

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug 8, 1991
ADMINISTRATIVE LAW DIVISION

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Agriculture TITLE NUMBER: 61

CITE AUTHORITY 19-9-34A

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____


TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 1C

TITLE OF RULE BEING PROPOSED: Disposal of Dead Poultry

(This rule was originally filed as series 1 and is now changed to 1C)

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.



DISPOSAL OF DEAD POULTRY

SUMMARY OF THE RULE

Regulations for the disposal of dead poultry establish definitions and procedures which allow farmers growing poultry or other domestic fowl for commercial purposes to dispose of birds in environmentally and economically sound methods. These methods include incineration, composting and rendering.

STATEMENT OF CIRCUMSTANCES REQUIRING THIS RULE

This rule is needed as the provisions of §19-9-34a require that rules be filed for the disposal of poultry by composting, incineration and rendering.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

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

NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date:

June 26, 1991

Signature of Agency Head or Authorized Representative

Clare Benedict

DATE: August 8, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Agriculture

LEGISLATIVE RULE TITLE: Disposal of Dead Poultry

1. Authorizing statute(s) citation 19-9-34A

2. a. Date filed in State Register with Notice of Hearing:

June 26, 1991

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

press release to all newspapers in the state;

copy of the rule sent to 25 individuals (list attached)

c. Date of hearing(s): August 1, 1991 at 10am

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 8, 1991

f. Name and phone number(s) of agency person(s) to contact for additional information:

Robert Williams 348-2210

Barbara Smith 348-2226

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.

b. Date of hearing: _____

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

d. Attach findings and determinations and reasons:

Attached _____

WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE DEPARTMENT OF AGRICULTURE
Chapter 19-9
SERIES IC

TITLE: Disposal of Dead Poultry

§61-1C-1. General.

1.1 Scope - These regulations establish rules for the regulation of the disposal of dead poultry and other domestic fowl by persons, firms or corporations engaged in growing poultry or other domestic fowl for commercial purposes.

1.2 Authority - W Va. Code 19-9-34A

1.3 Filing Date -

1.4 Effective Date -

§61-1C-2. Definitions.

2.1 "Poultry" means all chickens, ducks, turkeys, or other domestic fowl being kept or raised for profit.

2.2 "Dead poultry" means all poultry excluding those intentionally slaughtered, which die as a result of disease, injury or of natural causes.

2.3 "Person" means any person, firm, partnership, corporation, or institution which engages in the raising or keeping of poultry for profit. Person is further defined as the grower of the poultry regardless of ownership.

2.4 "Raising or keeping of poultry for commercial purposes" means the raising or keeping of 200 or more poultry at one time for the purpose of sale of such poultry or the eggs produced therefrom.

2.5 "Incinerator" means a firebox constructed of masonry or metal in which dead poultry is completely burned by the use of fuel.

2.6 "Composting" means a natural process in which beneficial microbes reduce organic waste (dead poultry) into a biologically safe by-product which is capable of being recycled in the agriculture industry. A composter is a unit constructed of concrete or treated wood located under a roofed structure. A typical unit will contain two treatment areas. A primary treatment area may consist of one or more compartments. The secondary treatment area will be one compartment that will receive partially composted material from the primary treatment areas. Material in the primary treatment area is

moved to the secondary area when it has reached a peak temperature (140 to 160 degrees fahrenheit after seven to ten days). The composting process is complete when the temperature in the secondary treatment area has reached peak temperature (140 to 160 degrees fahrenheit after seven to ten days).

2.7 "Rendering" means the treatment of dead poultry by steam treatment or by cooking at an approved commercial rendering plant, for a sufficient time to effectively destroy the product for human food purposes and to preclude dissemination of disease through consumption by animals. Dead poultry intended for disposal by rendering shall be picked up by or delivered to the rendering company within 24 hours of death or be refrigerated below 40 degrees fahrenheit pending pickup or delivery. All dead poultry for rendering shall be held in a container that is leak proof, fly proof, and pet and wild animal proof.

§61-1C-3. Rules and Regulations Pertaining to the Disposal of Dead Poultry.

3.1 It shall be unlawful for any person engaged in the raising or keeping of poultry for commercial purposes to dispose of, or cause to be disposed of, dead poultry in any manner except in an incinerator and/or by composting and/or through rendering. These methods of disposal must comply with the definitions provided herein.

3.2 For protection of public and animal health, the Commissioner of Agriculture may authorize disposal by methods other than those prescribed in this regulation in instances of serious disease outbreak, abnormal death losses, flock depopulation or other emergency situations.

