there wants to pull litter in here after he has tried to work with Aviagen, and they say no, I think he has the right to do what needs to be done.

Speaker #6 – Dr. Bob Edson, Aviagen: Thank you Commissioner. I just want to say something about Bill Nicholas. This man worked for BUTA and Aviagen for quite a number of years and is one of the absolute outstanding employees that company has ever had, and that information came from his heart. There are certain issues that he doesn't understand about issues that took place. It's certainly true that Dr. John Tomlinson came to us and asked to buy all of our litter, and why all of that didn't work out is an issue of business. Litter amendments that Bill was referring to, I will refer to his conversation first and then I will make my point. Poultry Litter Treatment or PLT is an acidifier, it is not a chemical that stays there, so it is not a long time problem. The issue for any poultry litter and I think, I don't know, if Rem Perkins is on the list to speak, but he

is an organic producer, and they need to get this material from organic sources, and of course most poultry producers, including ourselves, are not organic producers, because we will use antibiotics occasionally, as Ms. Scott referred to earlier. In our case, though, it is very rare because our flocks are extremely healthy due to bio-security, and we do not use any preventative medication whatsoever. None of that goes into the feed. I hope I have addressed your questions. I am speaking for Aviagen. We have been here 26 years, and we are not going away. We continue to invest and we have spent over 10 million dollars in the last five years on these farms. We are spending $2 million in Fayette county right now building a new facility. We hope to be here and be a part of the agricultural community. As Senator Miller said, we have A, and we have C. We need to get to B. I assure you that we are willing to compromise on some of these issues. Like Dr. Tomlinson, a practicing veterinarian, I have also been in this business. I have been a veterinarian for 41 years. Science should rule in everything, but it doesn't. Commerce is at hand here, and we need you to respect of ours, and we need to respect the commerce of our farmers. Dr. Tomlinson I have a point of interest for you. Last night, Dr. Tomlinson spoke about bringing in 5,000 tons of litter from the panhandle, and then he talked that it would be 10,000 next year. I can tell you that we already produce over 10,000 tons of litter here in Greenbrier county. Mr. Nicholas is correct, there are times that our flocks are not healthy, but what we are not doing, is we are not moving it in conjunction with other peoples farms. We are not taking it to another poultry farm. As a matter of fact, contractually we are allowed to specify to our contractors where it can go. If there is a health problem we take it away to a safe ground, and we encourage that it be tilled in as soon as possible. Danny Dodrill made the point about a lot of the things about the company far better than I could, but I will repeat one of the things that he said. It takes one time for us, because we are an international exporter. It takes one outbreak of Avian Influenza, whether it comes from pigs, or wherever it comes from to put us out of business. When that happens, and Greenbrier County is quarantined, it won't be just us, although it certainly will be us, it will be Tyson, Perdue, Pilgrims, and if it has to do with some countries like Russia and Japan they may quarantine all exports of all types. What we are asking for is not to stop the bringing in of litter. I certainly support it and I think it needs to be used on these farms. What we are asking for is protection. We are asking for a zone where no litter can be put around our farms, not tested litter, no litter from outside our area. Thank you Commissioner.

Speaker # 7 – Rem Perkins, Organic Farmer: Hello, I am Rem Perkins and I am an organic dairy farmer here in the valley and we are a third generation dairy farm and switched to organic in 2009. Poultry litter is extremely important to us in our organic production. For us to be able to grow high energy crops we have to have nitrogen to grow it. We cannot buy commercial nitrogen. There are many solutions that need to be dealt with. Our biggest concern with this rule is that the days that it has to be stored are too long. If the litter is tested safe it should be allowed to be shipped. It should be able to be shipped whether that is 21 days, 7 days, or 30 days. Sixty days gets it longer than the cycle of birds in Moorefield. Fifty-day cycle is what they have. In

fifty days they have taken the birds out, cleaned the barns out and put more birds back in. So they grow them for thirty-five days, and a twelve-day clean out cycle. Sixty days makes the litter unavailable to us. Every farm is different, but we have got to have this so the small guy is not excluded from being able to ship litter here. We want to bring safe litter in. We want to test it for what it needs to be tested for to protect Aviagen, but don't limit it so that the number of days makes it unavailable to bring in. I have two Aviagen barns on our farm, and we use all the litter for ourselves, but as our operation expands we need more litter and more nitrogen to grow our corn. The farther out we expand the more trucking we have, and when you do the math on the litter it is more expensive to truck Aviagen's litter here locally than it is to truck the litter from Moorefield. That is on a nutrient basis. When you truck it from Moorefield you are paying by the mile. When you truck locally you are paying by the hour. So the litter coming from Moorefield is actually a better deal than the litter you get locally. We still use the litter here and we continue to use it as long as it is available to us, but we really need to have the other litter available. As an organic producer it is essential to me, but as the higher cost of fertilizer continues, more and more beef farmers and hay farmers are going to realize the advantages of having this poultry litter at their disposal. Those are the most important points. The regulation is just too much. We need to protect Aviagen, but as an organic producer I am required by my organic certifier to be able to grow non-GMO corn, and non-GMO crops to feed my animals. I am not asking the Department of Agriculture to put a three-mile radius around my cornfields and not allow people to grown roundup ready corn or the other corns that are available. I am responsible to control that myself. I do that by planting later, and having buffer zones. I do not feel that it is right that Aviagen is dictating what goes on other ground, and not having responsibility for that. I know that right now the rule reads that the Department of Agriculture will pay the cost of testing for the next year, after than it shouldn't be the farmers that have to pay and protect that litter. It should be Aviagen. And they should pick up the bill to test that litter. I appreciate such a good turnout. Thank you all.

