

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Tuesday, November 14, 1995, 9:00 a.m. to 12:00 Noon

Senate Finance Committee Room - M-451

1. Approval of Minutes - Meeting October 17, 1995
2. Review of Legislative Rules:
 - a. Contractor Licensing Board
West Virginia Contractor Licensing Act
 - b. Department of Agriculture
Integrated Pest Management Programs in Schools and Day
Care Centers
 - c. Dept. Agriculture
Frozen Desserts and Imitation Frozen Desserts
 - d. Dept. Agriculture
Dairy Products and Imitation Dairy Products
 - e. Environmental Protection
Coalbed Methane Wells
 - f. State Tax Division
Business and Occupation Tax
 - g. Division of Health
Standards for Local Boards of Health
 - h. Jail and Correctional Facility Standards Commission
Minimum Standards for Construction, Operation and
Maintenance of Correctional Facility
 - i. Jail and Correctional Facility Standards Commission
Minimum Standards for Construction, Operation and
Maintenance of Jails
 - j. Infrastructure & Jobs Development Council
Infrastructure & Jobs Development Council Funding
Rules
3. Other Business:

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Rules
3. Other Business:

NOVEMBER 14

TENTATIVE AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Tuesday, November 14, 1995, 9:00 a.m. to 12:00 Noon

Senate Finance Committee Room - M-451

1. Approval of Minutes - Meeting October 17, 1995
2. Review of Legislative Rules:
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Maintenance of Correctional Facility
 - i. Jail and Correctional Facility Standards Commission
Minimum Standards for Construction, Operation and
Maintenance of Jails
 - j. Infrastructure & Jobs Development Council
Infrastructure & Jobs Development Council Funding
Rules
3. Other Business:

Tuesday, November 14, 1995

9:00 a.m. - 1:00 p.m.

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Robert "Chuck" Chambers,
ex officio nonvoting member

Senate

House

Ross, Chairman
Grubb, Vice Chairman
Anderson
Boley
Buckalew
Macnaughtan

Douglas, Chairman
Linch, Vice Chairman
Compton
Faircloth
Gallagher
Riggs

The meeting was called to order by Mr. Ross, Co-Chairman.

The minutes of the October 17, 1995, meeting were approved.

Debra Graham, Committee Counsel explained that the rule proposed by the Contractor Licensing Board, West Virginia Contractor Licensing Act, had been laid over at the Committee's meeting on September 11, 1995, and that it had been removed from the agenda at the Committee's October 17, 1995, meeting. Chris Quaesbarth, Deputy Commissioner, responded to questions from the Committee.

Mr. Faircloth moved that Section 5.5 of the proposed rule be modified to decrease the late payment fee from \$90 to \$25. The motion was adopted.

Mr. Faircloth moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham stated that the rule proposed by the Department of Agriculture, Integrated Pest Management Programs in Schools and Day Care Center, had been placed at the foot of the Committee's agenda at the Committee's October 17, 1995, meeting and that the Committee had adjourned prior to taking action on the proposed rule. She responded to questions from the Committee. Bob Frame, Assistant Director of the Pesticide Section, distributed information to the Committee and answered questions from the Committee. Dr. Peggy Powell, Compliance Assistance Specialist, Pesticide Regulatory Programs, responded to questions from the Committee.

Mr. Faircloth moved that the Committee recommend that the Department withdraw the proposed rule and requested a roll call vote.

Ben Shew, Kanawha County Schools, Director of Maintenance, addressed the Committee.

Mr. Anderson moved the previous question.

Mr. Faircloth's motion failed 5 to 7.

Ms. Douglas moved that the proposed rule be approved as modified. After discussion on the motion, Ms. Douglas asked unanimous consent to withdraw her motion. There being no objection, the motion was withdrawn.

Mr. Gallagher moved that the proposed rule be placed at the foot of the agenda.

Mr. Ross told the other members of the Committee that the rule proposed by the Division of Environmental Protection, Coalbed Methane Wells, had been removed from the agenda.

Ms. Graham reviewed her abstract on the rule proposed by the Department of Agriculture, Frozen Desserts and Imitation Frozen Desserts, and stated that the Department has agreed to technical modifications. John Liggett, Assistant Director, Regulatory Protection, responded to questions from the Committee.

Mr. Buckalew moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Department of Agriculture, Dairy Products and Imitation Dairy Products, and stated that the Department has agreed to technical modifications. Mr. Liggett answered questions from the Committee.

Mr. Macnaughtan moved that the proposed rule be modified to resolve any conflict with federal regulations on labeling and to include the updated reference to a referenced publication as requested by the Department. The motion was adopted.

Mr. Buckalew moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham told the Committee that the rule proposed by the State Tax Division, Business and Occupation Tax, had been laid over at the Committee's previous meeting.

Ms. Douglas moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Douglas informed the Committee that the rule proposed by the Division of Health, Standards for Local Boards of Health, had been removed from the agenda.

Ms. Graham reminded the Committee that the rules proposed by the Jail and Correctional Facility Standards Commission, Minimum Standards for Construction, Operation and Maintenance of Correctional Facilities and Operation and Maintenance of Jails, had been laid over at the previous meeting. She briefly explained the proposed rules.

Ms. Douglas moved that Section 10 of the proposed rule relating to the Operation and Maintenance of Jails be modified to delete language prohibiting tobacco in facilities operated jointly by the Regional Jail and Correctional Facility Authority and the Division of Corrections. The motion was adopted.

Frank Shumaker, Deputy Director, Regional Jail & Correctional Facility Authority, responded to questions from the Committee.

Mr. Gallagher moved that Section 10 of the proposed rule relating to the Operation and Maintenance of Jails and Section 13 of the proposed rule relating to the Operation and Maintenance of Correctional Facilities be modified to include language stating that the use of or the withdrawal from nicotine is not considered a chemical dependency for the purposes of the rule and that an affected inmate would not qualify for medical or psychological treatment or counseling. The motion was adopted.

Mr. Buckalew moved that the proposed rule relating to the Operation and Maintenance of Correctional Facilities be approved as modified. The motion was adopted.

Ms. Douglas moved that the Committee reconsider its action whereby it adopted her modification to the proposed rule relating to the Operation and Maintenance of Jails. The motion was adopted.

Ms. Douglas requested unanimous consent to withdraw her motion. There being no objection, the motion was withdrawn.

Mr. Anderson moved that the proposed rule be approved as modified. The motion was adopted.

Rita Stuart, Associate Counsel, reviewed her abstract on the rule proposed by the Infrastructure & Jobs Development Council, Infrastructure & Jobs Development Council Funding Rules. She explained modifications being proposed by the Council in response to her abstract and answered questions from the Committee. Steve Chambers, West Virginia American Water Company, and Mike Basile, Secretary of the Infrastructure & Jobs Development Council, addressed the Committee and responded to questions.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 11/14/95

TIME: 9:00-12:00

NAME **Present** **Absent** **Yeas** **Nays**

Chambers, Robert "Chuck", Speaker

Douglas, Vickie, Co-Chair

Linch, Larry, Vice-Chair

Compton, Mary Pearl

Faircloth, Larry V.

Gallagher, Brian

Riggs, Dale

Tomblin, Earl Ray, President

Ross, Michael, Co-Chair

Grubb, David, Vice-Chair

Anderson, Leonard

Boley, Donna

Buckalew, Jack

Macnaughtan, Don

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RE: _____

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: LRMRC

DATE: 10/14/95

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly <u>Robert Frame</u>	<u>1900 Kan. Blvd E Char., WV 25305-0190</u>	<u>Agriculture</u>	
<u>Peggy K Powell</u>	"	"	
<u>BARBARA SMITH</u>	<u>1207 LARCHWOOD RD, CH1ST</u>	<u>SELF.</u>	<u>X FROZ DESS / DAIRY</u>
<u>BEN SHAW</u>	<u>3300 PENN AVE CHAS 25302</u>	<u>KANAWHA Co. Schools Dir. Of Maint</u>	<u>X IPM</u>
<u>JOHN MONTGOMERY</u>	<u>CAPITOL</u>	<u>TAX & REVENUE</u>	<u>AS NECESSARY</u>
<u>Keith Larson</u>	"	"	"
<u>John Liggitt</u>	<u>1900 Kanaha Blvd. E.</u>	<u>Dept. of Agriculture</u>	
<u>Don Weekley</u>	<u>445 W. Pers. Clarksburg</u>	<u>CNB Transmission</u>	
<u>CHRIS QUASEBARTH</u>	<u>Bldg. 3, CAPITOL</u>	<u>DIVISION OF LABOR</u>	<u>IF NECESSARY</u>
<u>Heenan Rogers</u>	<u>905 7th Ave</u>	<u>Standard Est.</u>	
<u>Chyler Quady</u>	<u>1804 19th St. Martinsburg WV</u>	<u>HOUSE DOCTOR</u>	<u>X</u>
<u>Tommy Taylor</u>	<u>2180 Penn Ave Charleston</u>	<u>Terminix</u>	
<u>Mark Shumaker</u>	<u>Regional Jail Authority</u>		
<u>Chris Smith</u>	<u>PO Box 4432, Chas, 25314</u>	<u>Kan County Schools</u>	<u>X IPM</u>

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 11/14/95

TIME: 10:25

NAME Present Absent Yeas Nays

Chambers, Robert "Chuck", Speaker

Douglas, Vickie, Co-Chair

Linch, Larry, Vice-Chair

Compton, Mary Pearl

Faircloth, Larry V.

