

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Agriculture TITLE NUMBER: 61

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 12D

TITLE OF RULE BEING AMENDED: Regulations to Govern the Aerial Application
of Herbicides to Rights of Way

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

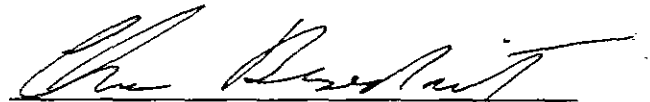
THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB1

SECTION 64-9-1 (ff), PASSED ON March 14, 1992

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: April 27, 1992



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TITLE 61
WEST VIRGINIA LEGISLATIVE RULE
WEST VIRGINIA DEPARTMENT OF AGRICULTURE
SERIES XIID

Title: Aerial Application of Herbicides to Utility Rights-of-Way

§61-12D-1. General

1.1 Scope - This legislative rule establishes the minimum standards governing the aerial application of herbicides to utility rights-of-way.

1.2 Authority - W. Va. Code 19-16A-4

1.3 Filing Date -

1.4 Effective Date -

1.5 Repeal of Former Rule - This legislative rule repeals and replaces West Virginia Department of Agriculture Administrative Regulations Series XIID effective September 1, 1981.

§61-12D-2. Definitions

2.1 "Utility rights-of-way" means those rights-of-ways maintained by persons providing public service to the citizens of the state and may include but is not limited to electric companies, gas companies, communication companies and railroads.

§61-12D-3. Prior Notification

3.1 Persons intending to aerially apply herbicides on utility rights-of-way, except on rights-of-way specifically excepted by laws held by the Attorney General of West Virginia to be preemptory, shall notify to the following persons, in writing at least 60 days and no more than 120 days prior to the anticipated beginning of the aerial spray program: the commissioner of the West Virginia Department of Agriculture, all news media within the counties where the aerial herbicide application program is to be conducted, all persons in the spray area on the hypersensitivity registry maintained by the West Virginia Department of Agriculture; and all property owners, tenants or other persons in control of land adjacent to the rights-of-way, who have made a written request

to the utility for special advance notification. A written request for special advance notification shall include the name, mailing address, property location and telephone number, if any, of the person making the request.

3.1.a The notice shall include, but is not limited to:

3.1.a.A. a description of the area(s) to be aerial sprayed;

3.1.a.B. a toll-free telephone number and an address of a utility office to which people can call or write to alert the utility to sensitive areas - including, but not limited to springs, wells, streams, lakes, ponds, orchards, crop areas, gardens, pastures, meadows, year around dwellings, public recreation areas, and Christmas tree plantations. A caller should, whenever possible, reference the location they are calling about to pole or tower numbers on the rights-of-way;

3.1.a.C. information describing how a land owner or tenant can enter into a rights-of-way maintenance agreement with the utility;

3.1.a.D. the location of a county or area office of the utility where individuals can inspect maps showing the location of rights-of-way that are to be sprayed;

3.1.a.E. the herbicides to be used in the project;
and

3.1.a.F. the procedures to be followed in lodging a complaint with either the utility or with the West Virginia Department of Agriculture.

3.1.b. The utility shall, on a weekly basis, provide the contemplated aerial spray program for the following week to the commissioner of the West Virginia Department of Agriculture and to a radio or TV station serving each county in which the aerial application of herbicides is planned. The utility shall make the initial notice each year on each of two weeks immediately proceeding the proposed beginning of the aerial herbicide spray program.

§61-12D-4 Procedural Prohibitions and Restrictions

4.1 The aerial application of herbicides is prohibited when:

4.1.a. the wind velocity in the local area exceeds five (5) miles per hour;

4.1.b. the spray may come into contact with fog banks;

4.1.c. there are periods of temperature inversion and air stagnation;

4.1.d. the air temperature exceeds 90 degrees Fahrenheit - except that the application of herbicides containing low-volatile amines and chemicals whose volatility is known to not be a problem will not be prohibited at temperatures above 90 degrees Fahrenheit;

4.1.e. it is raining or reasonably apparent that it will rain within two hours; or

4.1.f. the distance between the transmission line(s) at maximum design sag and the ground is greater than 100 feet.