COMMENTS RECEIVED REGARDING THE
DISPOSAL OF DEAD POULTRY RULE

Written comments

Larry G. Fanella, Co-Chairman, Disposal of Dead Poultry Work Group
Rocco Farms, Inc., Turkey Division, Dayton, VA

Wade Carlton, Live Production Manager,
Rocco Farms, Inc., Turkey Division, Dayton, VA

These two individuals asked that the option of disposal pits be added to this regulation. Mr. Fanella said that he has co-chaired the "Disposal of Dead Poultry Work Group" commissioned by the Virginia State Poultry Association and found that disposal pits were an environmentally sound option for disposal of poultry.

Oral comments

Allen Evans, Rt 1, Box 25, Dorcas, WV
a broiler grower

Ronald Combs, Rt 1, Box 170, Moorefield, WV
a broiler grower

Wm. Ray Whetzel, Star Rt 1, Box 46, Burlington, WV,
Service Person, representing Perdue Farms

Grover See, Box 612, Moorefield, WV
representing the West Virginia Poultry Association

Eleven persons attended the hearing. Oral comments received from four individuals during the hearing on August 1, 1991. While all supported the rule as it is now written, all asked that the agency to add the use of disposal pits as an option for disposal of dead poultry. Mr. Whetzel asked that the option for burial be added to the regulations.

Agency response: The agency declines to amend the rule in response to the written and oral requests as the use of disposal pits was denied when the legislation was presented to the seventieth legislature.

Other changes

The agency noted that the original filing for Series 1 was already taken by an existing rule. This rule is being refiled as Series 1C.

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DISPOSAL OF DEAD POULTRY RULES

ADDITIONAL WRITTEN COMMENT

One additional letter was received on August 6 from Grover M. See. This letter stated that the West Virginia Poultry Association supports burial and disposal pits as a method of disposing of dead poultry.

There was no agency response to this letter as no new issues were raised in this letter.

WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

PUBLIC HEARING FOR DISPOSAL OF DEAD POULTRY
AUGUST 1, 1991
10:00 A.M.

Barbara Smith - This hearing is called to order and it is now 10 till 11. We started out this hearing process by having a discussion with all the people here explaining the provisions of the regulation and having some discussion. This hearing is called to take the oral comments on the proposed rule called the Disposal of Dead Poultry. It is August 1, 1991. The notice of the hearing was filed in the Secretary of State's office on June 26, 1991, and published in Volume 8, No. 25, of the State Register. This rule establishes regulations for the disposal of dead poultry, definitions and procedures which will allow farmers growing poultry or other domestic fowl for commercial purposes to disposal of the birds in environmentally and economically sound methods. These methods include incineration, composting and rendering. Now I will take comments on the rule. There is one person signed up who would like to make a comment. Allen V. Evans, would you come up here and get close to the microphone please.

Allen Evans - Yes ma'am. First I would like to say that my name is Allen Evans and I do support the dead poultry bill. I think there is a couple of things that we need to add, one being the poultry disposal pit, and the reason why is that we have a lot of poultry producers in the area considering what they are producing is the turkeys, breeders and pullets. I think with that in mind, we need to add the disposal pit and also the burial. I think as far as being environmentally sound, most of the farmers were the first environmentalists, and I really feel that to support our industry we do need those two added to the rules and regulations.

Barbara Smith - Thank you.

Allen Evans - Your quite welcome.

Barbara Smith - Is there any one else here who would like to speak.

Ronald Combs - My name is Ronald Combs and I would like to say that I agree with Mr. Evans and what he had to say about the pits and the burial being added to this bill.

Barbara Smith - Thank you. Is there anyone else.

Ray Whetzel - My name is Ray Whetzel, I am the Service Person for Perdue Farms and I am also the West Virginia Poultry Association Service Person. I would have to share with Mr. Evans and Mr. Combs on their concern about bird disposal pits and burial to the law. Being with Perdue, in the area we are predominately the breeder end of it. At times there is a call for a large number of birds that need to be disposed of which incinerating would not be practical. Also, I think that at times there is a lot and we need to have a more rapid disposal than leaving birds piled up to be incinerated because they will only incinerate so fast. But I would like to again encourage an appeal that they will put dead

bird disposal pits on the bill and also burial with some qualifications to burial specifications.

Barbara Smith - Thank you. Is there anyone else who would like to give a comment.

Grover See - I'm Grover See, Secretary of the West Virginia Poultry Association. I talked with the Board of Directors and the members of the West Virginia Poultry Association and we support the comments that Mr. Allen Evans made and we would like to see disposal pits continued on the bill.

Barbara Smith - Thank you. Are there any more comments. If not, this hearing is adjourned. Thank you all for coming.