Speaker # 8 – Jerry Ours, Poultry Specialist: Thank you Commissioner. I am Jerry Ours a Poultry Specialist for the Department of Agriculture. This rule was not only made for Aviagen, it was made to protect primary breeder operations in West Virginia. As of now, Aviagen is the only one in West Virginia. A few years ago we had the opportunity to attract another primary breeder operation, and there was some negotiating going on to protect the area that they were going into. Unfortunately, from the time that they announced that they were going to move in here, they found another area in Tennessee and located there. So this would also make West Virginia more attractive for some smaller primary breeder operations such as Aviagen. One thing that was mentioned is that Aviagen grows turkeys for the world. Yes they do, but they also grow turkeys for West Virginia. We have a turkey operation in the Eastern Panhandle of West Virginia and we grow about 4 million birds a year also. Some of the offspring of Aviagen come back to that area. We had some of the questions about the three mile radius, and I have a map here of the Aviagen facilities within the three-mile circles around it. You can see that there is a lot of overlapping. The 18,000 acres is not 18,000 acres per farm, because a lot of them overlap

so much that they are almost in the same circle. Also, in that 18,000 acres, a lot of that is wooded, a lot of it is developed, and much of it is not farmland. So you cannot say that it cuts out 18,000 acres per circle. That is just not quite correct. I am not disputing that there are 1,200 farming families, but a lot of them do not use poultry litter and have no intentions of using poultry litter. That information is kind of misleading. The storage in Moorefield for litter, all of those farms there that went through a cost share have 180 days minimum, so that they can store their litter for up to 180 days on their farm. I am sure the thirty days will be looked at, but that is not an issue as far as storage on the farms. This comment period and the one in Moorefield was not proposed by the Legislature. The Commissioner said that we would have these public hearings, and that is where that comes from. The Commissioner set these hearings up, and they were set up early. Someone had asked why that we had the three-mile radius, and the answer to that is that is an industry standard. It is recognized if there is a disease outbreak the industry uses a three-mile standard. The thirty-day period, as Commissioner said, I am sure we will look at that and consider. We will make any corrections that we deem necessary and we certainly appreciate all your comments. A lot of good comments here tonight.

Speaker # 9 – Dr. Jewell Plumley: A lot of my information may be duplicate, but I want to reinforce what Jerry has said. Out of all the farming operations in West Virginia, your poultry industry has the top bio-security. You would absolutely be amazed, and also your primary breeder has even more intensive bio-security. As far as Dennis Burns raising the question about the three-mile radius this is brought about by Office International Epizootics, and by the poultry industry in a disease outbreak. What you also need to consider is that all the poultry companies in West Virginia have bilateral trade agreements with Japan and Russia. This means that they don't play by the rules of the Office International Epizootics, they kind of make their own rules. That is where most of our poultry goes. If we have one little glitch, or even a suspect, and with social media, they shut down immediately. There are ship loads of poultry products out in the ocean that have to go somewhere. They will totally refuse it that day until we can prove that we are totally free of Avian Influenza. This is not restricting movement, this is actually allowing movement of poultry litter by doing this testing. As far as moving litter out of the Chesapeake Bay Watershed, we get no credits for moving litter out of the watershed. What we do get are credits from EPA for Best Management Practices if they've got litter sheds and nutrient management plans. They will look at all that. Even if we shipped all the poultry litter out of the Eastern Panhandle, we would get no credits. The primary breeders are a very closed operation, and top bio-security. As Jerry mentioned we would like to attract other primary breeders. We did have one other company that was in West Virginia at one time, and then they relocated. I think this will be good to attract other primary breeders into our area. We have some natural disease controls, such as our mountains, and limited amount of travel in the area. The three main diseases that we are looking at are Avian Influenza, Mycoplasma, and Salmonella. All the birds are tested ten days pre-movement of going to slaughter or spent hens going to slaughter. We are

pretty good in that respect, although something could break in that time. In Mycoplasma testing the birds are testing every 90 days, so we feel good about that. I have had conversations with Dr. Tomlinson, and we have both agreed outside of this, that there will be no Mycoplasma litter moved to this area. As far as Salmonella, this is the one that we really need to compost the litter and test the litter. Mr. Burns also asked about our composting process. A lot of time and energy is put into teaching the producers proper composting techniques. We have used Ho Bo meters to test temperature in these piles. We have to get up to 140 degrees for three days to kill Avian Influenza. The other thing that was mentioned is the thirty days. I have spoken to other veterinarians from commercial industries this morning, and they will not accept anything less than thirty days of composting. If you are trying to shoot for a time of less than thirty days, something is going to happen in the Eastern Panhandle and there is going to be no litter if those companies impose that upon their producers. You need to consider that, too. As far as the testing, it is currently $17 a sample and we do two samples per litter shed and if they have six turns of birds per year, that total would come to $204 per year for the testing. The Commissioner has graciously said that we would absorb the cost of the testing in the first year for any litter moved into this area. We are not trying to restrict movement of litter, we are trying to move litter safely for producers to use. Thank you.

Commissioner Douglass: This concludes our list of speakers tonight. I hope that we have answered all of your questions here tonight. I thank you for all of your comments. You have shown us what we may need to bring this into line. We have listened to your comments regarding our definitions in the rule, and also the sixty-day limit. We also want to make sure that safety is within this rule. These issues are extremely important to the Ag industry. We are open minded, and will go back and look at and review these issues. Of course we always want to consider human health. I have fought to keep disease out of the state all of these years, and I certainly don't want to bring those things back into the state. Again, thank you for coming.