Gallagher, Brian

Riggs, Dale

Tomblin, Earl Ray, President

Ross, Michael, Co-Chair

Grubb, David, Vice-Chair

Anderson, Leonard

Boley, Donna

Buckalew, Jack

Macnaughtan, Don

TOTAL

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RE: Motion by Delegate Faircloth to rec that
the agency (Dept of Agriculture) withdraw the
proposed rule (Integrated Pest Mgt)

October 12, 1995

The Honorable Vicki Douglas
1003 Chestnut Dr.
Martinsburg, WV 25401

c/o WV House of Delegates
Building One, Room E-215
1900 Kanawha Boulevard, East
Charleston, WV 25305-0470

Dear Delegate Douglas:

I want to again thank you for taking the time to discuss the emergency school and day care integrated pest management (IPM) regulations that have been developed by the West Virginia Department of Agriculture as authorized by HB 2471. As chairperson of the Legislative Rule Making Review Committee (LRMRC), I certainly understand how busy you are and I appreciate your willingness to make time to talk about this matter with me.

As I noted, the National Pest Control Association (NPCA) is the national trade association which represents the more than 10,000 structural pest control companies for legislative, regulatory and educational purposes. Our members provide services in a variety of settings, including private residences, commercial facilities, schools and day care centers using a variety of control methods, including chemical, cultural, manual and mechanical.

NPCA has long promoted IPM. Long before it became a marketing buzz word, we stressed the practicality of the IPM approach. Therefore, I should point out that NPCA is not trying to repeal HB 2471. Although we would feel more comfortable with voluntary legislation rather than mandatory, we certainly understand the legislature's desire to address the issue of pesticide use in schools. After all, children are our most valuable resource and school IPM is an important issue and one which we anticipate will be taken up by more and more legislatures throughout the country.

Ironically, the Pest Control Operators Association of West Virginia (PCOAWV), a group who we deal with on almost a daily basis, promotes IPM as vigorously and aggressively as any state pest control association. In fact, almost all of the law's provisions have been practiced by NPCA and PCOAWV members alike for many years. Yet, there are a few provisions in the department's emergency regulations that are very troublesome and could adversely impact the quality of pest control services provided to schools and day care centers in West Virginia.

The Honorable Vicki Douglas

October 12, 1995

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First, I would like to question the Department's reasoning for creating a new applicator category for applicators servicing schools and day care centers. Specifically, Section Nine of the emergency regulations (9.5, 9.5.1, 9.5.2 and 9.5.3) require applicators using pesticides in schools after July 1, 1996 to be examined and certified in Urban Integrated Pest Management, also known as applicator subcategory 6.3.h.E. (Enclosed is a copy of Section Nine.) Let me make it perfectly clear, both NPCA and PCOAWV strongly endorse laws and regulations requiring those applying pesticides in public places to be trained and certified. In fact, NPCA has been lobbying Congress to make this federal law. Fortunately, regulations adopted under the West Virginia Pesticide Control Act of 1990 already require those using pesticides in public places to be trained and certified.

The department already dictates the standards applicators must meet in order to become certified under the current pesticide applicator certification program. Creating an additional applicator category does not guarantee that applicators will actually practice IPM techniques. The creation of another category is just another licensing and certification burden with which pest control operators will be forced to comply. **Therefore, NPCA strongly urges you and the LRMRC to strike Sections 9.5, 9.5.1, 9.5.2 and 9.5.3.**

A second concern NPCA has with the emergency regulations is the requirement that pest control operators go progressively through each step of pest control, as laid out by the department. Although the statutory language of HB 2471 already expressly prohibits the application of pesticides before monitoring indicates pest infestations are present, the department has created a number of steps pest control operators must go through before using the pest control technique they feel is most appropriate. Not only will this provision handcuff applicators, it will drastically increase the amount schools pay for pest control. **NPCA believes this provision (Section 6.2) is wrought with problems and asks that it be struck.** (Also enclosed is Section 6.2.)

For instance, if a pest infestation has cropped up because of a leaky pipe, the pipe would have to be repaired before pesticides could be applied to control the infestation. Most school systems, however, do not have the financial resources to make many of the repairs this law requires. Yet, as written, these regulations put PCOs in the position of either having to refuse to treat the school's problem or violate the law.

Ironically, this provision could result in the use of more pesticides. Even if a pest control operator feels a product the department has categorized as a Level Three pesticide would be the most effective product for a particular situation, he or she would be mandated to use other, possibly less useful products, before being able to use the Level Three product.

The Honorable Vicki Douglas

October 12, 1995

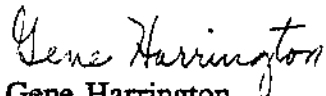
Page 3

Lastly, NPCA is concerned that the regulations developed by the Department allow for Local School Improvement Councils to create pest threshold levels or levels at which the existence of pests warrant the use of pesticides. Although NPCA certainly doesn't advocate the use of pesticides at the sight of a single ant, we have a serious concern about granting Local School Improvement Councils the authority to approve pest threshold levels. NPCA would dare say that there is probably not a single member of any Local School Improvement Council who is an entomologist. That's not to say these panels don't have educated individuals on them. They just don't have individuals who are qualified to set pest threshold levels.

The regulations should require Councils to consult with a pest control operator, a department official, an entomologist or a university extension service employee before approving threshold levels. It is also important to point out that there is no such thing as a pest threshold level for certain pests. For instance, when wasps and ticks are present in a school environment, there is no such thing as a threshold level. A single one can cause harm or possibly death. **NPCA feels strongly that these regulations should stipulate that some pest species have no threshold level and the existence of a single one is an imminent danger.** (Enclosed is Section 4.4.)

Again I appreciate your time and consideration of this matter and urge you to call me at 1-800-678-6722 if you have any questions or concerns.

Sincerely,



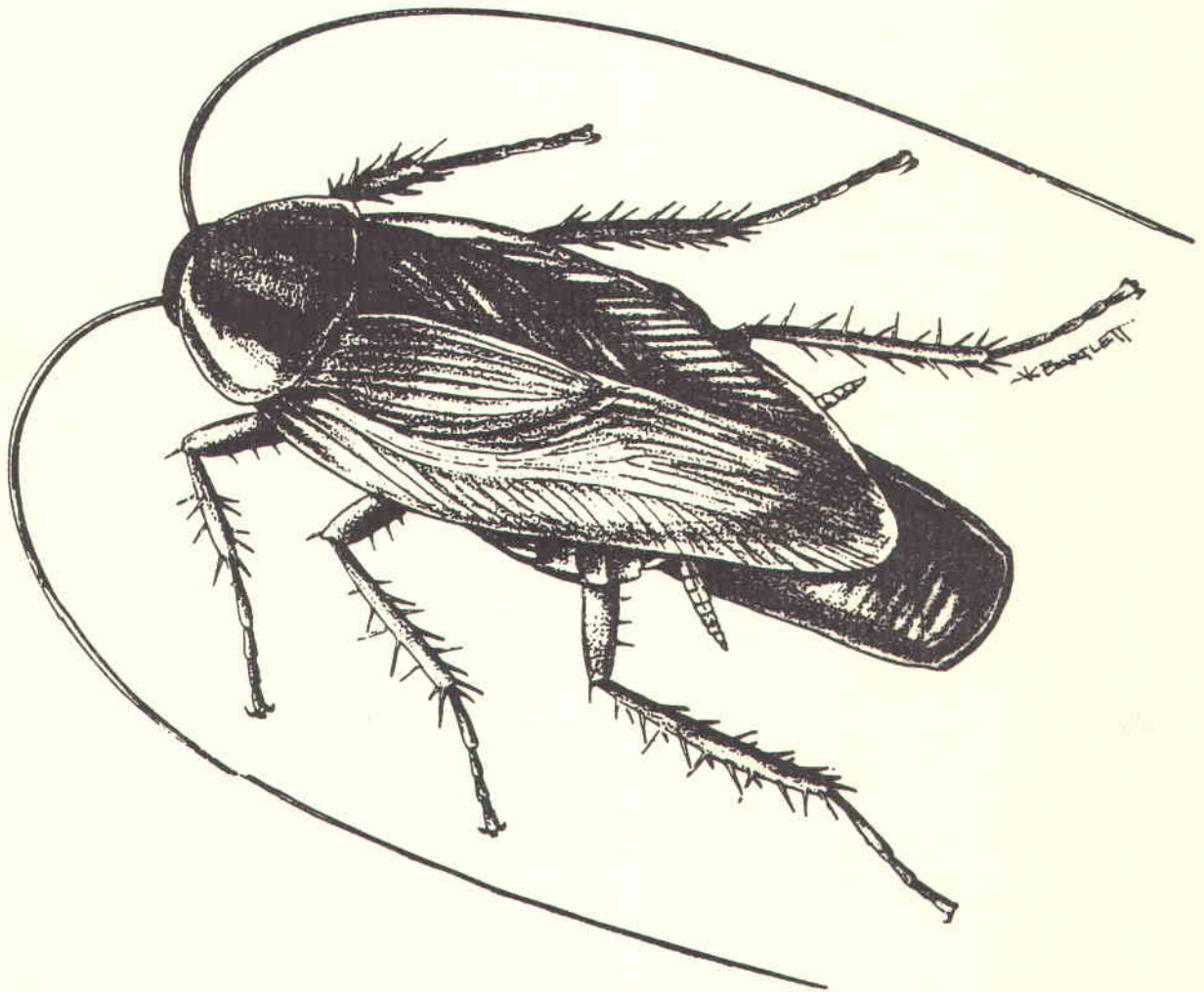
Gene Harrington
Manager of Government Affairs

Enclosures

Dist. at 11/14/95 meeting



Integrated Pest Management in Schools and Other Public Institutions



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Integrated Pest Management in Schools and Other Public Institutions

Public concern about the health and environmental risks associated with pesticides is increasing, particularly when children are involved. This has resulted in increased interest in the use of equally effective alternative pest control methods. Administrators and other persons who have pest control decision-making responsibilities for public institutions should become aware of the pest control options available to them.

