

CHAPTER 19 - AGRICULTURE

ARTICLE 16A. WEST VIRGINIA PESTICIDE CONTROL ACT.

§19-16A-1. Short title.

This article shall be known as the "West Virginia Pesticide Control Act of 1990".

§19-16A-2. Declaration of Purpose; legislative finding.

The purpose of this article is to regulate and control pesticides in the public interest, by their registration, use and application. The Legislature finds that pesticides perform a vital function in modern society because they control insects, fungi, nematodes, rodents and other pests which ravage and destroy our food and fiber, which serve as vectors of disease, and which otherwise constitute a nuisance in the environment or the home; they control weeds which compete in the production of foods and fiber, disrupt the supply of energy, render highways unsafe and which otherwise are unwanted elements in our environment; and they regulate plant growth to enhance both the quality and quantity of our food and fiber and to facilitate its harvest. Pesticides, however, may be rendered ineffective, may cause injury to man or may cause unreasonable, adverse effects on the environment if not properly used. They may injure man or animals either by direct poisoning or by the gradual accumulation of pesticide residues in their tissues. Crops or other plants may be affected by their improper use. The misapplication, the drifting or washing of pesticides into streams or lakes may cause appreciable damage to aquatic life. A pesticide applied for the purpose of killing pests in a crop, which is not itself injured by the pesticide, may drift and injure other crops or nontarget organisms with which it comes in contact. Therefore, it is deemed necessary to provide for the control of pesticides.

Nothing in this article shall be construed as permitting municipalities or counties to enact laws or ordinances regarding pesticide control.

§19-16A-3. Definitions.

As used in this article:

(1) "Active ingredient" means:

(A) In the case of pesticides other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel or mitigate insects, nematodes, fungi, rodents, weeds or other pests;

(B) In the case of a plant regulator, an ingredient which, through physiological

action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

(C) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and

(D) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissues.

(2) "Agriculture commodity" means any plant, or part thereof, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters or other comparable persons) primarily for sale, consumption, propagation or other use by man or animals.

(3) "Animal" means all vertebrate and invertebrate species, including, but not limited to, man and other mammals, birds, fish and shell fish.

(4) "Adulterated" means when the strength or purity of any pesticide falls below or is in excess of the professed standard or quality as expressed on labeling under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

(5) "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

(6) "Certified applicator" means any person who is certified under this article to use or supervise the use of any restricted use pesticides or general use pesticides for hire.

(7) "Certified public applicator" means a licensed applicator who applies "restricted use pesticides or general use pesticides for hire" as an employee of a state agency, municipal corporation or other governmental agency. This term does not include employees who work only under the direct supervision of a certified public applicator.

(8) "Commercial applicator" means a certified applicator (whether or not he or she is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as defined under the definition of "private applicator".

(9) "Commissioner" means the Commissioner of Agriculture of the State of West Virginia and his or her duly authorized representatives.

(10) "Defoliant" means any substance or mixture of substances intended for causing the leaves of foliage to drop from a plant, with or without causing abscission.

(11) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(12) "Device" means any instrument or contrivance (other than a firearm) intended for trapping, destroying, repelling or mitigating insects or rodents or destroying, repelling or mitigating fungi, nematodes or such other pests as may be designated by the commissioner, but not including treated wood products or equipment used for the application of pesticides when sold separately therefrom.

(13) "Direct supervision" means that unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the verifiable instructions and control of a certified applicator who is available when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

(14) "Environment" includes water, air, land and all plants and man and other animals living therein, and the interrelationships which exist among these.

(15) "Fumigant or fumigation" means any substance which, by itself or in combination with any other substance, emits or liberates a gas or gases, fumes or vapors, which gas or gases, fumes or vapors, when liberated and used, will destroy vermin, rodents, insects and other pests, and are usually lethal, poisonous, noxious or dangerous to human life.

(16) "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi or plant disease.

(17) "Fungus" means any nonchlorophyll-bearing thallophytes (that is, any nonchlorophyll-bearing plant of a lower order than mosses and liverworts), as, for example, rust, smut, mildew, mold, yeast, bacteria and virus, except those on or in living man or other animals and except those on or in processed food, beverages or pharmaceuticals.

(18) "General use pesticide" means any pesticide not designated as restricted use by the administrator, United States environmental protection agency or a state restricted use pesticide by the commissioner.

(19) "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.

(20) "Inert ingredient" means an ingredient which is not an active ingredient.

(21) "Ingredient statement" means a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients,

if any, in the pesticide, and in case the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(22) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, either winged or wingless forms, as, for example, beetles, bugs, bees, flies, aphids and termites, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes and wood lice.

(23) "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.

(24) "Label" means the written, printed or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide or device.