Meeting concluded.

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

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

August 29, 2012

Mr. Danny Dodrill
HC 71 Box 76B
Asbury, WV 24916-9631

Dear Mr. Dodrill:

Thank you for your comments regarding the proposed legislative rule Title 61, Series 28, Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas.

Much consideration is being given to compromise and find a solution that is acceptable for all parties involved. The West Virginia Department of Agriculture is addressing several of the major concerns that you have regarding the sixty (60) day composting period, as well as the three-mile radius.

All testing cost for the first year will be absorbed by the department to try and keep cost at a minimum to farmers. The testing will be performed in the department's laboratories. Also, we anticipate that any farm located within the area engaged in the production of commercial primary poultry breeder stock may acquire poultry litter being produced by the primary poultry breeder facility within the area.

Again, thank you for your comments. I look forward to working with you on these important issues.

Sincerely,

Gus R. Douglass
Commissioner

GRD/jfm

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Danny Dodrill - 8/21

August 21, 2012

My name is Danny Dodrill of Asbury, Greenbrier County, West Virginia. I would like to speak for a few minutes as a local beef and hay producer as well as an employee of Aviagen Turkeys, Inc. of Lewisburg. The intent of this message is to represent a large population in our area as producers along with around 160 local co-workers of a moderately large employer of the Greenbrier Valley. My main goal this evening is to emphasize 3 things – first, we need to recognize the need for alternatives to chemical fertilizers and the value of poultry litter; second, we need to recognize the need for a justifiable set of regulations to prevent the spread of diseases and contaminations; third and most importantly, it only takes 1.

First - We need to recognize the need for alternatives to chemical fertilizers and the value of poultry litter.

As a local producer, I fully support free trade and the ability to purchase and sell products to make our business as efficient and profitable as possible. I am a part of a sixth generation family farm that operates basically as a way of life and hopefully turn a small profit at the end of the year. I feel our situation is very similar to several of you here tonight. With the cost of chemical fertilizers, we have scaled back the amount fertilizer to fit our budget. Today 19-19-19 costs $660 per ton. Using that cost, if you apply 200 lbs. per acre you basically are applying 38-38-38 (N-P-K) per acre at a cost of $66 per acre. I can't give you commercial operation statistics however using the information that I have available from Aviagen's sites, you can apply approximately a 60-48-32 per acre for about $20-25 per acre. I'm not here to debate costs and values comparisons but rather to say you can apply poultry litter for less money to be able to subsidize or eliminate your chemical fertilizer costs. As the economy seems to spiral out of sight and disposable products such as fuels, feeds and fertilizers continue to increase in cost, we have to conserve and look for alternate sources of products. Should local producers be able to use poultry litter as fertilizer for crop and hay production ground? I say absolutely. This bi-product not only allows the poultry producer to remove it from their respective sites but also provides benefits for farmers such as myself and those represented today.

Second - we need to recognize the need for a justifiable set of regulations to prevent the spread of diseases and contaminations

As a husband and father, one of my primary duties in life is provide Godly leadership, food, shelter and education for my family. I have chosen the past 7 years to be employed by Aviagen Turkeys, Inc. I have served several roles from rearing farm manager, site services coordinator to my current position as Transportation Manager. In every role in the company, not only mine but for every employee, bio-security and disease prevention is taught and practiced daily. This business fully relies on disease free turkeys to sell into the global primary breeding market. Please recognize that Aviagen Turkeys is a local producer but also 1 of only 3 global companies that sell the products that we provide. 50% of the world's turkey consumption originates in the Greenbrier Valley of West Virginia. If an Avian Influenza, Swine Flu or one of the multitudes of infectious diseases reaches this operation, Aviagen

Doddrill 8/21

Turkeys will be no more. Production for the global market will seize. Product from an identified infected area will be quarantined and neither will it be exported nor shipped to domestic customers. How does that affect me and my some 160 fellow co-workers? The job market in the Greenbrier Valley becomes saturated with unemployed workers. We lose our livelihood. Our families lose their well-being. If there is any one in attendance who says "I don't care if they have to close" or "I hope they take that operation somewhere else". Who do you think you are affecting with that type of mentality? Dr. Bob Edson? Aviagen, Inc.? Yes, to a small degree but the rest of us, who live beside you, who support your businesses, who are related, we are who that would affect the most. Do you really want to see the doors close because of an infectious disease that was brought into our somewhat isolated area, spread across the fence from one of the turkey farms and then it carries over to infect and kill our turkeys? I hope and pray that you consider the cost of these types of application practices.

Can poultry litter be guaranteed to be disease free? I don't think so. There are two means of litter sampling – a jar and a swab to be a sample of potentially 300-500 tons of litter in a shed. Aviagen accumulates probably 45,000 or more cultures per year, do we always catch it? We hope so be there is no guarantee. A monetary guarantee would be unimaginable as the operation loses all birds, all genetic traits, etc that would take hundreds of years to recover.