The West Virginia Department of Agriculture prepared this document to acquaint you with **Integrated Pest Management (IPM)**, an alternative approach to traditional pest control. IPM can reduce the use of chemicals and provide economical and effective pest suppression. The purpose of this document is to serve as a guide for persons developing IPM programs in accordance with state regulations. It reviews the philosophy and organization of an IPM program for structural pests, identifies ways to reduce dependence on pesticides, and discusses alternative methods for managing structural pests.

This guide is not intended to discuss prevention and control of specific structural pests in detail. For further information on prevention and control of a specific pest, consult the list of references in Appendix III.

What Is Integrated Pest Management?

Integrated Pest Management is an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM programs use current, comprehensive information on the life cycles of pests and their interactions with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means, and with the least possible hazard to people, property, and the environment. IPM programs take advantage of all pest management options possible, including the judicious use of pesticides.

Understanding pest survival needs is essential to implementing IPM effectively. Pests seek habitats that provide basic needs such as air, moisture, food, and shelter. Pest populations can be prevented or controlled by creating inhospitable environments. This

can be accomplished through the removal of basic elements pests need to survive by blocking their access into buildings, restricting access to food and water, and eliminating harborage areas. Pests also may be managed by other methods such as traps, vacuums, or pesticides.

Establishing an IPM Program in Public Institutions

An efficient IPM program can be integrated with a facility's existing pest management plan and other building management activities. Activities such as preventive maintenance, janitorial practices, landscaping, occupant education, and staff training are all part of an IPM program. The following steps are an example of how an IPM decision network can be developed:

- STEP 1:** Develop an official IPM policy statement. This useful first step in making the transition from a conventional pesticide program to an IPM program goes beyond simply stating a commitment to support and implement an IPM approach. It acts as a guide for the pest manager to use in developing a specific IPM program.
- STEP 2:** Designate pest management roles for occupants, pest-management personnel, and key decision-makers, and assure good communication among them. Educate and train people for their respective roles.
- STEP 3:** Set pest management objectives for the sites. For every site, pest management objectives will differ. The type of pest management should be outlined.
- STEP 4:** Inspect sites; identify and monitor pest populations for potential problems.
- STEP 5:** Set action thresholds. These are the levels of pest populations or site environmental conditions that require remedial action.
- STEP 6:** Apply IPM strategies to control pests. These include redesigning and repairing structures, improving sanitation, using traps, and applying pesticides judiciously.
- STEP 7:** Evaluate results to determine if pest management objectives are reached. Keep written records of all aspects of the program.

STEP 1 Developing an Official Policy Statement for Integrated Pest Management

A policy statement for integrated pest management should state the intent of the administration to implement an IPM program. It should briefly explain what is expected—the incorporation of existing services into an IPM program and the education and involvement of building occupants and the pest manager. (See Appendix I for a sample policy statement.)

STEP 2 Designating Pest Management Roles

The concepts and methods of IPM were originally developed in the 1940's in agricultural settings. Later, it was found that the IPM concept could be applied to a wide range of pest problems, including control of pests in structures. **One of the most important points to remember is that the interaction among the people involved in an institutional pest management system is the key to the success or failure of an IPM program.** When the respective roles of all the people in the pest management system are identified and agreed upon, and when these people communicate with each other, effective and less expensive protection of the site and the people can be achieved with reduced risk. In successful urban pest management systems, people function effectively as occupants, pest managers, or decision-makers, gaining the information they need, providing the information that others need, cooperating with each other, and meeting their special responsibilities to achieve the unique pest management objectives of the site. These functions and responsibilities are identified below and should be outlined in the facility's pest management plan.

The Occupants

Occupants are concerned about the safety of the pest control methods used, their effectiveness, and possible adverse effects. Occupants should receive information addressing these concerns and their roles in the pest management system. The most important responsibility of the occupants is sanitation. Much of the prevention and reduction of pest infestations depends on whether occupants cooperate to clean up food leftovers, food in lockers, gum under desks, and paper clutter. In addition, when people observe the presence of pests, it should be reported. Other actions may be required of, or be undertaken by, occupants depending upon their interest and the pest management

system. The more occupants participate in the program, the better the pest management system will work. It is important to note that unreasonable demands for a totally pest-free building or pest control without the use of any pesticides can cause an IPM program to fail.

Parents Have Special Roles to Play in School IPM Systems

Parents have the most responsibility for their children and they are their children's natural advocates. Parents' first school pest management responsibility is to learn about and follow IPM practices at home so that pests are not carried to school in notebooks, lunch boxes, clothing, or children's hair. Second, parents should be aware of the current pest management practices in their children's schools. The schools should welcome questions by the parents and encourage the parents to seek information about IPM. Visible interest and concern by the parents are valuable resources for the implementation of a school IPM program. Parents may express their views to the school superintendent, school board, school district management, and parent-teacher organizations or associations. Parents may participate on IPM advisory or oversight committees with school and government management.

Managing the Pests — The Pest Manager

In a pest management system, the pest manager is the person who observes and evaluates the site, or directs others to do so, and decides what needs to be done to achieve the site pest management objectives. The pest manager designs a pest management system that considers potential liability, applicator and occupant safety, costs, effectiveness, time commitment, and occupant satisfaction. The pest manager draws on knowledge gained through prior training and uses information on the site, the pest and its biology, occupant health and concerns, appropriate control measures, and expected results. The pest manager also performs the necessary pest management actions or directs others in the actions to be taken.

Because the pest manager usually has the responsibility of keeping both the occupants and the decision-makers informed, he or she has the greatest need for available information about the site, pests, and appropriate pest management methods. The system for the site must achieve the goals within the limitations posed by safety, time, money,

and available materials. The pest manager monitors the site and the pest population to determine if actions taken are successful and keeps accurate records of the amount, location, and dates of use of any pesticides.

Decision-Makers

Generally, persons who authorize the pest management program and control the money for pest management are people who are involved in the direct management or administration of the facility. On other occasions, the purchasing agent or contracting officer for a facility may be a major decision-maker for a site. At this level of pest management decision-making, concerns about costs, liability, time expended, method effectiveness, safety, and occupant satisfaction are foremost. These decision-makers also determine if the pest manager is performing at an acceptable level and if the pest management objectives are being met. Among other methods, this can be done by monitoring complaints from the occupants, by observation of the site environment, or by a combination of both. Decision makers must also provide the necessary level of financial commitment for any IPM program to succeed. Much understanding, cooperation, and commitment from everyone in the system—staff, managers, administrators, and the public—is needed for an IPM program to succeed.

Educating IPM Participants

An institutional IPM program should include a commitment to the education of the occupants. This education should include all staff, including nurses, cafeteria employees, and housekeeping and administrative personnel. All staff at the facility should learn about the basic concepts of IPM and how these principles are being applied in their particular situation. The staff will need to understand how their own behavior can increase or reduce pest problems.

Specific instructions should be provided on what to do and what not to do. For example, staff should not bring and use their own pesticides at school sites, move sticky traps or other pest monitoring devices, or prop open windows or screens in kitchens. All pesticide products, including those purchased at a retail store, should only be applied by properly trained and qualified personnel. Educating and training staff to function within

an IPM context is important to the success of an in-house IPM program. (Note: More specific training is required for the pest manager. Information about sources of training materials can be obtained from the West Virginia Department of Agriculture.)

Education is also a vital component of integrated pest management in schools. Many schools across the United States have incorporated environmental issues into their curricula. Science classes could include discussions and activities to learn more about the fascinating and diverse roles of insects, plants, rodents, and birds in our world. Most are harmless and many are actually beneficial in controlling pest populations. However, the presence of predatory insects, spiders, mites, and similar organisms is usually not desirable in occupied buildings. If good sanitation is practiced, populations of these insects can be kept at tolerable levels.

STEP 3 Setting Pest Management Objectives for Sites

Pest management objectives will differ for most sites and must be considered before establishing action threshold levels. For example, with buildings or other structures, the main objective might be to control damage caused by termites. In kitchens and food service areas where health of occupants is of concern, the main objective might be to control cockroaches. Administrators should outline specific objectives in a pest management plan. Examples of pest management objectives include:

- (1) Managing pests that may be found on site to prevent interference with the work or learning environment,
- (2) Protecting the health of building occupants,
- (3) Eliminating injury to building occupants, and
- (4) Preserving the integrity of buildings or structures.

STEP 4 Inspecting, Identifying, and Monitoring

An IPM program consists of a cycle of inspecting, identifying, monitoring, evaluating, and choosing the appropriate method of control. Routine inspection and accurate identification of pests are vital steps in IPM to ensure that control methods will be effective. Once the pest has been identified and the source of its activity pinpointed, habitat modifications—primarily exclusion, repair, and sanitation efforts—may greatly reduce the prevalence of the pest.

Monitoring includes inspecting areas for pest evidence, entry points, food, water, and harborage sites, and estimating pest population levels. The information gained through monitoring is evaluated to determine whether the action threshold has been exceeded and what can be done in the way of prevention.

A monitoring program should be conducted in each facility on an ongoing basis. Sticky traps designed for cockroaches and other crawling insects should be placed along wall/floor junctions, on vertical surfaces, behind appliances, in closets, cabinets and shelves, and in other areas where insects have been seen. Components of the monitoring program should include:

- A floorplan of the facility showing the number and location of each trap.
- Weekly inspection of each trap with the following information recorded on a Pest Surveillance Data Sheet:
 1. Date checked,
 2. Trap number and location,
 3. Trap condition (either OK or needs to be replaced),
 4. Numbers and species of insects trapped,
 5. Other evidence of pests (feces, rub marks, cast skins, etc.) or pest damage,
 6. Any need for pest management.
- Replacement of the traps at least every 2 months or when the adhesive is no longer tacky or when trap is full, whichever comes first.
- Removal and disposition of the insects trapped after numbers are recorded and identification is confirmed, to prevent counting specimens more than once and to prevent their use as food by other insects or rodents.