NAME	ADDRESS	AFFILIATION	DO YOU WISH TO SPEAK?
Young E Barn	Rt. 1, Box 238 - Rig, W. Va. 26836	Becker Grower	No
Waldo Davis J	Box 541 Mansfield, W. Va.	Becker Grower General Farmer	Yes
Mohamir Teets	RT 2 Box 48 Martinsburg, W. Va.	Becker	No
John & Margaret	Box 3, Box 97A, Martinsburg, W. Va. 26833	Becker	No
Arnold W Conley	Rt 1 Box 170 Martinsburg, W. Va.	Becker	No
William J Stevens	Rt-1 Box 25 Dorrons	Becker	Yes
Sharon M. See	Box 612 Martinsburg, W. Va.	Becker	No
Paul H Asper	101 Dunbar Run Rd. Martinsburg, W. Va.	Becker	No
Bill Martin	Rt. 4 Box 29-D Martinsburg, W. Va.	Becker	No
John W. W. W. W.	500 E Main St. Romney, W. Va.	Becker	No
Wm. Ray W. W. W.	Star Rt 1 Box 46 Burlington, W. Va.	Becker	No

**ROCCO
FARMS, INC.
TURKEY DIVISION**

P.O. Box 158
Dayton, Va. 22021-0158
703-879-2521

July 31, 1991

ROCCO

Mr. Robert Williams
Marketing and Development Division
West Virginia Dept. of Agriculture
State Capitol
Charleston, WV 25305

Dear Mr. Williams:

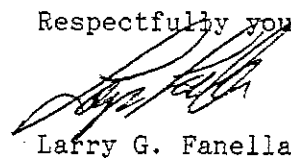
I have reviewed the proposed regulation governing the disposal of poultry. One concern raised during my review was the lack of dead pits in the proposed regulation as a viable means of dead bird disposal.

During this past year, I co-chaired the "Disposal of Dead Poultry Work Group" commissioned by the Virginia State Poultry Veterinarian to evaluate and update the State of Virginia's dead bird disposal laws. This group consist of members of the State Veterinarian's department, the poultry industry (broilers and turkeys), members of the Poultry Science Department at Virginia Tech, USDA APHIS VS Wytheville Regional Laboratory, and the Virginia Poultry Federation. The recommendations submitted to the State Veterinarian for inclusion into Virginia law includes the following methods of disposal as viable economic and environmentally sound options; incineration, dead pits, rendering, and composting.

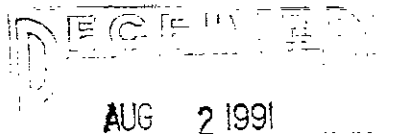
The current Virginia regulations defines a "disposal pit" to mean "an opening dug in the ground to a minimum depth of 6 feet, containing a minimum capacity of 150 cubic feet, covered with a minimum of 12 inches of dirt, and provided with 1 or more openings for the introduction of poultry therein; said openings to be of a minimum size of 8 inches square and equipped with tight lids". I believe if West Virginia adopted this same wording, the expanding poultry industry in West Virginia would have a working regulation that provides economically viable alternative methods for disposal and will meet the concerns of the state's citizens.

I strongly encourage the State of West Virginia to include dead pits as a viable method for disposing of dead poultry.

Respectfully yours,



Larry G. Fanella
Co-Chairman, Disposal of Dead
Poultry Work Group



**ROCCO
FARMS, INC.
TURKEY DIVISION**

P.O. Box 158
Dayton, Va. 22821-0158
703-879-2521

ROCCO

July 31, 1991

Mr. Robert Williams
Marketing and Development Division
West Virginia Dept. of Agriculture
State Capitol
Charleston, WV 25305

Dear Mr. Williams:

I am writing this letter to make comment on the proposed Disposal of Dead Poultry Regulations.

I agree with the regulation except for the exclusion of disposal pit as a method of dead poultry disposal. I believe disposal pits could possibly be a viable option in some areas of West Virginia. Also, it would keep the dead disposal regulation of Virginia and West Virginia consistent.

I also thin, a properly managed composting unit is the most environmentally sound way to dispose of normal mortality from a poultry facility.

Sincerely,

Wade Carlton

Wade Carlton
Live Production Manager

WC/bhm

AUG 2 1991



August 1, 1991

Robert L. Williams, Director
Marketing and Development Programs
WV Department of Agriculture
Capitol Building
Charleston, WV 25305

Dear Mr. Williams:

In the 1990 session, the West Virginia Legislature passed Senate Bill No. 87 requiring the disposal of dead poultry by composting, rendering, and incinerating methods.

The West Virginia Poultry Association would like to go on record as supporting burial and a disposal pit as acceptable methods of disposing of dead poultry. The Association believes that allowing burial and a pit disposal would give the poultry producers and farmers options that would be environmentally safe and cost effective.