(25) "Labeling" means all labels and other written, printed, graphic matter or advertising:

(A) Upon the pesticide or device or any of its containers or wrappers;

(B) Accompanying the pesticide or device at any time;

(C) To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States Departments of Agriculture or Interior, the United States Public Health Service, state experiment stations, state agricultural colleges or other similar federal institutions or official agencies of this State or other states authorized by law to conduct research in the field of pesticides; and

(D) Conveyed in any public media such as newspapers, periodicals, radio or television, relative to the offering for sale of any pesticide or device.

(26) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, contrivances and machinery, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(27) "Misbranded" means any pesticide or device if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular; or

(A) If it is an imitation of or is offered for sale under the name of another pesticide;

(B) If its labeling bears any reference to registration under this article;

(C) If the labeling accompanying it does not contain directions for use which are necessary and, if complied with, adequate for the protection of the public;

(D) If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals, vegetation and useful invertebrate animals;

(E) If the label does not bear an ingredient statement on that part of the immediate container of the retail package which is presented or displayed under customary conditions of purchase, and on the outside container or wrapper, if any, through which the ingredient statement on the immediate container cannot be clearly read;

(F) If any word, statement or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statement, designs or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(G) If in the case of an insecticide, nematocide, fungicide or herbicide when used as directed or in accordance with commonly recognized practice it is injurious to living man or other vertebrate animals, except weeds to which it is applied, or to the person applying such pesticide; or

(H) If in the case of a plant regulator, defoliant or desiccant when used as directed it is injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticide: Provided, That physical or physiological effects on plants or parts thereof are not deemed to be injury, when this is the purpose for which the plant regulator, defoliant or desiccant was applied, in accordance with the label claims and recommendations.

(28) "Name" as applied to the active ingredient shall be designated by an accepted chemical name and in addition the accepted common name, or by a common name promulgated by the commissioner. It is recommended that the commissioner adopt the nomenclature approved by the interdepartmental committee on pest control or the American standards committee or any national committee similarly functioning.

(29) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform or sac like bodies covered with cuticle and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

(30) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes.

(31) "Permit" means a written certificate, issued by the commissioner authorizing the use of certain restricted use pesticides or state restricted use pesticides.

(32) "Person" means any individual, partnership, association, fiduciary, corporation or any organized group of persons whether incorporated or not.

(33) "Pest" means any insect, rodent, nematode, fungus, weed or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism (except viruses, bacteria or other microorganisms on or in living man or other living animals) which is declared to be a pest by the commissioner.

(34) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any undesirable insects, rodents, nematodes, fungi, weeds and other forms of plant or animal life or viruses, except viruses on or in living man or other animals or which the commissioner may declare to be a pest and any substance or mixture of substances intended for use as a plant regulator, defoliant, desiccant or herbicide.

(35) "Pesticide application business" means any person who owns or manages a pesticide application business which is engaged in the business of applying pesticides upon the lands of another (whether such person applies restricted use pesticides or other pesticides) and means each place for which the business of applying pesticides for hire is carried on, including a branch office, franchise location, suboffice or worker location of a larger business entity.

(36) "Pesticide business" means any person engaged in the business of distributing, applying or recommending the use of a product, storing, selling or offering for sale pesticides for distribution to the user. The term does not include wood treaters not for hire or businesses exempted by rule adopted pursuant to this article.

(37) "Pesticide dealer" means any person who sells, wholesales, distributes, offers or exposes for sale, exchanges, barter or gives away within or into this state any restricted use pesticide.

(38) "Plant regulator" means any substance or mixture of substances, intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments.

(39) "Private applicator" means a certified applicator who uses or supervises the use

of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or her or his or her employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on property of another person.

(40) "Registered technician" means an individual who renders services similar to those of a certified commercial applicator, but who has not completed all the training or time in service requirements to be eligible for examination as a commercial applicator and is limited to application of general use pesticides. However, if he or she applies restricted use pesticides, he or she may do so only under the direct supervision of a certified commercial applicator.

(41) "Registrant" means the person registering any pesticide pursuant to the provisions of this article.

(42) "Repellant" means a substance, not a fumigant, under whatever name known, which may be toxic to insects and related pests, but is generally employed because of its capacity for preventing the entrance or attack of pests.

(43) "Restricted use pesticide" means any pesticide classified for restricted use by the administrator, United States Environmental Protection Agency or any pesticide declared to be state restricted by the commissioner.

(44) "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any undesirable rodents or any other vertebrate animals or others which the commissioner may declare to be a pest.

(45) "Serious violation" means a violation of this article or rule promulgated by the commissioner where there is a substantial probability that death or serious physical harm to persons, serious harm to property or serious harm to the environment could have resulted from the violation unless the person or licensee did not or could not with the exercise of reasonable diligence know of the violation.