4.2 Before herbicides are applied, the applicator shall fly a reconnaissance flight over the area to be sprayed and shall not apply herbicides if humans or domestic animals are visible in areas subject to the intended application of herbicides.

4.3 The applicator for the utility shall not apply herbicides to any body of water during aerial spraying of rights-of-way to control woody vegetation.

§61-12D-5. Minimum Spray Distances

5.1 The applicator for the utility shall not apply herbicides within the distance specified in the tables contained in this section of the rule. The following minimum spray distances shall be adhered to unless greater distances are specified on the label of the pesticide.

5.1.a. Formulations Containing Picloram or Dicamba herbicides:

AREA	
Ponds	100 feet
Year Around Flowing Water (including wells, springs, and other water areas used for domestic purposes)	200 feet
Cultivated Land, Except Tobacco fields	100 feet
Tobacco fields	500 feet
Christmas Tree Plantations	100 feet
Pasture Lands	100 feet
Public Recreation Areas	100 feet
Residential Structures (used as year-around homes)	150 feet
Barns and Other Outbuildings Where People or Livestock Might Ordinarily Be Expected	150 feet

County, State, and Federal,
Graveled or Paved Road
Crossovers and Lines
paralleling such Roads 50 feet

5.1.b. Other Herbicide Formulations Not Listed in sub
division 5.1.a. of this rule.

AREA

Ponds	100 feet
Year Around Flowing Water (including wells, springs, and other water areas used for domestic purposes)	200 feet
Cultivated Land, except Tobacco fields	100 feet
Tobacco fields	200 feet
Pasture Lands	100 feet
Christmas Tree Plantations	100 feet
Residential Structures (used as year around homes)	100 feet
Barns & Other Outbuildings Where People or Livestock Might Ordinarily Be Expected	150 feet
Public Recreation Areas	150 feet
County, State, and Federal, Graveled or Paved Road Crossovers and lines Parallelling such Roads	50 feet

5.2. Application Spray System.

The minimum spray distance listed in sub-divisions 5.1.a. and 5.1.b. of this rule applies to applications utilizing a drift control system such as a microfoil spray boom or its equivalent. Persons using non-drift control technology in the aerial application of herbicides shall notify the commissioner of the West Virginia Department of Agriculture in writing and shall specify minimum spray distances at least double those listed in sub-divisions 5.1.a. and 5.1.b. of this rule.

5.3. Measured Tolerance - The commissioner will use a tolerance of ten (10) percent in the minimum spray distances to assess acceptability with this section.

§61-12D-6. Company Monitoring of Herbicide Applications to their Rights-of-Way

6.1. Utility personnel shall inspect their rights-of-way which have been sprayed with herbicides to insure that applicable

standards have been adhered to and shall keep a log of such inspections on file for at least two (2) years. The log shall contain the following information.

- 6.1.a. the inspector's name;
- 6.1.b. the date of the inspection;
- 6.1.c. a description or identification of the area inspected; and
- 6.1.d. a record of compliance or deviation from this rule.

§61-12D-7. Exceptions

7.1 When a person owns a right-of-way wholly on his private or corporate property, he may ask the commissioner for an exception from the prior notification requirements of section 3 of this rule. The commissioner may grant a exception from these requirements in situations where prior notification does not serve to protect the public interest. The commissioner shall consider each request for a exception on a case by case basis.

7.2 Persons requesting a deviation from Section 3 of this rule shall provide the Commissioner with the following information.

- 7.2.a. the location of the rights-of-way to be sprayed;
- 7.2.b the distance from the rights-of-way to residences, public highways, agricultural lands or navigatable rivers; and
- 7.2.c. the herbicides to be sprayed, including application rates.

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Bill Agri, Herbicides 6F-120

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H B. 4250

(By Delegate Grubl)

(Introduced January 27, 1992; referred to the
Committee on the Judiciary)

10 A BILL to amend and reenact section one, article nine, chapter
11 sixty-four of the code of West Virginia, one thousand nine
12 hundred thirty-one, as amended, relating to authorizing the
13 commissioner of agriculture to promulgate legislative rules
14 relating to the aerial application of herbicides to rights of
15 way.