STEP 5 Setting Action Thresholds

An **action threshold** is the level at which action is initiated for each pest. It is determined by deciding how many pests can be tolerated by a buildings' occupants. Action thresholds are set by the pest manager and the occupants and should reflect pest management objectives for the site. **Note that the presence of a few pests does not necessarily require application of pesticides.**

When pest populations exceed action thresholds, action must be taken. Precise recommendations or actions to achieve specific results are an essential part of an IPM

program. Specific recommendations, including an explanation of the benefits, should be based on the evaluation of all available data obtained through inspecting, identifying, and monitoring. An example of an action threshold hierarchy for German cockroaches is shown in Table 1.

Table 1 Action Thresholds for Control of German Cockroaches ¹	
Average number trapped per zone ²	Action to be taken
0	None caught for 3 months, change monitoring to every 2 months, and replace bait stations at 6 months;
1-2	Continue routine use of bait stations, check for any sanitation problems;
3-6	Crack and crevice application in locations next to traps that had cockroaches, add or replace bait stations, review sanitation, check sanitation in 2 weeks;
7-15	Thorough crack and crevice treatment, review sanitation, place sticky traps for monitoring in 2 weeks;
15+	Close the facility and conduct a thorough inspection with a cockroach-flushing aerosol, spot and crack and crevice treatment, replace and increase bait stations, monitor every 2 weeks.
¹ After Robinson and Snell, 1991, from data collected in Virginia Department of Corrections facilities.	
² Each room or area monitored monthly for 24 hours with 3 to 5 sticky traps.	

STEP 6 Applying IPM Strategies

Pest-preventive measures can be incorporated into existing structures. Such preventive measures reduce the need for pesticide applications and include sanitation and structural repair, and the use of physical and mechanical controls such as screens, traps, and air doors. Specific IPM strategies for specific sites are provided below. Note that each facility will experience slightly different combinations of pests.

IPM Strategies for Indoor Sites

Typical Pests: Mice, rats, cockroaches, ant, flies, wasps, hornets, yellowjackets, spiders, termites, carpenter ants, and other wood-destroying insects. Although wasps, hornets, yellowjackets and spiders are beneficial as predators, stinging or biting arthropods can be troublesome or hazardous to occupants.

Entryways—Doorways, overhead doors, windows, holes in exterior walls, and openings around pipes, electrical fixtures, and ducts.

- Keep doors shut when not in use.
- Place weather stripping on doors and maintain tight door thresholds.
- Caulk and seal openings in walls. Seal utility chases.
- Install or repair screens.
- Install air curtains.
- Keep vegetation, shrubs, and wood mulch at least one foot away from structures.

Classrooms and Offices—Classrooms, laboratories, administrative offices, auditoriums, gymnasiums, and hallways.

- Allow food and beverages only in designated areas.
- If indoor plants are present, keep them healthy. When small insect infestations appear, remove them manually. If mechanical removal is not possible, use insecticidal soaps or insecticides that are not volatile. It may be necessary to move the plant to an unoccupied room for treatment.
- Keep areas as dry as possible by removing standing water and water damaged or wet materials.
- In science labs, store animal foods in tightly sealed containers and clean cages regularly. In all areas, remove dust and debris.
- Clean lockers and desks routinely.
- Vacuum carpeted areas frequently.
- In school situations, if students get head lice, consult your local health department

and have parents contact a physician. Discourage students from exchanging hats or caps at school.

Food Preparation and Serving Areas—Dining room, main kitchen, employees' lounge, lunchroom, snack area, vending machines, and food storage rooms.

- Store food and waste in containers that are inaccessible to pests. Containers must have tight lids and be made of plastic, glass, or metal. Waste should be removed at the end of each day.
- Place screens on vents, windows, and floor drains to prevent cockroaches and other pests from using unscreened ducts or vents as pathways.
- Create inhospitable living conditions for pests by reducing availability of food and water—remove food debris, sweep up crumbs, fix dripping faucets and leaks, and dry out wet areas.
- Improve cleaning practices, including promptly cleaning food preparation equipment after use and removing grease accumulation from vents, ovens, and stoves. Use caulk or paint to seal cracks and crevices.
- Capture rodents by using mechanical or glue traps. Place traps in areas inaccessible to children. Mechanical traps, including glueboards, used in rodent control must be checked daily. Dispose of killed or trapped rodents within 24 hours.

Rooms and Areas With Extensive Plumbing—Bathrooms, rooms with sinks, locker rooms, dishwasher rooms, swimming pools, and greenhouses.

- Promptly repair leaks and correct other plumbing problems to deny pests access to water.
- Routinely clean floor drains, strainers, and grates. Seal pipe chases.
- Keep areas dry. Avoid conditions that allow formation of condensation. Areas that never dry out are conducive to molds and fungi. Increasing ventilation may be necessary.
- Do not store paper products or cardboard boxes near moist areas, directly on the floor, or against the wall.

Maintenance Areas—Boiler-room, mechanical room, janitorial-housekeeping areas, and pipe chases.

- After use, promptly clean mops and mop buckets; dry mop buckets and hang mops vertically on a rack above a floor drain.
- Allow eating only in designated areas.
- Clean trash cans regularly, use plastic liners, and secure lids.
- Keep areas clean and as dry as possible; remove debris.

IPM Strategies for Outdoor Sites

Typical Pests: Structure-invading pests — rodents, insects, and other pests that enter structures from the outdoors. Turf pests — broad-leaf and grassy weeds, insects such as beetle grubs or sod webworms, diseases such as brown patch, and vertebrates such as moles. Ornamental plant pests — plant diseases and insects such as thrips, aphids, Japanese beetles, and bagworms.

Parking Lots, Athletic Fields, Playgrounds, Loading Docks, and Refuse Dumpsters:

- Regularly clean trash containers and gutters and remove all waste, especially food and paper debris.
- Secure lids on trash containers.
- Repair cracks in pavement and sidewalks.
- Provide adequate drainage away from the structure and on the grounds.

Turf—lawns, athletic fields, and playgrounds.

- Maintain healthy turf by selecting a mixture of turf types (certified seed, sod, or plugs) best adapted for the area. Check with the Cooperative Extension Service for recommendations on turf types, and management practices.
- Raise mowing height on turf to enhance its competition with weeds; adjust cutting height of mower, depending on the grass type; sharpen mower blades; and vary mowing patterns to help reduce soil compaction.

- Water turf infrequently but sufficiently during early morning hours to let turf dry out before nightfall; let soil dry slightly between waterings.
- Provide good drainage, and periodically inspect turf for evidence of pests or diseases.
- Allow grass clippings to remain in the turf (use a mulching mower or mow often) or compost with other organic material.
- Have the soil tested to determine pH and fertilizer requirements.
- Use a dethatcher to remove thatch. Do this in early fall or early spring when the lawns can recover and when overseeding operations are likely to be more successful.
- Time fertilizer application appropriately, because excessive fertilizer can cause additional problems, including weed and disease outbreaks. Apply lime if necessary.
- Use aeration to place soil on top of thatch so that microbes from soil can decompose thatch.
- Seed over existing turf in fall or early spring.

Ornamental Shrubs and Trees:

- Apply fertilizer and nutrients to annuals and perennials during active growth and to shrubs and trees during dormant season or early in the growing season.
- If using fertilizer, use the correct one at the suitable time, water properly, and reduce compaction.
- Prune branches to improve plants and prevent access by pests to structures.
- Use the appropriate pest-resistant variety (check with the West Virginia Department of Agriculture or the Cooperative Extension Service), and prune properly for growth and structure.
- Correctly identify the pest in question. When in doubt, send several specimens to the West Virginia Department of Agriculture or the Cooperative Extension Service. Once the pest is identified, recommendations can be made.
- Use pheromone traps as a time-saving technique for determining the presence and activity periods of certain pest species. Pheromones are chemicals released by various organisms as means of communication with others of the same species, usually as an aid to mating.

- Select replacement plant material from among the many disease-resistant types being developed by plant breeders throughout the country.
- Check with the West Virginia Department of Agriculture or the Cooperative Extension Service for information on plant types appropriate for your site.
- Remove susceptible plants if a plant disease recurs and requires too many resources, such as time, energy, personnel, or money. Some ornamental plants, trees, and turf are so susceptible to plant diseases that efforts to keep them healthy may be futile.

Applying Pesticides Judiciously

Many pesticides are available for use against urban and structural pests. Before application, the pest manager should consider the toxicity of the product and application techniques. Because excessive or improper application of pesticides can cause injury, these materials should be applied by properly trained and certified applicators in a manner to ensure maximum efficiency with minimal hazard. Pesticides should be applied only when occupants are not present in areas where they may be exposed to materials applied.

Although EPA registers pesticides for use within the United States, registration should not be taken to mean that a particular pesticide is "safe" under all conditions of use. Read and follow the pesticide label directions, know how to apply and handle these chemicals, and try to minimize the exposure to people and nontarget species of animals and plants.

The following general recommendations should minimize exposure to people and other nontarget species when the application of pesticides is considered:

- All pesticides used in West Virginia must be registered by EPA and the West Virginia Department of Agriculture.
- Read and follow all label instructions.
- Choose a pesticide that is labeled for the specific site. If possible, use a product that is intended for the pest you are trying to control and target-pest specific rather than broad spectrum.

- Limit the use of sprays, foggers, and volatile formulations. Instead, use baits and crack and crevice application when possible. Look for crack and crevice label instructions on how to apply the pesticide. These treatments maximize the exposure of the pest to the pesticide while minimizing the pesticide exposure for the occupants.
- Place all rodenticides regardless of packaging either in locations not accessible to children and nontarget species or in tamper-resistant bait boxes. Outdoors, place bait inside the entrance of an active rodent burrow and then collapse the burrow entrance over the bait to prevent nontarget species' access. Securely lock or fasten shut the lids of all bait boxes. Place bait in the baffle-protected feeding chamber of the box. Never place bait in the runway of the box.
- Apply only when occupants are not present or in areas where they will not be exposed to the material applied. After application of aerosols or sprays, ventilate the room thoroughly as indicated on the pesticide label or as required by other regulations. Note any reentry time limits listed on the label and be aware that some residues can remain long after application.
- Use proper protective clothing or equipment when applying pesticides. Properly ventilate areas after pesticide application.
- Notify occupants according to the institution's policy statement. Pay particular attention to individuals who may be at higher risk.
- Keep copies of current pesticide labels, consumer information sheets, and Material Safety Data Sheets (MSDS) accessible.