(46) "State restricted use pesticide" means any pesticide that the commissioner determines subsequent to a hearing, when used as directed or in accordance with a widespread and commonly recognized practice, requires additional restrictions for that use to prevent unreasonable adverse effects on the environment including man, land, beneficial insects, animals, crops and wildlife, other than pests.

(47) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

(48) "Weed" means any plant which grows where not wanted.

(49) "Wildlife" means all living things that are neither human, domesticated nor, as defined in this article, pests, including, but not limited to, mammals, birds and aquatic life.

§19-16A-4. Powers and duties of the commissioner.

The commissioner of agriculture has the power and duty to carry out the provisions of this article and is authorized to:

(a) Delegate to employees of the Department of Agriculture the authority vested in the commissioner by virtue of the provisions of this article;

(b) Cooperate, receive grants in aid and enter into agreements with any other agency of the state, the United States Department of Agriculture, United States Environmental Protection Agency or any other federal agency or any other state or agency thereof for the purpose of carrying out the provisions of this article;

(c) Contract for research projects;

(d) Require that pesticides used in this state are adequately tested and are safe for use under local conditions;

(e) Require that individuals who sell, store, dispose or apply pesticides are adequately trained and observe appropriate safety practices;

(f) Promulgate rules pursuant to chapter twenty-nine-a [§§ 29-A-1-1 et seq.] of this code, including, but not limited to, the following:

(1) Licensing of businesses that sell, store, recommend for use, mix or apply pesticides;

(2) Registration of pesticides for manufacture, distribution, sale, storage or use in this state;

(3) Requiring reporting and recordkeeping related to licensing and registration;

(4) Establishing training, testing and standards for certification of commercial application, public application, registered technician and private applicator;

(5) Revoking, suspending or denying licenses, registration and certification or certificate or permits;

(6) Creating advisory committees made up of both pesticide industry representatives and consumers as considered necessary to implement this article;

(7) Establishing a fee structure for licenses, registration and certificate to defray the costs of implementing this article;

(8) Classifying or subclassifying certificate or certificates to be issued under this article. The classification may include, but not be limited to, agricultural, forest, ornamental, aquatic, right-of-way, industrial, institutional, structural or health-related pest control;

(9) Restricting or prohibiting the sale or use and disposal of any pesticide, pesticide container or residue which is extremely hazardous;

(10) Coordinating and supporting pesticide monitoring programs;

(11) Developing a program for registration of persons with health sensitivity to pesticide drift;

(12) Establishing guidelines and requirements, as deemed necessary, for licenses, certificate holders and permittees for the identification of pests and their methods of inspection of property to determine the presence of pests;

(13) Establishing procedures for reporting spills, accidents or incidents; and

(14) Such other rules necessary or convenient to carry out the purpose of this article;

(g) Design and conduct an appropriate educational program on the use of pesticides and the necessity for care when applying the same; and

(h) Only after consultation with the state board of education, division of human services for child welfare, representatives from the environmental community, and representatives of school and daycare employees, by the first day of July, one thousand nine hundred ninety-five, promulgate emergency rules, pursuant to article three, chapter twenty-nine-a of this code, establishing an integrated pest management program. The emergency and legislative rules for the program established in this subsection shall include, but are not limited to, the following:

(1) The use of least hazardous materials;

(2) That pesticides shall only be applied when monitoring indicates that pest infestations are present;

(3) That students and school and daycare employees, except school, board of education or daycare employees that are certified applicators, shall not be present during application and provide for appropriate reentry times, except that pesticides may be applied to a localized area of infestation when students or school and daycare employees are present if the infestation causes an imminent threat of bodily harm;

(4) A definition of pesticides; and

(5) A system for prior notification to parents and school and daycare employees.

§19-16A-5. Registration of pesticides; fees; confidentiality of trade secrets.

(a) Every pesticide which is manufactured, distributed, sold or offered for sale, used or offered for use within this State, or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered in the office of the commissioner, and such registration shall be renewed annually. The commissioner may register and permit the sale and use of any pesticide which has been registered under the provisions of 7 U.S.C. § 136 et seq., as the same is in effect on the effective date of this article: Provided, That such pesticides are subject to registration fees and all other provisions of this article.

(b) Products which have the same formula, and are manufactured by the same person, the labeling of which contain the same claims and which have designation identifying the products as the same pesticide may be registered as a single pesticide without an additional fee.

(c) Within the discretion of the commissioner or his or her authorized representative, a change in labeling or formulas of a pesticide may be made within the current period of registration, without requiring a new registration of the product. The period of registration shall be for one year, commencing on the first day of January and ending on the thirty-first day of December of each year.