16 Be it enacted by the Legislature of West Virginia:

17 That section one, article nine, chapter sixty-four of the
18 code of West Virginia, one thousand nine hundred thirty-one, as
19 amended, be amended and reenacted, to read as follows:

20 ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS
21 TO PROMULGATE LEGISLATIVE RULES.

22 §64-9-1. Commissioner of Agriculture.

23 (a) The legislative rules filed in the state register on the
24 sixth day of April, one thousand nine hundred eighty-three,

4250

1 relating to the commissioner of agriculture (schedule of charges
2 for inspection services: fruit); are authorized.

3 (b) The legislative rules filed in the state register on the
4 third day of August, one thousand nine hundred eighty-three,
5 relating to the commissioner of agriculture (licensing of
6 auctioneers), are authorized.

7 (c) The legislative rules filed in the state register on the
8 eighth day of February, one thousand nine hundred eighty-four,
9 relating to the commissioner of agriculture (conduct of beef
10 industry self-improvement assessment program referendum), are
11 authorized.

12 (d) The legislative rules filed in the state register on the
13 fourth day of June, one thousand nine hundred eighty-four,
14 relating to the commissioner of agriculture (feeding untreated
15 garbage to swine), are authorized.

16 (e) The legislative rules filed in the state register on the
17 fourth day of June, one thousand nine hundred eighty-four,
18 relating to the commissioner of agriculture (registration,
19 taxation and control of dogs), are authorized.

20 (f) The legislative rules filed in the state register on the
21 first day of November, one thousand nine hundred eighty-four,
22 relating to the commissioner of agriculture (public markets), are
23 authorized.

24 (g) The legislative rules filed in the state register on the
25 tenth day of September, one thousand nine hundred eighty-four,

1 relating to the commissioner of agriculture (noxious weed rules),
2 are authorized.

3 (h) The legislative rules filed in the state register on the
4 fourth day of June, one thousand nine hundred eighty-four,
5 relating to the commissioner of agriculture (animal disease
6 control), are authorized.

7 (i) The legislative rules filed in the state register on the
8 fifth day of January, one thousand nine hundred eighty-four,
9 relating to the commissioner of agriculture (use of certain
10 picloram products), are authorized.

11 (j) The legislative rules filed in the state register on the
12 eighth day of March, one thousand nine hundred eighty-five,
13 relating to the commissioner of agriculture (increasing certain
14 fees by rules and regulations), are authorized.

15 (k) The legislative rules filed in the state register on the
16 thirteenth day of January, one thousand nine hundred eighty-six,
17 modified by the commissioner of agriculture to meet the
18 objections of the legislative rule-making review committee and
19 refiled in the state register on the thirty-first day of January,
20 one thousand nine hundred eighty-six, relating to the
21 commissioner of agriculture (licensing of livestock dealers), are
22 authorized.

23 (l) The legislative rules filed in the state register on the
24 eighteenth day of June, one thousand nine hundred eighty-six,
25 modified by the commissioner of agriculture to meet the

1 objections of the legislative rule-making review committee and
2 refiled in the state register on the fifth day of January, one
3 thousand nine hundred eighty-seven, relating to the commissioner
4 of agriculture (West Virginia pesticide use and application act),
5 are authorized.

6 (m) The legislative rules filed in the state register on the
7 eighteenth day of August, one thousand nine hundred eighty-six,
8 modified by the director of the division of forestry of the
9 department of agriculture to meet the objections of the
10 legislative rule-making review committee and refiled in the state
11 register on the fifth day of January, one thousand nine hundred
12 eighty-seven, relating to the director of the division of
13 forestry of the department of agriculture (ginseng), are
14 authorized.

15 (n) The legislative rules filed in the state register on the
16 tenth day of April, one thousand nine hundred eighty-seven,
17 relating to the commissioner of agriculture (schedule of charges
18 for inspection services: fruit), are authorized.

19 (o) The legislative rules filed in the state register on the
20 thirteenth day of August, one thousand nine hundred eighty-seven,
21 modified by the commissioner of agriculture to meet the
22 objections of the legislative rule-making review committee and
23 refiled in the state register on the eighth day of September, one
24 thousand nine hundred eighty-seven, relating to the commissioner
25 of agriculture (animal disease control), are authorized.