Storing Pesticides

Store pesticides off-site or in buildings that are locked and inaccessible to all unauthorized personnel. Be sure adequate ventilation is provided for the pesticide storage area. Avoid storing pesticides in places where flooding is possible or in open places where they might spill or leak into the environment. Store flammable liquids away from an ignition source. Check label requirements and state recommendations for pesticide storage.

If pesticides are stored in occupied buildings, special care is necessary to ensure air

does not get contaminated. Notice should be placed outside the designated storage area. Store all pesticides in their original containers, and secure the lids tightly. Make sure that childproof caps are properly fastened. However, even closed pesticide containers may volatilize toxic chemicals into the air. Therefore, store pesticides only in spaces that are physically separated and closed off from occupied spaces and where there is adequate exhaust ventilation (i.e., the air is exhausted directly to the outside). In addition, precautions are needed to ensure that the air in the storage space has no chance of mixing with the air in the central ventilation system.

The pest manager is responsible for periodically checking stored pesticide containers for leaks or other hazards. To reduce pesticide storage problems, buy only enough of the pesticide to last through the use season. Mix only the amount of pesticide that is needed for the immediate application.

Equipment

The equipment used in an integrated pest management program is effective only when used by competent pesticide applicators. To use pesticides efficiently and economically applicators must understand the capabilities of their equipment.

Sprayers and Dusters

The one or two gallon stainless steel compressed air sprayer is the workhorse of pest control. The sprayers sold in garden centers for application of pesticides outdoors deliver much larger volumes and are unsuitable for indoor use.

Depending on the nozzle selection, the compressed air sprayer applies different spray patterns. Depending on the amount of pumping, it delivers the pesticide under high or low pressure. The most common nozzle for the hand-held compressed air sprayer is made of brass and usually can be set in one of four spray patterns. Most nozzles are designed to deliver two flat fan patterns and two pin stream patterns. In most situations, neither the coarse nor the fine pin stream will produce an ideal crack and crevice application. Even when set for fine spray, a stream is produced that splashes out of all but the widest crack. To solve this problem, many nozzles now have a connection for a narrow-diameter

plastic tube for crack and crevice treatments. The pest control technician inserts the tube into or at the edge of a crack and is thus able to deliver an accurate stream of insecticide into the crack. This method provides the most effective spray pattern for cockroach control, with little or no exposure of building occupants to the insecticide.

Dusters apply a fine, dry layer of a powdery mixture containing a small amount of insecticide. The dust accumulates on the bodies of insects who touch it. Pesticides in dusts are absorbed by insects in the same way as liquid sprays. Additionally, if the pest ingests particles when grooming itself, the dust can also cause stomach poisoning. Three types of hand dusters are commonly used by pest management technicians: bulb, bellows, and plunger dusters. In IPM programs, dusts are applied into wall voids or as crack and crevice treatments.

Traps, Bait Boxes, and Monitoring Devices

Rodent control traps range from snap traps to boxes that use trap doors, spring-loaded multiple catch traps, and small animal traps. Rodent bait boxes, or bait stations, are containers that hold poisonous baits or glue boards. They must be tamper proof for safety. Electric fly traps are made with an attracting light that lures flies to electrocution grids or glue boards. Sticky traps are small glue boards used to catch cockroaches and other crawling insects. These are used to monitor roach populations and to survey for other insects.

Bait Stations and Bait Gels

Bait stations deliver an insecticide through a chamber that insects enter; the stations confine the insecticide rather than leaving it exposed. This gives bait stations the advantage of decreasing both the amount of insecticide applied and the likelihood of exposure to it. Bait gels allow for the accurate placement of small quantities of non-volatile insecticide directly into insect harborage areas. The key to using bait stations and bait gels is knowing where and how to place them.

Posting and Notification

The institution should take the responsibility to inform occupants of upcoming pesticide treatments. When good IPM practices are followed, concerns raised by notification and posting activities will be minimized. The notification policy should be explained so it will not be misinterpreted to imply that more pesticides are being applied.

Advance notification can be accomplished by posting signs around the facility or, in the case of schools, by sending notices home with students. Administrators should consider posting notices in areas to be treated or that have been treated. The pest manager should be prepared and be available to provide more specific information to concerned individuals.

A voluntary registry of individuals who are adversely affected by exposure to pesticides can be kept at the facility. Information on how to contact the local poison control center and emergency personnel should be kept accessible.

STEP 7 Evaluating Results and Recordkeeping

Successful practice of IPM relies on accurate recordkeeping. It allows the facility to evaluate the results of practicing IPM to determine if pest management objectives have been met. Keeping accurate records also leads to better decision making and more efficient procurement. By keeping accurate records of inspecting, identifying, and monitoring, results can be recorded showing changes in the site environment (less available food, water, or shelter), physical changes (exclusion and repairs), pest population changes (increased or reduced, older or younger pests) or changes in the amount of damage or loss.

A complete and accurate pest management log should be maintained for each facility and be kept in the office of the pest manager. Pesticide use records also should be maintained to meet any requirements of the West Virginia Department of Agriculture and the institution's administrators. The log book should contain the following items:

- A copy of the approved Integrated Pest Management Plan and service schedule for the property.
- A copy of the current EPA-registered label and the current MSDS for each pesticide

product used.

- Pest surveillance data sheets that record in a systematic fashion the type and number of pests or other indicators of pest population levels revealed by the monitoring program for the site. Examples include: date, trap number and location, and numbers and species of insects trapped.
- A diagram noting the location of pest activity including the location of all traps, trapping devices, and bait stations in or around the site.
- A diagram noting the location of areas treated and treatment dates.

Evaluating the Costs

Long-term costs of IPM may be less than a conventional pest control program that relies solely on the use of pesticides. However, the long-term labor costs for IPM may be higher than those for conventional pesticide treatments. The labor costs may be offset by fewer service calls for the pest manager and reduced expenditures for materials.

Whether an IPM program raises or lowers costs depends in part on the nature of the current housekeeping, maintenance, and pest management operations. The costs of implementing an IPM program also can depend on whether the pest management services are contracted, performed in-house or both. To fit the IPM program into the existing budgetary framework, facility administrators must consider the additional and redistributed expenditures. **As with any program, insufficient resources will jeopardize the success of IPM.**

Potential Added Costs

Initiating an IPM program may require repair and maintenance activities to prevent pest entry and to eliminate sources of shelter, food, and moisture. Examples of these one-time expenses that may pay back with future budgetary savings include:

- Improving waste management by moving trash or garbage containers away from buildings to reduce the opportunity for pest invasion. This cost is a one time expense that will result in fewer pest problems and reduce the need for other pest control

procedures.

- Installing physical barriers such as air curtains over the outside entrances to kitchens to reduce flying insect problems. These devices do require maintenance to operate properly and these long term costs need to be considered.
- Stepping up structural maintenance to correct such situations as leaky pipes reduces future maintenance problems, prevents pest problems, and saves money in the long-term.
- Training staff in IPM. The amount of information necessary to implement IPM is greater than that required for conventional pest control. Consequently, training staff in IPM will likely result in increased costs.
- Relandscaping the area next to buildings to discourage pests.

In the long run, these repair and maintenance activities will reduce overall costs of the pest control operation, as well as other maintenance and operating budgets. Whether these costs are actually budgeted as a pest control expense or under some other budgetary category depends on the budgetary format of the institution. Institutions with an active maintenance and repair program may be able to absorb these activities within the current budget.

Procurement

Successful practice of IPM relies on accurate recordkeeping and efficient procurement. As the IPM program progresses, predictable events and pest control needs will be identified. Close consultation with the pest management specialist is essential for making good budget decisions.

Some nonpesticidal products, such as traps, can be stocked to reduce purchases in future years, but few savings can be realized by purchasing pesticides in bulk. It is probably best to keep no more than a 60-day pesticide inventory to assure product freshness. Pest managers should be able to anticipate needs to fit a 60-day buying schedule.

"In-house" or Contracted Services

IPM programs can be successfully implemented by trained and certified "in-house" employees or by contracting with a pest control company. A combination of in-house and contracted functions may be mixed and matched to the needs and capabilities of the facility. Both approaches have advantages and disadvantages and individual institutions must decide what is best for them. Whether you choose in-house or contracted services, pest management personnel should be trained to:

- Understand the principles of IPM.
- Identify pests and associated problems or damage.
- Monitor infestation levels and keep records.
- Know cultural or alternative control methods.
- Know recommended methods of judicious pesticide application.
- Know the hazards of pesticides and the safety precautions to be taken.
- Be familiar with the pesticide label's precautionary statements pertaining to exposure to humans or animals.

"In-house" Services

One of the most important tasks for an in-house program is training staff to function within an IPM context. Contact the West Virginia Department of Agriculture for assistance with IPM training.

Contracted Services

Pest control firms should work with the responsible administrator to solve pest control problems. Using an outside pest control firm may cost more initially but this method does eliminate the need to hire and train personnel, store pesticides, and maintain specialized liability insurance. The contract should specify the use of IPM principles and practices in meeting pest management objectives. (See Appendix II for a sample pest management contract.)

The pest management services contract should include IPM specifications. Contracts should be written to provide expected results. Pest management objectives specific to the

site should be jointly developed, agreed upon, and written into the contract. Any special health concerns (such as those for individuals with allergies) should be noted and reflected in the pesticides that can be utilized or excluded from use.