Is there common ground? Most definitely. The mass majority of us stand in the middle of a continuum. Can local producers use poultry litter as an alternative to chemical fertilizers? I hope so. We have to be more efficient. Does Aviagen Turkeys need to have an identified, reasonable and agreeable barrier around the turkey farms? Yes, we have to strive daily to maintain a disease free environment for our birds to live, grow and produce. The parties involved seem to have perspectives that aren't compatible however that is not the case. I believe that we should be able respect each other's interests and concerns. I believe with help from the local farm owners with whom Aviagen contracts farms can provide a reasonable amount of turkey litter that can be spread near those sites without transporting litter from other known areas that are potentially detrimental to our operation. We can establish a reasonable price for the litter that everyone knows and understands. Then, when the local litter is unavailable outsourcing to other monitored operations to obtain poultry litter should be used on ground outside of the agreed buffer zone from the Aviagen operations. Am I trying to sell turkey litter for Aviagen Turkeys? Ok yes, the litter has a very good value and we need to remove it from our farms. Am I saying local producers should not look outside the local area for alternate means of fertilizer? No, we have to be efficient and look for lesser expensive alternatives. Let's just recognize and respect the importance of Aviagen's bio-security and need to remain disease free. There are 160 or so of us who depend on it.

Third – It only takes 1

I want you to remember it only takes 1. That is 1 infectious disease that is not picked up by a sample that walks, crawls, blows, flies across the fence from nearby property and the operation is finished. It only takes 1 truck load of untested material that reaches our area. Let's role reverse for just a second and think about the cattle producers in the room. How would you feel about someone spreading cow manure from a mad cow disease herd near your operation? Or, more simply how do you

Dod 8/21

feel when your neighbor's cows have some form of pink eye that infects your herd. That's not too pleasant to think about is it? It only takes 1.

Finally, I am a farmer. I spend 16-18 hours per day in the agriculture fields. First, I work for Aviagen Turkeys to be a provider for my family. Second, I am a part of a small family beef and hay producer. I work in this community; I am a proud citizen of the Greenbrier Valley and value each of your operations. We need to work together for betterment of each of our operations. I firmly believe there is no one in this room who understands each party's interests more than me. I believe that the Department of Ag is working to resolve this issue for all parties concerned both here and in the Eastern panhandle. God bless you and may he lead to sound decision.

Thank you,

Danny Dodrill

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

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

August 29, 2012

Dr. John Tomlinson
Fairlea Animal Hospital
RR 2 Box 174
Lewisburg, WV 24901

Dear Dr. Tomlinson:

Thank you for your comments regarding the proposed legislative rule Title 61, Series 28, Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas.

Much consideration is being given to compromise and find a solution that is acceptable for all parties involved. The West Virginia Department of Agriculture is addressing several of the major concerns that you have regarding the sixty (60) day composting period, as well as the three-mile radius.

All testing cost for the first year will be absorbed by the department to try and keep cost at a minimum to farmers. The testing will be performed in the department's laboratories. Also, we anticipate that any farm located within the area engaged in the production of commercial primary poultry breeder stock may acquire poultry litter being produced by the primary poultry breeder facility within the area.

Again, thank you for your comments. I look forward to working with you on these important issues.

Sincerely,

Gus R. Douglass
Commissioner

GRD/jfm

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

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

August 29, 2012

Mr. Dennis Burns
Conservation Specialist
West Virginia Conservation Agency
179 Northridge Drive
Lewisburg, WV 24901

Dear Mr. Burns:

Thank you for your comments regarding the proposed legislative rule Title 61, Series 28, Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas.

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Sincerely,

Gus R. Douglass
Commissioner

GRD/jfm

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Martin, Jodee

From: Plumley, Jewell
Sent: Wednesday, August 22, 2012 12:54 PM
To: Martin, Jodee; Douglass, Gus
Cc: Ours, Jerry; Miller, Steve
Subject: FW: Litter Meeting in Lewisburg

Jewell G. Plumley, DVM
State Veterinarian/ Director Animal Health
WVDA - Moorefield Field Office
60B Moorefield Industrial Park Rd.
Moorefield, WV 26836
Office: (304) 538-2397, Ext. 6945
Fax: (304) 538-8133
Cell: (304) 257-8973

From: Dennis Burns [mailto:dburns@wvca.us]
Sent: Wednesday, August 22, 2012 8:10 AM
To: Plumley, Jewell
Subject: Litter Meeting in Lewisburg

Hi Dr. Plumley
I had a thought after the meeting in Lewisburg last night. Would it be possible to add a line in the emergency rule that says something to the tune of "a primary breeder protected by the 3 mile buffer zone may only dispose of its litter within this 3 mile buffer zone, and it must be provided to landowners in the 3 mile buffer zone at a comparable price to other litter sources in the county" . This way you would have litter set aside to be available to farmers within the circles, and everyone else outside of the circles could use the outside litter. You would still have your buffers, farmers would still have litter, and the cost should be within reason. Just a thought, you all probable already thought of it, but it went through my head last night so I thought I would pass it along.

Thank you

Dennis A. Burns
Conservation Specialist
West Virginia Conservation Agency
179 Northridge Drive
Lewisburg, WV 24901

Office 304-645-6172 ext 109
Cell 304-539-3977
Fax 304-645-4755

dburns@wvca.us

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

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

August 29, 2012

Mr. Bill Nicholas
Route 2, Box 67A-1
Second Creek, WV 24974

Dear Mr. Nicholas:

Thank you for your comments regarding the proposed legislative rule Title 61, Series 28, Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas.

Much consideration is being given to compromise and find a solution that is acceptable for all parties involved. The West Virginia Department of Agriculture is addressing several of the major concerns that you have regarding the sixty (60) day composting period, as well as the three-mile radius.

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Sincerely,

Gus R. Douglass
Commissioner

GRD/jfm

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

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

August 29, 2012

Dr. Robert Edson
17 Coleman Drive
Lewisburg, WV 24901

Dear Dr. Edson:

Thank you for your comments regarding the proposed legislative rule Title 61, Series 28, Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas.