(d) The registrant shall file with the commissioner a statement including:

(1) The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;

(2) The name of the pesticide;

(3) A complete copy of the labeling accompanying the pesticide and a statement

of all claims to be made for it including directions for use; and

(4) If requested by the commissioner, a full description of the tests made and the results thereof upon which the claims are based and the analytical method or methods employed in determining the percentage of each active ingredient listed on the label to be registered. In the case of renewal of registration, a statement is required only with respect to information which is different from that furnished when the pesticide was registered or last registered.

(e) The registrant shall pay an annual fee as prescribed by rules promulgated hereunder for each brand and grade of pesticide. The fees shall be deposited in the state treasury and to the credit of a special fund to be used only for carrying out the provisions of this article, and shall be expended upon order of the commissioner of agriculture, pursuant to section twenty-three [§ 19-16A-23] of this article.

(f) The commissioner may require the submission of the complete formula of any pesticide. If it appears to the commissioner that the composition of the item is such as to warrant the proposed claims for it and if the item and its labeling and other material required to be submitted to comply with the requirements of this article, he or she shall register the item.

(g) If it does not appear to the commissioner that the item is such as to warrant the proposed claims for it or if the item and its labeling and other material required to be submitted do not comply with the provisions of this article, he or she shall notify the registrant of the manner in which the item, labeling or other material required to be submitted fails to comply with this article so as to afford the registrant an opportunity to make the necessary corrections.

(h) The commissioner may not make public, information which, in his or her judgment, contains or relates to trade secrets, commercial or financial information obtained from a person and privileged or confidential, except that, when necessary to carry out the provisions of this article, information relating to formulas of products acquired by authorization of this article may be revealed to any federal, state or local agency consultant and may be revealed at a public hearing or in findings of fact issued by the commissioner when it is in the public's best interest.

(i) The commissioner shall provide the necessary forms to register pesticides.

§19-16A-6. Refusal or cancellation of registration.

The commissioner may refuse or cancel the registration of a pesticide if he or she finds, after a hearing, that use of the pesticide has demonstrated unreasonable adverse effects on the environment; or, a false or misleading statement about the pesticide has been made or implied by the registrant or the registrant's agent, in writing, verbally or

through any form of advertising or literature or the registrant has not complied or the pesticide does not comply with the requirements of this article or any rule adopted pursuant to this article.

§19-16A-7. Annual pesticide business license.

(a) No person may engage in the application of pesticides for hire at any time without a pesticide application business license issued by the commissioner. The commissioner shall require an annual fee for each pesticide application business license issued as prescribed by rules promulgated under this article.

(b) Application for a pesticide application business license shall be made in writing to the commissioner on forms approved or supplied by the commissioner. Each application for a license shall contain information regarding the applicant's qualifications and proposed operations, license classification or classifications the applicant is applying for and shall include the following:

(1) The full name of the person applying for the license;

(2) If different from subdivision (1) of this section, the full name of the individual qualifying under subsection (c) of this section;

(3) If the applicant is a person other than an individual, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation or group;

(4) The principal business address of the applicant in the State and elsewhere;

(5) The address of each branch office or suboffice from which the business of applying pesticides is carried on. Each suboffice shall be licensed;

(6) The name and address of each certified commercial applicator applying pesticides or supervising the application of pesticides for the pesticide application business;

(7) State tax number; and

(8) Any other necessary information prescribed by the commissioner.

(c) The commissioner may not issue a pesticide application business license until the owner, manager, partner or corporate officer is qualified by passing an examination to demonstrate to the commissioner his or her knowledge of the state and federal pesticide laws, safe use and storage of pesticides. The pesticide application business

shall be limited to the classification or classifications for which the business maintains certified commercial applicators in their employ.

(d) If the commissioner finds the applicant qualified to apply pesticides in the classifications the applicant has applied for, and if the applicant files the financial security required by this article, and if the applicant applying for a license to engage in aerial application of pesticides has met all the requirements of the Federal Aviation Agency, the Aeronautics Commission of this State, and any other applicable federal or state laws or regulations to operate the equipment described in the application, the commissioner shall issue a pesticide application business license. The license so issued expires at the end of the calendar year of issue, unless it has been revoked or suspended prior thereto by the commissioner for cause. When the financial security required under this article is dated to expire at an earlier date, the license shall be dated to expire upon expiration date of the financial security. The commissioner may limit the license of the applicant to certain classifications of pest control work, or to certain areas or to certain types of equipment or to certain specific pesticides, if the applicant is only so qualified. If a license is not issued as applied for, the commissioner shall inform the applicant in writing of the reasons for the denial.

(e) All persons applying pesticides as a pesticide business, whether or not they are applying restricted use pesticides, must be a certified applicator in the appropriate category or subcategory, or shall be a registered technician under the direct supervision of a certified commercial applicator.