1 ---(p) The legislative rules filed in the state register on the
2 fifteenth day of September, one thousand nine hundred
3 eighty-eight, relating to the commissioner of agriculture (sale
4 and distribution of commercial fertilizer), are authorized.

5 (q) The legislative rules filed in the state register on the
6 fifteenth day of September, one thousand nine hundred
7 eighty-eight, modified by the commissioner of agriculture to meet
8 the objections of the legislative rule-making review committee
9 and refiled in the state register on the twenty-sixth day of
10 October, one thousand nine hundred eighty-eight, relating to the
11 commissioner of agriculture (animal disease control), are
12 authorized.

13 ---(r) The legislative rules filed in the state register on the
14 fifteenth day of May, one thousand nine hundred eighty-nine,
15 modified by the commissioner of agriculture to meet the
16 objections of the legislative rule-making review committee and
17 refiled in the state register on the twenty-first day of August,
18 one thousand nine hundred eighty-nine, relating to the
19 commissioner of agriculture (production of milk and cream for
20 manufacturing purposes), are authorized.

21 (s) The legislative rules filed in the state register on the
22 seventh day of August, one thousand nine hundred eighty-nine,
23 modified by the commissioner of agriculture to meet the
24 objections of the legislative rule-making review committee and
25 refiled in the state register on the twenty-third day of October,

1 one thousand nine hundred eighty-nine, relating to the
2 commissioner of agriculture (animal disease control), are
3 authorized.

4 (t) The legislative rules filed in the state register on the
5 tenth day of August, one thousand nine hundred ninety, modified
6 by the commissioner of agriculture to meet the objections of the
7 legislative rule-making review committee and refiled in the state
8 register on the fifth day of October, one thousand nine hundred
9 ninety, relating to the commissioner of agriculture (meat
10 inspection), are authorized.

11 (u) The legislative rules filed in the state register on the
12 tenth day of August, one thousand nine hundred ninety, modified
13 by the commissioner of agriculture to meet the objections of the
14 legislative rule-making review committee and refiled in the state
15 register on the third day of October, one thousand nine hundred
16 ninety, relating to the commissioner of agriculture (agricultural
17 liming materials), are authorized.

18 (v) The legislative rules filed in the state register on the
19 tenth day of August, one thousand nine hundred ninety, modified
20 by the commissioner of agriculture to meet the objections of the
21 legislative rule-making review committee and refiled in the state
22 register on the third day of October, one thousand nine hundred
23 ninety, relating to the commissioner of agriculture (public
24 markets), are authorized.

1 (w) The legislative rules filed in the state register on the
2 nineteenth day of September, one thousand nine hundred ninety,
3 modified by the commissioner of agriculture to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the ninth day of November, one
6 thousand nine hundred ninety, relating to the commissioner of
7 agriculture (animal disease control), are authorized.

8 (x) The legislative rules filed in the state register on the
9 eighth day of August one thousand nine hundred ninety-one,
10 modified by the commissioner of agriculture to meet the
11 objections of the legislative rule-making review committee and
12 refiled in the state register on the twenty-fourth day of
13 September, one thousand nine hundred ninety-one, relating to the
14 commissioner of agriculture (aerial application of herbicides to
15 rights of way) are authorized.

16
17 NOTE: The purpose of this bill is to authorize the
18 Commissioner of Agriculture to promulgate legislative rules
19 relating to the aerial application of herbicides to rights of
20 way.

21
22 Strike-throughs indicate language that would be stricken from
23 the present law, and underscoring indicates new language that
24 would be added.



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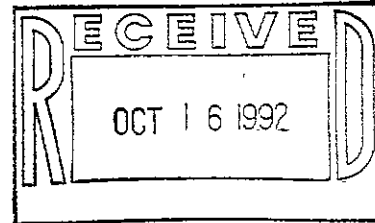
DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770



TO: Barbara Smith

AGENCY: Department of Agriculture

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: October 15, 1992

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

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

SERIES: 110 TITLE: 61 Department of Agriculture

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

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

SIGNED: Barbara J. Smith

TITLE OF PERSON SIGNING: Director of Compliance

DATE: 11-13-92 (repeal clause?)

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