Much consideration is being given to compromise and find a solution that is acceptable for all parties involved. The West Virginia Department of Agriculture is addressing several of the major concerns that you have regarding the sixty (60) day composting period, as well as the three-mile radius.

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Again, thank you for your comments. I look forward to working with you on these important issues.

Sincerely,

Gus R. Douglass
Commissioner

GRD/jfm

State Capitol • 1900 Kanawha Boulevard, East • Charleston, West Virginia 25305-0170 • 304/558-3550

Thank you Commissioner Douglas, Deputy Commissioners Fisher and Miller, State Veterinarian Plumley and Poultry Specialist Ours for this opportunity to participate in this public hearing related to the movement of poultry litter into the Greenbrier and Monroe county areas.

I'm Bob Edson, VP of Operations for Aviagen Turkeys, Inc. We are a Turkey Primary Breeder. As such we provide the seed stock (with our sister company in the UK) for 2/3's of the world's turkey breeding flocks. Part of our considerable responsibility in that role is to provide efficient and healthy animals to our customers for breeding purposes. Some of our customers are Jennie-O Turkey Store, Butterball Turkey Company, Cargill, Foster Farms, and Perdue Farms

Today we're here as part of the West Virginia Ag Community and as a part of the communities at large in Greenbrier, Fayette and Monroe counties.

We have been here 26 years, and we employ about 180 people, most locally. You have heard about us as BUTA, Nicholas and Aviagen. Our operations are typical of primary breeders – they are very high security. All are shower in-shower out. You have to be away from poultry and pigs for 3 – 5 days to visit one of our farms. We take Biosecurity very seriously.

We are not here to oppose anyone doing business in these counties. We are not here to oppose Dr. Tomlinson bringing in 5,000 – 10,000 tons of litter per year to enrich soils in our counties. You should know that we produce 10,000 to 12,000 tons of litter per year from our own operations, and we are pleased to see it used in local agriculture.

About 5,000 tons of the total Aviagen litter production come from and are used or sold by eight of our contract operations, all local farmers. You will hear from one

of them tonight who uses annually about 1100 tons of our litter on his organic cropland.

Unfortunately Aviagen and Aviagen contractors do not produce enough litter to supply all who might want it, so we understand that some needs to be "imported". We just hope this will be done with consideration for the biological safety of our operations.

What we are asking the Dept of Agriculture for is some level of protection for our Primary Breeding facilities. The good health or our flocks is the most important asset we have, and it must be preserved.

Certain disease agents, when introduced, would make our products unacceptable in both domestic and international markets:

Salmonella

Influenza

Mycoplasma

One outbreak of Avian Influenza in Greenbrier County would likely put Aviagen Turkeys out of business due to the loss of our export markets. This will likely also affect exports by other large integrated poultry companies such as Tyson, Pilgrims and Perdue.

All of these diseases can be spread by litter and pests that may inhabit litter (litter beetles, flies, and fly larvae). Under favorable conditions litter beetles can be disseminated over 3 miles from the source.

These diseases can also be spread over long distances by the airborne route. I have personally seen Avian Mycoplasmas spread by airborne methods for distances greater than one mile. Corona virus can be spread over long distances by flies moving from one area to another.

The reason we first asked for some control and regulation of the litter coming from other areas within and outside our state is that litter was brought in and spread next to our farms without any notice and without any controls.

If this continues there can be only one result – a disease outbreak, sooner or later that will put us out of business. I have seen it happen in other places, and it can happen here.

For many years no litter was allowed into our production area. Then as financial gain was possible it began to move into our area. We are not asking for it to be kept out altogether – just that it be kept away from our high-security farms.

Some will say that one-time testing should satisfy our concerns, and that the litter should be allowed to be spread anywhere. We do not agree.

The testing, good as it may be, cannot guarantee freedom from these pathogens. The rule as currently written requires only one sample. Compare this to the 200 – 250 samples we take per month on each of our farms, and the 1,000's of blood samples we take each year to confirm freedom from disease.

Last night Dr. Tomlinson made the point that keeping imported litter away from our facilities (the 3-mile radius zone) would eliminate its use form a majority of the areas in our 3 counties. A 3-mile radius around each of our farms, given location and overlaps and lack of agricultural ground would amount to less than 20% of the county areas.

Dr. Tomlinson and the poultrymen from the northern part of the state (and possibly elsewhere) will say that the 60 days for composting is too long. I disagree. The chicken litter will not compost as rapidly and thoroughly as turkey litter because it has very little carbon source (wood shavings) in it compared to turkey litter. We feel the 60 day compost requirement should remain as-is, and there should be documentation of the effectiveness of the process (time/temperature records).

Our conclusion and our belief as poultry health specialists is that here should be *imported-litter-free zones* around our farms. This means no imported litter whatsoever within each zone. Litter allowed into our general production area – **the 3 counties** – should all be tested and found negative for the pathogens of concern before it comes into these counties. We believe that a 3-mile radius around each facility is appropriate.

We recognize that the regulation and policing of the litter importation process will be difficult. We certainly do not want to play that role. We hope that through cooperation and appropriate compromise we can make this a worthwhile and safe endeavor for all involved.

Submitted by

Bob Edson, Vice President of Operations for Aviagen Turkeys, Inc.

August 22, 2012

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

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

August 29, 2012

Mr. Rem Perkins
HC 68 Box 108
Frankford, WV 24938

Dear Mr. Perkins:

Thank you for your comments regarding the proposed legislative rule Title 61, Series 28, Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas.

Much consideration is being given to compromise and find a solution that is acceptable for all parties involved. The West Virginia Department of Agriculture is addressing several of the major concerns that you have regarding the sixty (60) day composting period, as well as the three-mile radius.