(f) All funds collected pursuant to this section shall be deposited in the Pesticide Control Fund of the State, pursuant to section twenty-three [§ 19-16-23] of this article.

§19-16A-8. Financial security requirement for licensed pesticide business.

(a) The commissioner may not issue a pesticide application business license until the business has furnished evidence of financial security with the commissioner consisting of either:

(1) A surety bond to the benefit of the State of West Virginia; or

(2) A liability insurance policy from a person authorized to do business within this State or a certificate thereof protecting persons who may suffer legal damages as a result of the operation of licensee's business operation.

(b)(1) The commissioner, taking into consideration the different classifications or categories of pesticide application business licenses, shall establish the amount and kind of financial security for property damage and public liability and including loss of damage arising out of the actual use of any pesticide for each classification of license required. The financial security shall be maintained at not less than that sum at all times

during the licensed period. The commissioner shall be notified forty-five days prior to any reduction at the request of the applicant or cancellation of such surety bond or liability insurance by the surety or insurer. The total and aggregate liability of the surety or insurer for all claims is limited to the face of the bond or liability insurance policy. The commissioner may accept a liability insurance policy or surety bond in the proper sum which has a deductible clause in the amount not exceeding that which the commissioner shall establish separately for aerial applicators and for other commercial applicators for the total amount of financial security required herein. If the applicant has not satisfied the requirement of the deductible amount in any prior legal claim, the deductible clause may not be accepted by the commissioner unless the applicant furnishes the commissioner with a surety bond or liability insurance which satisfies the amount of the deductible as to all claims that may arise in his or her application of pesticides.

(2) If the surety furnished becomes unsatisfactory, the applicant shall, upon notice, immediately establish new evidence of financial security and if he or she fails to do so, it is unlawful thereafter for such person to engage in said business of applying pesticides until the financial security is brought into compliance with the requirements as established by the commissioner and the person's license is reinstated.

(c) Nothing in this article may be construed to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though the use conforms to the rules of the commissioner.

§19-16A-9. Records of pesticide businesses.

As a condition of obtaining or renewing a license, each pesticide business shall maintain such records as required by the rules promulgated hereunder. The commissioner may require a licensed pesticide business to submit records to his or her office and failure to submit requested records is grounds for revocation of a license.

§19-16A-10. Restricted use pesticides.

No person may use any pesticide classified for restricted use unless that person has first complied with the certification requirements of the rules promulgated pursuant to this article, unless such person is acting under the direct supervision of a certified applicator.

§19-16A-11. Application of this article to government entities; liability.

All state agencies, municipal corporations or any other governmental agency are subject to the provisions of this article and rules adopted thereunder concerning the registration or application of pesticides.

These agencies are exempt from any fees prescribed by this article. The governmental agencies and municipal corporations are subject to legal recourse by any person damaged by the application of any pesticide, and the action may be brought in the county where the damage or some part thereof occurred.

§19-16A-12. Private and commercial applicator's license and certificate; registered technician certificate.

(a) Application for a private or commercial applicator's license shall be made in writing to the commissioner on forms approved or supplied by the commissioner. Each application shall contain:

- (1) The full name of the person applying for the license;
- (2) The principal business address of the applicant;
- (3) A listing of agricultural commodities produced or to be produced by the applicant applying for a private applicator's license;
- (4) Any other necessary information prescribed by the commissioner; and
- (5) Payment of required fees.

(b) The commissioner may renew any applicant's license under each classification for which such applicant is licensed. However, the applicant may, at no greater than three-year intervals, be required to present evidence or documentation indicating he or she has attended a workshop or training session approved by the commissioner.

(c) No private applicator may use any restricted use pesticide which is restricted to use by certified applicators without having first complied with the certification requirements determined by the commissioner as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons, for that specific pesticide use.

(d) As a minimum requirement for certification, a private or commercial applicator must show that he or she possesses a practical knowledge of the pest problems and pest control practices associated with his or her agricultural operations, proper storage, use, handling and disposal of the pesticides and containers and his or her related legal responsibility. This practical knowledge includes ability to:

- (1) Recognize common pests to be controlled and damage caused by them;
- (2) Read and understand the label and labeling information including the common name of pesticides he or she uses; the crop, animal or site to which they will be applied;

pests to be controlled; timing and methods of application; safety precautions; any preharvest or reentry restrictions; and any specified disposal procedures;

(3) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances, taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;

(4) Recognize local environmental situations that must be considered during application to avoid contamination; and

(5) Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

(e) If the commissioner does not certify the private or commercial application under this section, he or she shall inform the applicant in writing of the reasons therefor.