Acknowledgement

This document was based on *Pest Control in the School Environment: Adopting Integrated Pest Management*, by the U. S. Environmental Protection Agency.

Appendix I

Sample Pest Management Policy Statement

This policy statement is for information only; it should not be considered to be an official West Virginia Department of Agriculture policy statement on IPM in schools and other public institutions.

Pest Management Policy Statement

Structural and landscape pests can pose significant hazards to people and the environment. Pesticides also can pose hazards to people, property and the environment. It is therefore the policy of _____ name of facility to incorporate Integrated Pest Management (IPM) procedures for control of structural and landscape pests.

Pests

Pests are populations of living organisms that interfere with the human purposes for an area. Strategies for managing pest populations will be influenced by the pest species and any threat they pose to people, property, or the environment.

Pest Management

Pests will be managed to:

- Reduce any potential human health hazard or to protect against a significant threat to public safety;
- Prevent loss or damage to structures or property;
- Prevent pests from spreading in the community or to plant and animal populations beyond the site;
- Enhance the quality of life for building occupants.

Integrated Pest Management Procedures

IPM procedures will determine when to control pests and whether to use mechanical,

physical, chemical, cultural, or biological means. IPM practitioners depend on current, comprehensive information on the pest and its environment and the best available pest control methods. Applying IPM principles prevents unacceptable levels of pest activity and damage by the most economical means and with the least possible hazard to people, property, and the environment.

The choice of using a pesticide will be based on a review of all other available options and a determination that these options alone are not acceptable or not feasible. Selected nonchemical pest management methods will be implemented adequately. The full range of alternatives, including no action, will be considered. When it is determined that a pesticide must be used to meet important management goals, the least hazardous material¹ will be chosen. The application of such pesticides is subject to state regulations, the Federal Insecticide, Fungicide and Rodenticide Act, EPA regulations, and Occupational Safety and Health Administration regulations.

¹ Precautionary statements are required on all pesticide labels. Signal words on each label indicate the level of acute toxicity of the pesticide product (see below). The chronic toxicity is not indicated on the label. Every label bears the child hazard warning: **KEEP OUT OF REACH OF CHILDREN.**

Toxicity Category I — DANGER — A taste to a teaspoonful taken by mouth could kill an average-sized adult.

Toxicity Category II — WARNING — A teaspoonful to an ounce taken by mouth could kill an average-sized adult.

Toxicity Category III — CAUTION — An ounce to over a pint taken by mouth could kill an average-sized adult.

Toxicity Category IV — CAUTION — More than one pint taken by mouth could kill an average-sized adult.

Education

Building occupants, the pest manager, and the public will be educated about potential pest problems and the IPM policies and procedures to be used to achieve the desired pest management objectives.

Recordkeeping

Records of pesticide used shall be maintained on site to meet the requirements of the West Virginia Pesticide Control Act of 1990 as administered by the West Virginia Department of Agriculture. Records must be current and accurate if IPM is to work. Additionally, Pest Surveillance Data Sheets, which record the number of pests or other indicators of pest populations, are to be maintained to verify the need for treatments.

Notification

This administration takes the responsibility to notify occupants of upcoming pesticide treatments. Notices will be posted in designated areas in the facility or, in the case of a school, sent home with students whose parents request notification.

Pesticide Storage and Purchase

Pesticide purchases will be limited to the amount authorized for available use during the year. Pesticides will be stored and disposed of in accordance with the EPA-registered label directions and state regulations. Pesticides must be stored in an appropriate, secure site not accessible to staff or unauthorized personnel.

Pesticide Applicators

Pesticide applicators must be educated and trained in the principles and practices of IPM and they must follow regulations and label precautions. The West Virginia Department of Agriculture requires that applicators be certified or work under the direct supervision of a certified applicator and comply with the institution's IPM policy and Pest Management Plan.

Appendix II
Sample Pest Management Specifications

These specifications were developed for the General Services Administration of the U.S. government. They are provided for information only; they should not be considered to be official West Virginia Department of Agriculture specifications for IPM in schools and other public institutions.

General Services Administration
Public Buildings Service
Specification No. BM-5-1
January 1993
Superseding Specification No. BM-5-1
January 1989

SPECIFICATION
Pest Control

-01 General

- a. Description of Service: This contract is part of a comprehensive Integrated Pest Management (IPM) program for the buildings and other areas specified herein. IPM is a process for achieving long term, environmentally sound pest suppression through the use of a wide variety of technological and management practices. Control techniques in an IPM program extend beyond the application of pesticides to include structural and procedural modifications that reduce the food, water, harborage, and access used by pests. The Contractor shall furnish all supervision, labor, materials, and equipment necessary to accomplish the surveillance, trapping, and pesticide application components of the IPM program. The Contractor shall also provide detailed, site-specific recommendations for structural and procedural modifications necessary to

achieve pest prevention.

- b. **Pests Included and Excluded:** The Contractor shall adequately suppress indoor populations of rats, mice, cockroaches, ants, flies, and any other arthropod pests not specifically excluded from the contract. Populations of these pests that are located outside of the specified buildings, but within the property boundaries of the buildings, are included.

Populations of the following pests are excluded from this contract:

- Birds, bats, snakes, and all other vertebrates other than commensal rodents.
- Termites and other wood-destroying organisms.
- Mosquitoes.
- Pests that feed primarily on outdoor vegetation.

However, the following shall be controlled under the terms of the contract:

- Individuals of all the above pests that are incidental invaders inside buildings.
- Winged termite swarmers emerging indoors.

- c. **Initial Inspection:** The Contractor shall conduct a thorough, initial inspection of each building or site within ten (10) working days after the effective date of the contract. The purpose of the initial inspection is for the Contractor to identify problem areas and any equipment, structural features, or management practices that are contributing to pest infestations.

Access to building space shall be coordinated with the Contracting Officer's Representative (COR). The COR will inform the Contractor of any restrictions or areas requiring special scheduling.

- d. **Pest Control Plan:** Prior to initiation of service, the Contractor shall submit to the COR a Pest Control Plan for each building or site within ten (10) working days following the initial inspection. Upon receipt of the Pest Control Plan, the COR will render a decision regarding its acceptability within five (5) working days. The Contractor shall be on site to initiate service within five (5) working days following notice of approval. If aspects of the Pest Control Plan are incomplete or disapproved, the Contractor shall have three (3) working days to submit revisions. The Pest Control Plan shall consist of four parts:

1. Proposed methods for control, including labels and Material Safety Data Sheets (MSDS) for all pesticides to be used. A list of brand names of rodent bait boxes, insect and rodent trapping devices, pest monitoring devices, and any other control devices or equipment should also be included.
2. A service schedule for each building or site. Frequency of Contractor visits shall depend on the specific pest control needs of each premise. At the minimum, the Contractor shall conduct inspections monthly to determine if treatment is required. The Government will consider weekly service to be the standard for large office buildings with a history of pest infestation.
3. A description of any structural or operational changes that would facilitate the pest control effort.
4. A copy of the Commercial Pesticide Applicator Certificate or License for every Contractor's representative who will be performing on-site service under this contract. At the minimum, the Contractor shall submit the Certificates of two individuals, one acting as a regular service representative and the other acting as an alternate.

It shall be the Contractor's responsibility to carry out work according to the approved Pest Control Plan for each building or site. The Contractor shall receive the concurrence of the COR prior to implementing any subsequent changes to the approved Pest Control Plan, including additions or replacements to the pesticide list and to on-site service personnel.

- e. **Pesticide Application:** The Contractor shall not apply any pesticide product that has not been included in the Pest Control Plan or approved in writing by the COR.

Pesticide application shall be according to need and not by schedule. As a general rule, application of pesticides in any area inside or outside the premises shall not occur unless visual inspections or monitoring devices indicate the presence of pests in that specific area.

Preventive pesticide treatments of areas where inspections indicate a potential insect or rodent infestation are acceptable on a case-by-case basis. Written

approval must be granted by the COR prior to any preventive pesticide application.

The Contractor shall not store any pesticide product on Government property.

- f. **Structural/Procedural Recommendations:** Structural modifications for pest control, including the application of caulk and other sealing materials, will not be the responsibility of the Contractor. However, throughout the life of this contract, the Contractor shall be responsible for notifying the COR in writing about any structural, sanitary, or procedural modifications deemed necessary to eliminate pest food, water, harborage, or access.
- g. **Record Keeping:** The Contractor shall be responsible for maintaining a pest control logbook or file for each building or site specified in this contract. These records shall be kept on Government property and maintained on each visit by the Contractor.

Each logbook or file shall contain at least the following items:

- A copy of the Pest Control Plan for the building or site, including labels and MSDS for all pesticides used in the building, brand names of all pest control devices and equipment used in the building, and the Contractor's service schedule for the building;
- The field office copies of GSA Form 3638, Pest Control Work and Inspection Report, or an equivalent. These forms will be supplied to the Contractor by the COR, and will be used to advise the Contractor of routine service requests and to document the performance of all work, including emergency work. Upon completion of a service visit to the building, the Contractor's representative performing the service shall complete, sign, and date the Form 3638, and return it to the logbook or file on the same or succeeding day of the services rendered; and
- The Contractor's Service Report forms, documenting all information on pesticide application required by statute in the jurisdiction where service is actually performed. These forms shall not be mandatory if all required

information on pesticide application is included on the Government's Pest Control Work and Inspection Report.

- h. **Contractor Personnel:** Throughout the life of this contract, all Contractor personnel providing on-site pest control service must meet state and local requirements in the jurisdiction(s) where service is actually performed for training, registration, or certification as Commercial Pesticide Applicators in the category of Industrial, Institutional, Structural, and Health Related Pest Control. Uncertified individuals working under the supervision of a Certified Applicator will not be permitted to provide service under the terms of this contract.
- i. **Manner and Time to Conduct Service:** The Contractor shall perform routine pest control services that do not adversely affect tenant health or productivity during the regular hours of operation in buildings. When it is necessary to perform work outside of the regularly scheduled hours set forth in the Pest Control Plan, the Contractor shall notify the COR at least one day in advance.