All testing cost for the first year will be absorbed by the department to try and keep cost at a minimum to farmers. The testing will be performed in the department's laboratories. Also, we anticipate that any farm located within the area engaged in the production of commercial primary poultry breeder stock may acquire poultry litter being produced by the primary poultry breeder facility within the area.

Again, thank you for your comments. I look forward to working with you on these important issues.

Sincerely,

Gus R. Douglass
Commissioner

GRD/jfm

State Capitol • 1900 Kanawha Boulevard, East • Charleston, West Virginia 25305-0170 • 304/558-3550

Martin, Jodee

From: Martin, Jodee
Sent: Friday, August 31, 2012 10:46 AM
To: 'kmshuckster@gmail.com'
Attachments: Title 61 Series 28 Poultry Litter Rule.doc

Please see attached letter. Thank you.

Jodee Martin
Executive Assistant
West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305
304-558-3200 (1325)
jodeemartin@ag.state.wv.us

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

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

August 29, 2012

Dear Ms. Shuck:

Thank you for your comments regarding the proposed legislative rule Title 61, Series 28, Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas.

Much consideration is being given to compromise and find a solution that is acceptable for all parties involved. The West Virginia Department of Agriculture is addressing several of the major concerns that you have regarding the sixty (60) day composting period, as well as the three-mile radius.

All testing cost for the first year will be absorbed by the department to try and keep cost at a minimum to farmers. The testing will be performed in the department's laboratories. Also, we anticipate that any farm located within the area engaged in the production of commercial primary poultry breeder stock may acquire poultry litter being produced by the primary poultry breeder facility within the area.

Again, thank you for your comments. I look forward to working with you on these important issues.

Sincerely,

Gus R. Douglass
Commissioner

GRD/jfm

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Martin, Jodee

To: Douglass, Gus
Subject: RE: proprosed rule"

-----Original Message-----
From: Gothard, Robin On Behalf Of Douglass, Gus
Sent: Tuesday, August 28, 2012 9:57 AM
To: Fisher, Janet; Tabb, Bob; Miller, Steve
Cc: Morgan, Regina; Martin, Jodee; Staley, Pam
Subject: FW: proprosed rule"

-----Original Message-----
From: karen shuck [mailto:kmshuckster@gmail.com]
Sent: Wednesday, August 22, 2012 2:57 PM
To: Douglass, Gus
Subject: proprosed rule"

Mr. Douglass: My husband and I live in a very rural area of Western Greenbrier County, and there are many farms in this region. We both feel that should the Turkey Farm be successful in their endeavor to limit the farmers, as to any type of fertilizer they use, then the Turkey Farm should supplement any addtional costs to the farmers for the specific fertilizers that would take the place of the pultry litter. Our farmers have it hard enough already, just trying to keep their crops healthy, especially when you factor in the weather, insects, animals, and all the rules and policies already in place that they must abide by. The farmers need our assistance, not another burden, that may well cause them to throw in the towel. The Turkey Farm Executives should figure out how to compensate the farmers, should this rule pass.

Martin, Jodee

From: Martin, Jodee
Sent: Friday, August 31, 2012 10:29 AM
To: 'jwalk52164@gmail.com'
Attachments: Title 61 Series 28 Poultry Litter Rule.doc

Please see attached letter. Thank you.

Jodee Martin
Executive Assistant
West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305
304-558-3200 (1325)
jodeemartin@ag.state.wv.us

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

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

August 29, 2012

Dear Mr. Walker:

Thank you for your comments regarding the proposed legislative rule Title 61, Series 28, Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas.

Much consideration is being given to compromise and find a solution that is acceptable for all parties involved. The West Virginia Department of Agriculture is addressing several of the major concerns that you have regarding the sixty (60) day composting period, as well as the three-mile radius.

All testing cost for the first year will be absorbed by the department to try and keep cost at a minimum to farmers. The testing will be performed in the department's laboratories. Also, we anticipate that any farm located within the area engaged in the production of commercial primary poultry breeder stock may acquire poultry litter being produced by the primary poultry breeder facility within the area.

Again, thank you for your comments. I look forward to working with you on these important issues.

Sincerely,

Gus R. Douglass
Commissioner

GRD/jfm

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Martin, Jodee

From: Jay Walker <jwalk52164@gmail.com>
Sent: Wednesday, August 22, 2012 2:41 PM
To: Martin, Jodee
Subject: Poultry litter dispersal

Commissioner Douglass, Ms Martin
Thank you for the pleasant conversation this afternoon.

As I had stated I live further away than would be affected by this ordinance. I live on 219 znorth of one of Avigens poultry farms. This appears to be athinly veiled attempt to rein in or eliminate family farm producers or the niche pasture raised poultry producers.

I grew up on a farm in Cabell Co. I understand about biosecurity and how neighbors flocks and herds affect yours. If this is an attempt to control disease. The large producers would be better suited spending resources educating their neighbors, even givingthem assistance vaccinating their flocks. Poultry and swine waste are not as nearly the vector for disease as are the wild bird population. The large producers and WV deptof ag know this.

The legislation even covers the large producers that compost their waste and sell them. '"CLEAN WASTE..LITTER " would be allowed

Who will test it? We all know composting does not kill viruses or highly contageous stains of bacteria. If home flocks could not spread then the larger producers should be similiarly limited. They produces tons.

They also were stopped from dumping dead birds in our land fill. So the very ones claiming disease control, incinerate

Which in most cases turns the dead birds to ash and smoke which release whatever the bird had into the air. When they drive thier trucks by my home a cloud of dust,waste and feather follow their trucks. Should not this be restricted??