(f) Any written examinations required of private or commercial applicators may not be more stringent than the requirements for such examinations by the United States Environmental Protection Agency.

§19-16A-13. Renewals.

Any person holding a current valid license, permit or certification may renew such license, permit or certification for the next year without taking another examination, unless the license, permit or certification is not renewed by the first day of April of any year in which case such licensee, permittee or certificate holder shall be required to take another examination: Provided, That no person holding an expired license, permit or certification may engage in any activity for which such license, permit or certification is required until such license, permit or certification has been renewed. Any person renewing after the fifteenth day of January of each year shall pay a penalty of twenty-five percent of the established license, permit or certificate fee. A penalty of fifty percent of the established fee shall be levied after the first day of February of each year. Persons delinquent after the first day of February shall be so notified.

§19-16A-14. Exemptions.

(a) *Veterinarian exemption.* -- The provisions of section seven [§ 19-16A-7] of this article relating to licenses and requirements for their issuance do not apply to a doctor of veterinary medicine applying pesticides to animals during the normal course of his or her veterinary practice: Provided, That he or she is not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation and does not publicly hold himself or herself out as a pesticide applicator.

(b) *Farmer exemption.* -- The provisions of section seven of this article relating to licenses and requirements for their issuance do not apply to any farmer applying pesticides for himself or herself or with ground equipment or manually for his or her farmer neighbors: Provided, That he or she:

(1) Operated farm property and operates and maintains pesticide application equipment primarily for his or her own use;

(2) Is not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation and that he or she does not publicly hold himself or herself out as a pesticide applicator; and

(3) Operates his or her pesticide application equipment only in the vicinity of his or her own property and for the accommodation of his or her neighbors.

(c) *Experimental research exemption.* -- The provisions of section seven of this article relating to licenses and requirements for their issuance do not apply to research personnel applying pesticides only to bona fide experimental plots.

§19-16A-15. Reexamination or special examinations.

Any applicator, whose certificate has been suspended, revoked or modified or if significant technological developments have occurred requiring additional knowledge related to the classification or subclassification for which the applicator has applied, or when required by additional standards established by the United States Environmental Protection Agency, or when required by rules of the commissioner, is required to be reexamined or to take special examinations and furnish satisfactory evidence of completion of educational courses, programs or seminars approved by rules relating to applicator's certification.

§19-16A-16. Employee training program.

A licensee shall register with the commissioner any employee who performs pest control within thirty days after employment. The employee must have successfully completed training approved by the department. An employee who has not successfully completed training may only apply pesticides if a certified applicator is physically present at the time and place the pesticide is applied. The commissioner shall adopt rules that establish the criteria for approved training programs for such registered technicians.

§19-16A-17. Reciprocal agreement.

The commissioner may waive all or part of any license examination requirement provided for in this article on a reciprocal basis with any other state which has standards at least equal to those of West Virginia and with federal agencies whose employees are

certified under a government agency plan approved by the administrator of the federal Environmental Protection Agency and may issue a license to the applicant: Provided, That all other requirements of this article are complied with by the applicant.

§19-16A-18. Denial, suspension or revocation of license, permit or certification; civil penalty.

The commissioner shall notify any licensee of violations of this article by the licensee, and after inquiry, including opportunity for a hearing, may deny, suspend, revoke or modify any provision of any license, permit or certification issued under this article, or he or she may impose a civil penalty as provided hereafter by this article, if he or she finds that the applicant or the holder of a license, permit or certification has violated any provision of the act or any rule promulgated hereunder.

§19-16A-19. Pesticide accidents; incidents or loss.

(a) Any person claiming damages for a pesticide application shall file with the commissioner, on a form provided by the commissioner, a written statement claiming that he or she has been damaged. This report must be filed within sixty days after the date that damages occurred. If a growing crop is alleged to have been damaged, the report must be filed prior to the time that twenty-five percent of the crop has been harvested. The statement shall contain, but not be limited to, the name of the person allegedly responsible for the application of said pesticide, the name of the owner or lessee of the land on which the crop is grown and for which damage is alleged to have occurred and the date on which the alleged damage occurred. The commissioner shall, upon receipt of the statement, notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility of the damages claimed and furnish copies of statements as requested. The commissioner shall inspect damages whenever possible and when he or she determines that the complaint has sufficient merit he or she shall make the information available to the person claiming damage and to the person who is alleged to have caused the damage.

(b) The filing of the report or the failure to file a report need not be alleged in any complaint which is filed in a court of law, and the failure to file the report may not be considered a bar to the maintenance of any criminal or civil action.

(c) The failure to file a report is not a violation of the provisions of this article. However, if the person failing to file a report is the only one injured from such use or application of a pesticide by others, the commissioner may, when in the public interest, refuse to hold a hearing for the denial, suspension or revocation of a license or permit issued under this article until a report is filed.