The Contractor shall observe all safety precautions throughout the performance of this contract. Certain areas within some buildings may require special instructions for persons entering the building. Any restrictions associated with these special areas will be explained by the COR. The Contractor shall adhere to these restrictions and incorporate them into the Pest Control Plan for the specific building or site. The following areas are restricted:

All Contractor personnel working in or around buildings designated under this contract shall wear distinctive uniform clothing. The Contractor shall determine and provide additional personal protective equipment required for the safe performance of work. Protective clothing, equipment, and devices shall as a minimum, conform to Occupational Safety and Health Administration (OSHA) standards for the products being used. Vehicles used by the Contractor shall be identified in accordance with state regulations.
- j. **Special Requests and Emergency Service:** On occasion, the COR may request that the Contractor perform corrective, special, or emergency service(s) that are beyond routine service requests. The Contractor shall respond to these exceptional

circumstances and complete the necessary work within one (1) working day after receipt of the request. In the event that such services cannot be completed within one working day, the Contractor shall immediately notify the COR and indicate an anticipated completion date.

-02 INSECT CONTROL

- a. **Non-pesticide Products and Use:** The Contractor shall use non-pesticide methods of control wherever possible. For example:
- Portable vacuums rather than pesticide sprays shall be used for initial clean-outs of cockroach infestations, for swarming (winged) ants and termites, and for control of spiders in webs wherever appropriate.
 - Trapping devices rather than pesticide sprays shall be used for indoor fly control wherever appropriate.
 - Sticky traps shall be used to guide and evaluate indoor pest control efforts wherever necessary.
- b. **Pesticide Products and Use:** When it is determined that a pesticide must be used in order to obtain adequate control, the Contractor shall employ the least hazardous material, most precise application technique, and minimum quantity of pesticide necessary to achieve control.
- The Contractor shall be responsible for application of pesticides according to the label. All pesticides used by the Contractor must be registered with the Environmental Protection Agency and the state jurisdiction. Transport, handling, and use of all pesticides shall be in strict accordance with the manufacturer's label instructions and all applicable Federal and state laws and regulations.
- The Contractor shall minimize the use of liquid pesticide applications wherever possible. For example:
- Containerized and other types of bait formulations rather than sprays shall be used for cockroach and ant control wherever appropriate. The Government will consider bait formulations to be the standard for typical office space.
 - As a general rule, liquid, aerosol, or dust formulations shall be applied only as

crack and crevice treatments with application devices specifically designed or modified for this purpose. "Crack and crevice treatment" is defined in this contract as an application in which the stream of pesticide is never visible.

■ Application of pesticide liquid, aerosol, or dust to exposed surfaces, and pesticide space sprays (including fogs, mists, and ultra-low volume applications), shall be restricted to unique situations where no alternative measures are practical. The Contractor shall obtain the approval of the COR prior to any application of pesticide liquid, aerosol, or dust to exposed surfaces, or any space spray treatment. The Contractor shall take all necessary precautions to ensure tenant and employee safety, and all necessary steps to ensure the containment of the pesticide of the site of application. Other than crack and crevice treatments, no liquid, aerosol, or dust applications shall be made while tenant personnel are present.

-03 RODENT CONTROL

a. **Non-pesticide Products and Use:** As a general rule, rodent control inside occupied buildings shall be accomplished with trapping devices only. All such devices shall be concealed out of the general view and in protected areas so as not to be affected by routine cleaning and other operations. Trapping devices shall be checked on a schedule approved by the COR. Trapping shall not be performed during periods when maintenance will be delayed by holidays, weekends, etc. The Contractor shall be responsible for disposing of all trapped rodents and all rodent carcasses in an appropriate manner.

b. **Pesticide Products and Use:** In exceptional circumstances, when rodenticides are deemed essential for adequate rodent control inside occupied buildings, the Contractor shall obtain the approval of the CPR prior to making any interior rodenticide treatment.

All rodenticides, regardless of packaging, shall be placed either in locations not accessible to children, pets, wildlife, and domestic animals, or in EPA-approved tamper-resistant bait boxes.

Frequency of bait box servicing shall depend upon the level of rodent infestation.

All bait boxes shall be maintained in accordance with EPA regulations, with an emphasis on the safety on nontarget organisms. The Contractor shall adhere to the following five points:

1. All bait boxes shall be placed out of the general view, in locations where they will not be disturbed by routine operations.
2. The lids of all bait boxes shall be securely locked or fastened shut.
3. All bait boxes shall be securely attached or anchored to the floor, ground, wall, or other surface, so that the box cannot be picked up or moved.
4. Bait shall always be placed in the baffle-protected feeding chamber of the box and never in the runway of the box.
5. All bait boxes shall be labelled with the Contractor's business name and address, and dated at the time of installation and each servicing.

As a general rule, rodenticide application outside buildings shall emphasize the direct treatment of rodent burrows wherever feasible. The Contractor shall be responsible for notifying the COR about the location of all rodent burrows on the premises that must be filled.

-04 PROGRAM EVALUATION

GSA reserves the right to evaluate the progress of this contract in terms of effectiveness and safety, and to require such changes as are necessary. The Contractor shall take prompt action to correct all identified deficiencies.

-05 QUALITY CONTROL PROGRAM

The Contractor shall establish a complete quality control program to assure the requirements of the contract are provided as specified. Within five (5) working days prior to the starting date of the contract, the Contractor shall submit a copy of his program to the Contracting Officer. The program shall include, but not be limited to the following:

- An inspection system covering all the services stated in this contract. A checklist used in inspecting contract performance during regularly scheduled or unscheduled inspections. The name(s) of the individual(s) who will perform the

inspections.

- The checklist shall include every area of the operation serviced by the Contractor as well as every task required to be performed.
- A system for identifying and correcting deficiencies in the quality of services before the level of performance becomes unacceptable and/or the Government inspectors point out the deficiencies.
- A file of all inspections conducted by the Contractor and the corrective actions taken. This documentation shall be maintained locally and made available to the Government during the term of the contract, and until such time that final payment is made.

-06 SAFETY AND HEALTH

- a. All work shall comply with the applicable requirements of 29CFR 1910/1926 and 40CFR 761 and the GSA Supplement to Masterspec, Safety and Health. All work shall comply with applicable state safety and health requirements. Where there is a conflict between applicable regulations, the most stringent will apply.
- b. The Contractor shall assume full responsibility and liability for compliance with all applicable regulations pertaining to the health and safety of personnel during the execution of work, and shall hold the Government harmless for any action on its part or that of its employees or subcontractors, that results in illness or death.

Appendix III

References for Further Information

- Bennett, Gary W., Robert M. Corrigan, and John M. Owens. 1988. Truman's Scientific Guide to Pest Control Operations. Edgell Communications, Duluth MN.
- Christensen, Chris. 1989. Technician's Handbook to the Identification and Control of Insect Pests. Franzak and Foster, Cleveland OH.
- Hedges, Stoy A. 1992. Field Guide for the Management of Structure-Infesting Ants. Franzak and Foster, Cleveland OH.
- Hedges, Stoy A. 1993. Field Guide for the Management of Structure-Infesting Flies. Franzak and Foster, Cleveland OH.
- Hedges, Stoy and Mark S. Lacey. 1995. Field Guide for the Management of Urban Spiders. Franzak and Foster, Cleveland OH.
- Mallis, Arnold. 1990. Handbook of Pest Control, 7th edition. Franzak and Foster, Cleveland OH.
- Olkowski, William, Sheila Daar, and Helga Olkowski. 1991. Common-sense Pest Control. Taunton Press, Newton CT.
- Smith, Eric H. and Richard C. Whitman. 1992. NPCA Field Guide to Structural Pests. National Pest Control Association, Dunn Loring VA.
- Snell, Eric and William H. Robinson. 1991. German cockroach pest management. Pest Control Technology 19:30-36.
- United States Environmental Protection Agency. 1992. Urban Integrated Pest Management: A Guide for Commercial Applicators (reprinted as Urban Integrated Pest Management: A Guide for Commercial Applicators Treating Schools and Other Public Buildings by the West Virginia Department of Agriculture, 1995).

Appendix IV

Suggested Monitoring and Sanitation Report Forms

The following are examples of forms that can be used in an IPM monitoring program. The forms can be copied and used as they are or modified to fit a given situation.

Sanitation and Maintenance Survey

A. Exterior Areas

- | | | | |
|----|--------------------------------------|------------------------------|-----------------------------|
| 1. | Harborage in need of removal | <input type="checkbox"/> yes | <input type="checkbox"/> no |
| | Location(s) _____ | | |
| 2. | Rat burrows | <input type="checkbox"/> yes | <input type="checkbox"/> no |
| | Location(s) _____ | | |
| 3. | Proper drainage | <input type="checkbox"/> yes | <input type="checkbox"/> no |
| | Location(s) _____ | | |
| 4. | Dumpster area clean | <input type="checkbox"/> yes | <input type="checkbox"/> no |
| | Location(s) _____ | | |
| 5. | Holes in wall that permit pest entry | <input type="checkbox"/> yes | <input type="checkbox"/> no |
| | Location(s) _____ | | |
| 6. | Windows need screening | <input type="checkbox"/> yes | <input type="checkbox"/> no |
| | Location(s) _____ | | |
| 7. | Doors rodent proofed | <input type="checkbox"/> yes | <input type="checkbox"/> no |
| | Location(s) _____ | | |

B. Building Interior

- | | | | |
|----|----------------------|------------------------------|-----------------------------|
| 1. | Holes in wall | <input type="checkbox"/> yes | <input type="checkbox"/> no |
| | Location(s) _____ | | |
| 2. | Floor needs cleaning | <input type="checkbox"/> yes | <input type="checkbox"/> no |
| | Location(s) _____ | | |

3. Stock areas free of harborage yes no
Location(s) _____
4. Faulty plumbing yes no
Location(s) _____
5. Walls, ceilings need cleaning yes no
Location(s) _____
6. Dish washing area clean and maintained yes no
Location(s) _____
7. Food preparation equipment easily opened for service and cleaning yes no
Location(s) _____
8. Utility areas clean yes no
Location(s) _____
9. Toilet and locker rooms clean yes no
Location(s) _____
10. Infestations present yes no
Location(s) _____
11. Remarks _____

Pest Surveillance Data Sheet

Date	Trap location	Trap condition	Pest	Number	Damage or other evidence	Pest management required?	Remarks

Dist. 11/24/95 meeting

Sheriff
LAKE COUNTY



GEORGE E. KNUPP, JR.