Again I feel legislation is not the answer. Education, Vaccination (practice and development) and cooperation are the keys. No One ever gained from alienating neighbors. A good neighbor is worth a fortune bad ones cost you a fortumne.

Finally, we , all West Virginians, are in this together we either stand together as neighbors and friends or we will be destroyed from within. Taking food off the small mans plate is never the way to ingratiate his trust, loyalty or comraderie. EDUCATE NOT LEGISLATE. F J Walker. PO BX397. Ronceverte

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Poultry Litter and Manure Movement Into Primary Breeder Rearing Areas

Type of Rule: [X] Legislative [ ] Interpretive [ ] Procedural

Agency: West Virginia Department of Agriculture

Address: State Capitol
1900 Kanawha Boulevard, East
Charleston, WV 25305

Phone Number: 304-558-3200 Email: douglass@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.

This legislative rule establishes standards for the transport of poultry litter and swine manure into areas where commercial primary poultry breeder operations are located. Implementation and ongoing management of this rule will increase agency expense in its first and subsequent years.

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	10,000.00	10,000.00	10,000.00
Personal Services			
Current Expenses	10,000.00	10,000.00	10,000.00
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Poultry Litter and Manure Movement into Primary Breeder Rearing Areas

Rule Title: Poultry Litter and Manure Movement Into Primary Breeder Rearing Areas

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

The estimated cost to the state in the first year of implementation is $10,000.00, which is comprised of $6,000.00 for testing supplies and $4,000.00 for staff travel for monitoring and enforcement of this rule.

The agency will cover the cost of testing in the first year; in subsequent years, farmers will be charged for the actual cost of each test which will offset the testing supplies expense. As a result, after the first year, the net cost to the agency will be $4,000.00 to cover required staff travel.

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.

Date: 8/30/12

Signature of Agency Head or Authorized Representative

Gene R. Douglas

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

Janet L. Fisher
Deputy Commissioner

Bob Tabb
Deputy Commissioner

Steve Miller
Assistant Commissioner

The purpose of this rule is to establish guidelines for the transport of poultry litter and swine manure into areas where commercial primary poultry breeder operations are located. The function of these primary breeders is to maintain pure blood lines, expand pure bred lines and develop cross-bred lines. Primary breeder farms adhere to strict biosecurity programs to prevent introduction of pathogens from other poultry or animals. Movement of personnel, equipment and birds are strictly controlled to reduce the risk of infection and disease. Other protocols to ensure disease prevention on primary breeder farms include strict separation of generations and geographically separated farms.

We have made changes to this rule, due to written comments, and comments heard during public hearings from stakeholders. These changes came about through compromise of the involved parties and make the rule more acceptable.

Gus R. Douglass

State Capitol • 1900 Kanawha Boulevard, East • Charleston, West Virginia 25305-0170 • 304/558-3550

TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE

SERIES 28
POULTRY LITTER AND MANURE MOVEMENT INTO PRIMARY POULTRY BREEDER REARING AREAS

61-28-1. General.

1.1. Scope. -- This legislative rule establishes standards for the transport of poultry litter and swine manure into areas where commercial primary poultry breeder operations are located.

1.2. Authority. -- W. Va. Code ' 19-9-2; 19-9-10.

1.3. Filing Date. --

1.4 -- Effective Date. --

61-28-2. Purpose.

The purpose of this article is to establish guidelines for the transport of poultry litter and swine manure into areas where commercial primary poultry breeder operations are located. The function of primary breeders is to maintain pure blood lines, expand pure blood lines and develop cross-bred lines. Primary breeders maintain and reproduce the first three generations of birds referred to as Pedigree, Great-grandparent and Grandparent stock. These birds are used to produce the fourth generation known as Parent or Multiplier stock, which produce the fifth generation birds grown by commercial growers for marketing. Primary breeder farms adhere to strict biosecurity programs to prevent introduction of pathogens from other poultry or animals. Diseases such as salmonella, mycoplasmas and avian influenza are major concerns. Breeding turkeys may also be easily infected with influenza viruses from swine which will result in immediate and dramatic cessation of egg production. Movement of personnel, equipment and birds are strictly controlled to reduce the risk of infection or disease. Other protocols to ensure disease prevention on primary breeder farms include strict separation of generations and geographically separated farms.

61-28-3. Definitions.

The following words as used in this article, unless the context otherwise requires or a different meaning is specifically prescribed, shall have the following meanings:

(a) "Area" means any land within a ~~three-mile~~ one-mile radius of a poultry house engaged in the rearing of commercial primary breeder stock.

(b) "Certificate" means a document issued by the commissioner of agriculture or the WVDA State Veterinarian, if designated by the commissioner, indicating a regulated material is free of specified pathogens.

(c) "Commissioner" means the commissioner of agriculture of the State of West Virginia or his/her designee.

(d) "Commercial primary poultry breeder" is an operation engaged in the maintenance and improvement of breeding genetics.

(e) "Compost" means the natural process in which beneficial microbes reduce organic waste into a biologically safe by-product which is capable of being recycled.

(f) "Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move or to be moved.

(g) "Multiplier" (commonly referred to as the fourth generation) is the offspring of Grandparent stock used to produce birds for market.

(h) "Pathogen" is a microorganism, virus, bacterium, or fungus capable of causing disease in its host.

(i) "Permit" is a document issued by the commissioner of agriculture or the WVDA State Veterinarian, if designated by the commissioner, to provide for movement of regulated articles to restricted destinations.