(d) Where damage is alleged to have occurred, the claimant shall permit the commissioner, the licensee and his or her representative, such as bondsman or insurer,

to observe within reasonable hours the lands or nontarget organism alleged to have been damaged in order that the damage may be examined. Failure of the claimant to permit the observation and examination of the damaged lands automatically bars the claim against the licensee.

§19-16A-20. Legal recourse of aggrieved persons.

Any person aggrieved by any action of the commissioner may obtain a review thereof by filing in a court of competent jurisdiction, within thirty days of notice of the action, a written petition praying that the action of the commissioner be set aside. A copy of such petition shall forthwith be delivered to the commissioner and within thirty days thereafter the commissioner shall certify and file in the court a transcript of any record pertaining thereto, including a transcript of evidence received, whereupon the court has jurisdiction to affirm, set aside or modify the action of the commissioner, except that the findings of the commissioner as to the facts, if supported by substantial evidence, are conclusive.

§19-16A-21. Violations.

It is unlawful for any person to manufacture, distribute, sell or offer for sale, use or offer to use:

(1) *Product registration.*

(A) Any pesticide which is not registered pursuant to the provisions of this article, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representation made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration, in the discretion of the commissioner, a change in the labeling or formula of a pesticide may be made, within a registration period, without requiring registration of the product, however, changes are not permissible if they lower the efficiency of the product.

(B) Any pesticide sold, offered for sale or offered for use which is not in the registrant's or the manufacturer's unbroken container and to which there is not affixed a label, visible to the public, bearing the following information:

(i) The name and address of the manufacturer, registrant or person for whom manufactured;

(ii) The name, brand or trademark under which the pesticide is sold; and

(iii) The net weight or measure of the content, subject to such reasonable variation as the commissioner may permit.

(C) Any pesticide which contains any substance or substances in quantities highly toxic to man, unless the label bears, in addition to any other matter required by this

article:

(i) A skull and crossbones;

(ii) The word "poison" prominently in red, on a background of distinctly contrasting color; and

(iii) A statement of an antidote for the pesticide.

(D) The pesticides commonly known as lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, sodium fluoride, sodium fluosilicate and barium fluosilicate unless they have been distinctly colored or discolored as provided by rules issued in accordance with this article, or any other white powder pesticide which the commissioner, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of coloration or discoloration, by rules, requires to be distinctly colored or discolored, unless it has been so colored or discolored. The commissioner may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this subsection if he or she determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(E) Any pesticide which is adulterated or misbranded, or any device which is misbranded.

(F) Any pesticide that is subject of a stop sale, use or removal order provided for hereinafter in this article until such time as the provisions of that section hereafter have been met.

(2) *Business/applicator violations.* -- In addition to imposing civil penalties or referring certain violations for criminal prosecution the commissioner may, after providing an opportunity for a hearing, deny, suspend, modify or revoke a license issued under this article, if he or she finds that the applicant, or licensee or his or her employee has committed any of the following acts, each of which is declared to be a violation:

(A) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized or sold;

(B) Used or caused to be used any pesticide in a manner inconsistent with its labeling or rules of the commissioner: Provided, That such deviation may include provisions set forth in section 2(ee) of the Federal Insecticide, Fungicide and Rodenticide Act, as the same is in effect on the effective date of this article, disposed of containers or unused portions of pesticide inconsistent with label directions or the rules of the commissioner in the absence of label directions if those rules further restrict such disposal;

(C) Acted in a manner to exhibit negligence, incompetence or misconduct in acting as a pesticide business;

(D) Made false or fraudulent records, invoices or reports;

(E) Failed or refused to submit records required by the commissioner;

(F) Used fraud or misrepresentation, or presented false information in making application for a license or renewal of a license, or in selling or offering to sell pesticides;

(G) Stored or disposed of containers or pesticides by means other than those prescribed on the label or adopted rules;

(H) Provided or made available any restricted use pesticide to any person not certified under the provisions of this article or rules issued hereunder;

(I) Made application of any pesticide in a negligent manner;

(J) Neglected or, after notice, refused to comply with the provisions of this article, the rules adopted hereunder or of any lawful order of the commissioner;

(K) Refused or neglected to keep and maintain records or reports required under the provisions of this article or required pursuant to rules adopted under the provisions of this article or refused to furnish or permit access for copying by the commissioner any such records or reports;

(L) Used or caused to be used any pesticide classified for restricted use on any property unless by or under the direct supervision of a certified applicator;

(M) Made false or misleading statements during or after an inspection concerning any infestation of pests found on land;

(N) Refused or neglected to comply with any limitations or restrictions on or in a duly issued certification;