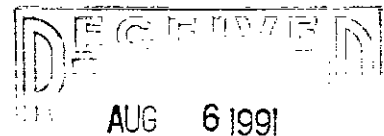
Therefore, the West Virginia Poultry Association strongly urges the inclusion of these two methods of disposal in the rules and regulations for agricultural industries in the State.

Sincerely,

GROVER M. SEE
Executive Secretary

GMS/lrb

cc: Cleve Benedict,
Commissioner of Agriculture



~~WV Poultry Association's Liaison Committee to Meet With~~
~~Commissioner:~~ *Persons who received a copy of this rule.*

Dennis Zirk
Rt. 3, Box 61
Milam, WV 26838

Jim K. Stutler
Rt. 1, Box 60A-1
Lost Creek, WV 26385

John P. Hott
P. O. Box 625
Franklin, WV 26807

Allen Evans
Box 25
Dorcas, WV 26835

Sam Robertson
Wampler-Longacre Chicken, Inc.
P. O. Box 539
Moorefield, WV 26836

Paul Lewis
G050 Animal Sciences Bldg.
West Virginia University
Morgantown, WV 26506

Lorenzo Caldwell
Rural Rt. 1, Box 154
Mathias, WV 26812

Elwood Williams
504 Clements Street
Moorefield, WV 26836

Steve Weaver
Wampler-Longacre Chicken, Inc.
P. O. Box 530
Moorefield, WV 26836

Jeff Hester
Hester Industries, Inc.
Hester Building
Moorefield, WV 26836

Delmer Schell
P. O. Box 5
Scherr, WV 26726

Other Industry Leaders:

Dr. Gene Misner
Wampler-Longacre Chicken, Inc.
P. O. Box 275
Broadway, VA 22815

Tim Hardy
Perdue Farms, Inc.
P. O. Box B
Broadway, VA 22815

Winston Turner
Tyson Foods, Inc.
501 North Liberty Street
Harrisonburg, VA 22801

Dr. Glenn Carpenter
1064 Animal Sciences Bldg.
West Virginia University
Morgantown, WV 26506

Wade Carlton
Rocco Turkeys, Inc.
P. O. Box 158
Dayton, VA 22821

Marc White
Rocco Farms, Inc.
P. O. Box 549
Harrisonburg, VA 22801

James J. Darazsdi
Rocco, Inc.
P. O. Box 549
Harrisonburg, VA 22801

John Gascoyne
B.U.T.A.
P. O. Box 727
Lewisburg, WV 24901

Dr. Walker Thompson
Wampler-Longacre Turkey, Inc.
P. O. Box 228
Hinton, VA 22831

Herman D. Mason
Wampler-Longacre Chicken, Inc.
P. O. Box 228
Hinton, VA 22831

Persons who received a copy of the Disposal of Dead Poultry rule
(Page 2)

Kimber Ward
Perdue Farms
by means of fax

George Carenbauer
Steptoe and Johnson
PO Box 1588
Charleston, WV 25326

Fred Butler
West Virginia Farm Bureau
Rt 2, Box 159
Inwood, WV 25428

Steve Hannah
West Virginia Farm Bureau
One Red Rock Road
Buckhannon, WV 26201

JUL 08 1991



Cleve Benedict
Commissioner of Agriculture

NEWS RELEASE

July 8, 1991

Charleston, West Virginia 25305

Public hearings scheduled for new regulations

Agriculture Commissioner Cleve Benedict announced a series of public hearings on new regulations and encouraged public participation in the process.

Benedict said the public hearings give the West Virginia Department of Agriculture (WVDA) the opportunity to modify regulations after taking public input into consideration.

In addition to the public hearings, written comments will be accepted until the time of the hearing. The public hearings will be held on the following days:

July 12, 1 p.m.	Licensing of Pesticide Business
July 12, 3 p.m.	Regulations to Govern Aerial Application of Herbicides to Right of Way
July 29, 10 a.m.	Frozen Desserts and Imitation Frozen Desserts
July 29, 2 p.m.	Commercial Feed
July 30, 10 a.m.	Assessment of Civil Penalties for Consent Agreement or Negotiated Settlements (Pesticides)
July 30, 1 p.m.	Certified Pesticide Applicator
July 31, 10 a.m.	Licensing of Livestock Dealers
August 1, 10 a.m.	Disposal of Dead Poultry

All hearings will be held in the J. T. Johnson Conference Room in Building 2 of the Guthrie Agricultural Center, Charleston, W.Va., except for the Disposal of Dead Poultry hearing. The Dead Poultry hearing will be held at the Moorefield Agricultural Center.

Comment period deadlines for the following regulations (there are no public hearings) will be July 29 at noon:

Plant Pest Act
West Virginia Apiary Law of 1991
Animal Disease Control

For more information on how to comment on the new regulations, contact Barbara Smith, Director of Compliance, WVDA, at 304/348-2226.