(j) "Person" means an individual, partnership, corporation, association, co-op, firm, company, or any organized group of persons whether incorporated or not.

(k) "Poultry" includes any birds raised commercially or domestically for meat, eggs, feathers or pets.

(l) "Poultry Litter" refers to any material used as poultry bedding which may include sawdust, wood shavings, rice hulls, peanut hulls, straw, newspaper, and sand.

(m) "Primary poultry breeder" is any person (as designated in definitions) engaged in the production of Pedigree, Great-grandparent, Grandparent and Parent stock of poultry (commonly referred to as the first four generations).

(n) "Sell" means offer for sale, exchange, barter or trade.

(o) "Swine manure" refers to excreta from the production of pigs which may include bedding material such as sawdust, wood shavings or straw.

61-28-4. Powers and duties of the Commissioner.

The Commissioner has the authority to:

(A) Adopt, promulgate and enforce rules to carry out the purpose of this article. Said rules shall establish guidelines for the movement of poultry litter into restricted areas.

~~(1) No person shall transport, move or sell poultry litter, which is a regulated material as defined in this legislative rule, into any area engaged in the production of commercial primary poultry breeder stock unless the poultry litter being transported has been properly composted for a period of 60 days.~~

(1) No person shall transport, move, or sell poultry litter into any area engaged in the production of commercial primary poultry breeder stock ("Area" means any land within a one-mile radius of a poultry house engaged in the rearing of commercial primary breeder stock.

(a) Any farm located within the area engaged in the production of commercial primary poultry breeder stock may be given reasonable consideration to acquire poultry litter being produced by the primary poultry breeder facility within the area.

~~(2) No person shall move or sell swine manure, into any area engaged in the production of commercial primary poultry breeder stock due to additional disease risks.~~

(2) No person shall move or sell swine manure, into any area engaged in the production of commercial primary poultry breeder stock due to additional disease risk. ("Area" means any land within a one-mile radius of a poultry house engaged in the rearing of commercial primary breeder stock)

(3) No person shall transport, move, or sell poultry litter, which is a regulated material as defined in this legislative rule, into the county in which the primary poultry breeder facility is located unless the poultry litter being transported has been properly composted for a period of 30 days, and is in compliance with the required testing.

(B) Require testing and prescribe methods of testing for the presence of pathogens capable of causing harm to poultry or people.

(1) No person shall move or sell poultry litter into any area engaged in the production of commercial primary poultry breeder stock unless the poultry litter being transported has been certified by the State Veterinarian to have:

(a) originated from a flock that has been tested negative for Avian Influenza pre-movement.

(b) originated from a flock that is Mycoplasma free.

(c) been tested at an approved laboratory facility using approved methodology for the absence of salmonella.

(2) No person shall move or sell poultry litter into ~~any area engaged in the production of commercial primary poultry breeder stock~~ the county in which the primary breeder facility is located without having in his/her possession the certificate from the State Veterinarian stating poultry litter being transported has been tested within 30 days of movement.

61-28-5. Criminal penalties; civil penalties; negotiated agreement.

(A) **Criminal penalties.** -- Any person violating any provision of this article or rules adopted hereunder is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two thousand dollars nor more than five thousand dollars for the first offense; second and subsequent offenses shall be fined not less than five thousand nor more than ten thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(B) **Civil penalties.** –

(1) Any person violating a provision of this article or rules adopted hereunder may be assessed a civil penalty by the commissioner of agriculture. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history of previous violations of any person, the seriousness of the violation, including any irreparable harm to the environment, any hazards to the health and safety of the public and any economic damages to the public or business entity.

(2) The commissioner may assess a civil penalty of up to one thousand dollars for any violation.

(3) The civil penalty is payable to the State of West Virginia and is collectible in any manner now or hereafter provided for collection of debt. If any person liable to pay the civil penalty neglects or refuses to pay the same, the amount of the civil penalty, together with interest at ten percent, is a lien in favor of the State of West Virginia upon the property, both real and personal, of such a person after the same has been entered and docketed to record in the county where such property is situated. The clerk of the county, upon receipt of the certified copy of such, shall enter same to record without requiring the payment of costs as a condition precedent to recording.

(C) Notwithstanding any other provision of law to the contrary, the commissioner may promulgate and adopt rules which permit consent agreements or negotiated settlements for the civil penalties assessed as a result of violation of the provisions of this article.

(D) Nothing in this article may be construed as requiring the commissioner or his representative to report for prosecution as a result of minor violations of the article when he believes that the public interest will be best served by a suitable notice of warning in writing.

(E) Upon application by the commissioner, the circuit court of the county in which the violation is occurring, has occurred or is about to occur, as the case may be, may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule promulgated under this article, notwithstanding the existence of other remedies at law. Any such injunction shall be issued without bond.

(F) No state court may allow for the recovery of damages for any administrative action taken, if the court finds that there was a probable cause for the action.

(G) It is the duty of the prosecuting attorney of the county in which the violation occurred to represent the department of agriculture, to institute proceedings and to prosecute the person charged with such violation.

61-28-6. Right to appeal.

Any order of the Commissioner of agriculture or his/her designee shall be served upon all persons affected thereby by registered mail. Within ten days of the receipt of such order any party adversely affected thereby may, in writing, request a hearing before the Commissioner. Such hearing and any judicial review thereof shall be conducted in accordance with the applicable provisions of article five (§29A-5-1 et. seq.) and six (§29A-6-1 et seq.), chapter twenty-nine-A of this Code as if the same were set forth herein in extensor.