(O) Aided, abetted or conspired with any person to violate the provisions of this article, or permitted one's certification or registration to be used by another person;

(P) Impersonated any federal, state, county or city inspector or official;

(Q) Made any statement, declaration or representation through any media implying that any person certified or registered under the provisions of this article is recommended or endorsed by any agency of this state;

(R) Disposed of containers or unused portions of pesticide inconsistent with label

directions or the rules of the commissioner in the absence of label directions if those rules further restrict such disposal;

(S) Detach, alter, deface or destroy, in whole or in part, any label or labeling provided for in this article or the rules promulgated under the provisions of this article; or

(T) Refuse, upon a request in writing specifying the nature or kind of pesticide or device to which such request relates, to furnish to or permit any person designated by the commissioner to have access to and to copy such records of business transactions as may be essential in carrying out the purposes of this article.

§19-16A-22. Criminal penalties; civil penalties; negotiated agreement.

(a) *Criminal penalties.* -- Any person violating any provision of this article or rule adopted hereunder is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars for the first offense, and for the second offense, shall be fined not less than five hundred nor more than one 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 rule adopted hereunder may be assessed a civil penalty by the commissioner. 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 and any hazards to the health and safety of the public and the demonstrated good faith of any person charged in attempting to achieve compliance with this article after written notification of the violation.

(2) The commissioner may assess a penalty of not more than five hundred dollars for each first offense, nonserious violation, and not more than one thousand dollars for a serious violation, or for a repeat or intentional 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) No state court may allow the recovery of damages for administrative action taken if the court finds that there was probable cause for such action.

§19-16A-23. Continuation of Pesticide Control Fund in State Treasury; disposition of certain fees to General Revenue Fund.

There is continued a special fund in the State Treasury to be known as Pesticide Control Fund and may be expended on order of the commissioner. All product registration fees, dealer, commercial and private applicator license fees, pesticide application business license fees, nondedicated fees and civil penalties collected under this article shall be placed in the Pesticide Control Fund. The proceeds of the Pesticide Control Fund may be used in carrying out the purpose of this article.

§19-16A-24. Issuance of subpoenas.

The commissioner may issue subpoenas to compel the attendance of the witnesses or production of books, documents and records anywhere in the state in any hearing affecting the authority or privilege granted by a license, certification or permit issued under the provisions of this article.

§19-16A-25. Right of commissioner to enter and inspect; enforcement of article.

(a) For the purpose of carrying out the provisions of this article, the commissioner may enter upon any public or private premises, other than a dwelling house and the curtilage thereof, at reasonable times, after reasonable notification to the owner, tenant or agent, in order to:

- (1) Have access for the purpose of inspecting any equipment subject to this article and such premises on which such equipment is kept or stored;
- (2) Inspect lands actually or reported to be exposed to pesticides;
- (3) Inspect storage or disposal areas;
- (4) Inspect or investigate complaints of injury to humans or land; or
- (5) Sample pesticides being applied or to be applied.

(b) If the commissioner is denied access to any land where such access was

sought for the purpose set forth in this article, he or she may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for said purposes. The court may, upon such application, issue the search warrant for the purposes requested.

(c) The commissioner, with or without the aid and advice of the county prosecuting attorney, is charged with the duty of enforcing the requirements of this article and any rules issued hereunder. In the event a county prosecuting attorney refuses to act on behalf of the commissioner, the Attorney General shall so act.

(d) The commissioner may bring an action to enjoin the violation or threatened violation of any provisions of this article or any rule made pursuant to this article in a court of competent jurisdiction of the county in which such violation occurs or is about to occur.

§19-16A-26. Issuance of stop-sale; use or renewal orders; judicial review.

The commissioner shall issue and enforce a written or printed “stop-sale, use or renewal” order directed to the owner or custodian of any lot of pesticide, requiring him or her to hold the lot of pesticide at a designated place, when the commissioner finds the pesticide is being offered or exposed for sale or use or is being used in violation of any of the provisions of this article, until the law has been complied with and the pesticide is released in writing by the commissioner, or the violation has been otherwise legally disposed of by written authority. The owner or custodian of such pesticide has the right to judicial review of such order in accordance with the provisions of article five [§§ 29A-5-1 et seq.], chapter twenty-nine-a of this code. The provisions of this section may not be construed as limiting the right of the commissioner to proceed as authorized by other provisions of this chapter. The commissioner shall release the pesticide so withdrawn when the requirements of the provisions of this chapter have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal.

§19-16A-27. Issuing warnings.

Nothing in this article requires the commissioner to report, for the institution of proceedings under this article, minor violations of this article whenever the commissioner believes that the public interest will be adequately served by a suitable written notice or warning to the person violating the provisions of this article.