315 W. MAIN STREET, SUITE 119 TAVARES, FLORIDA 32778-3877
Phone 904-343-2101

October 19, 1995

Larry Parsons, Administrator
South Central Regional Jail
1001 Centre Way
Charleston, WV 25309-1001

LP
10/26/95

Dear Mr. Parsons,

In reference to our phone conversation on October 18, 1995, I would like to reassure you of the success we had in our transition from a smoking to a non-smoking facility.

About two months prior to moving in June of 1992, the inmate population was notified that as of a certain date (approximately 1 month) that we were no longer selling tobacco products in commissary; as we were moving to a new facility and that facility would be non-smoking (actually a non-tobacco).

There were initially a few verbal complaints, but those quickly dissipated and the inmates simply accepted that this is the way it was going to be and there was nothing they could do about it. Actually, the staff geared up for anticipated problems, but they never took place.

There are many advantages to a non-tobacco facility and I can think of no disadvantages. Our new facility looks and smells clean.

The ban on tobacco products has actually helped in the reduction in attempts to smuggle in other contraband such as marijuana and cocaine because tobacco has now become the "contraband of choice" and is in higher demand than drugs. Our facility is for the most part, drug free.

We are pleased with our decision to go non-tobacco.

If I can be of further assistance, feel free to contact me.

Sincerely,

Kevin S. Drinan
Captain Kevin S. Drinan
Deputy Bureau Commander



SHERMAN BLOCK, SHERIFF

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



(213) 974-5058

October 23, 1995

Mr. Larry Parsons
Administrator South Central Regional Jail
1001 Central Way
Charleston, West Virginia 25309-1001

Dear Mr. Parsons:

Attached for your review, is the plan that was utilized to obtain a smoke-free environment in the Los Angeles County Custody Division facilities.

The plan consisted of a carefully designed "phase down" system that slowly eliminated all tobacco products from the Custody facilities over a six month period. Included in the attachments are examples of signs used throughout the various Custody Division facilities, to communicate the upcoming reductions in allowable tobacco products.

Although there have been some legal challenges regarding "inmate rights" both of smokers and nonsmokers, there have been no prohibitive rulings. Even special interests groups, like the American Civil Liberties Union (ACLU) have taken "no official position" on this issue.

Contraband has been the only issue of concern. We have noticed that contraband cigarettes have become an expensive commodity within our system. Generally, minimum security inmates are finding ways to bring cigarettes into the facilities, although we have had several incidents wherein staff members have been detected selling cigarettes to inmates. These employees, mostly civilian staff, have all been or soon will be terminated. This contraband issue has been declining recently and, with the lack of any other notable obstacles, we don't anticipate any future problems.

A Tradition of Service

Mr. Larry Parsons

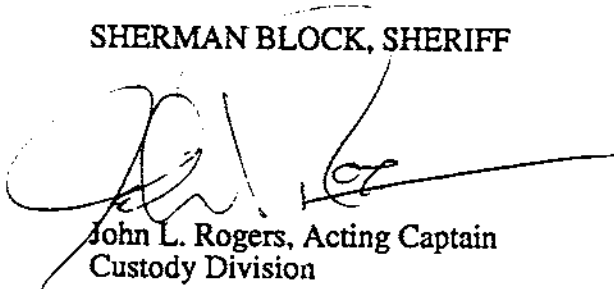
- 2 -

October 23, 1995

I hope that this information has been helpful in your quest to obtain a smoke-free environment in your prison system. If the Los Angeles Sheriff's Department can be of any more help to you, please don't hesitate to contact us further.

Sincerely,

SHERMAN BLOCK, SHERIFF

A handwritten signature in black ink, appearing to read "John L. Rogers", with a long horizontal flourish extending to the right.

John L. Rogers, Acting Captain
Custody Division

COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT

DATE March 5, 1991

FILE NO.

OFFICE CORRESPONDENCE

FROM: ROBERT J. CIULIK, CHIEF CUSTODY DIVISION TO: UNIT COMMANDERS CUSTODY DIVISION

SUBJECT: NON-TOBACCO JAIL ENVIRONMENT

CORRESPONDENCE #1

It is our intent to convert the jail system into a tobacco free environment. We are now ready to implement Phase One of the plan.

Effective March 15, 1991 inmates will be prohibited from possessing more than ten packs of tobacco products or more than ten books of matches. These requirements include cigars and chewing tobacco. Please advise your personnel to be conservative in enforcing the maximum allowable possession during the first week or two of this change.

The steering committee developed signs to notify inmates of the program and the allowable tobacco limits (signs attached). Our commissaries have been advised of this change and have agreed to post signs announcing the reduction of allowable items. In addition to the commissaries posting these signs, we are asking that you have them posted in areas accessible to inmates.

We are presently having signs produced to notify our employees and inmate visitors of the program. The signs will also alert them that effective September 1, 1991 the use of any tobacco product will be restricted to designated smoking areas only.

You will also find attached an "Action Plan" for the conversion to a tobacco free environment. This plan is provided to give you our anticipated timelines for various phases of the conversion.

Thank you for your assistance in this program.

RJC:RRP:jm

**ACTION PLAN
FOR A
TOBACCO FREE JAIL SYSTEM**

PHASE ONE

Phase One of the plan will be implemented prior to start of any formal steps to reduce allowable tobacco products. This phase should be completed before March 15, 1991.

Develop a formal announcement for distribution.

1. Teletype announcement to all Sheriff's units
2. Letter of announcement to:
 - a. The legal environment
 - Courts
 - County Agencies
 - State Agencies
 - Federal Agencies
 - Outside Agencies (in LA County)
 - b. News Distribution
 - Code 20's
 - Star News
 - Daily Journal
 - c. Employee Organizations
 - ALADS
 - POPA
 - SEIU
 - d. Inmate Contact Groups
 - Chaplains
 - La Puente Adult Education
 - e. Internal Services

PHASE TWO

To be implemented on 03-15-91

Step One:

1. Post announcements in the form of signs (spanish and english) for inmates and visitors advising them of the intent of the Department to eliminate tobacco products by the end of 1991.

Step Two:

1. Increase commissary hours and days of service.
2. Reduce the purchase and "in possession" allowable amount of tobacco product at all facilities to a maximum of 10 units of tobacco and 10 books of matches.

Step Three:

1. Have each Custody facility identify appropriate employee smoking areas. The areas must be out of sight, smell and access of inmates. Units must consider ventilation system air movement to prevent the distribution of harmful passive smoke. The area must be approved by competent medical authority and meet Fire and County Safety Ord.

Step Four:

1. Begin identification of Employee Assistance Programs for quitting smoking. Make program information available to employees.
2. Develop an "Employee Smokers Policy" statement.

PHASE THREE

To be implemented on 05-01-91

Step One:

1. Reduce the purchase and "in possession" allowable amount of tobacco products at all facilities to a maximum of 5 units of tobacco and 5 books of matches.
2. Distribute the "Employee Smokers Policy" statement.

PHASE FOUR

To be implemented on 07-01-91

Step One:

1. Reduce the purchase and "in possession" allowable amount of tobacco products at all facilities to a maximum of 2 units of tobacco and 2 books of matches.

PHASE FIVE

To be implemented on 08-01-91

Step One:

1. Prohibit the sale of tobacco products.
2. Allow inmates to "smoke what they have".
3. Add items for purchase at the commissary to replace tobacco.
4. Offer non-smoking assistance programs to inmates.
5. Prohibit employees from smoking except in designated smoking areas.

PHASE SIX

To be implemented on 09-01-91

Step One:

1. Tobacco product and matches become contraband for inmates.
2. Use warnings and confiscation of tobacco products for inmates during the first month of our "tobacco free system".

Office of the Sheriff

Charles R. Schofield
Sheriff
County of Peoria



301 N. Maxwell Rd.
Peoria, IL 61604
(309) 697-8515
FAX (309) 697-3734

October 27, 1995

Larry Parson
South Central Regional Jail
1001 Centre Way
Charleston, West Virginia 25309-1001

Dear Mr. Parson:

In response to your inquiry concerning the no smoking policy at the Peoria County Jail, I am pleased to report that in our opinion it is a success.

Approximately three years ago we went to a no smoking policy in response to a State Law that prohibited smoking in public buildings. This ban included employees. This was a progression from allowing smoking only in designated smoking areas which we felt did not work. The total ban has been a much better solution to several problems.

We had been telling the inmates for some time the no smoking option was coming and to expect it, so when the time finally arrived it was not a surprise. There were some uneasy times in the beginning and it took some patience on the part of staff and inmates to get through those days. I would say about three weeks or so were the worst. We did increase the variety of commissary items sold to the inmates as some compensation for the loss of the cigarettes. We did not have any serious disturbances or any damage to the facility as a result of the ban.

We have experienced no noticeable increase in problems. Jails always have a contraband problem and the cigarettes continue to be a minor one now. I don't believe that it is any more serious than before.

Page 2

We never allowed inmates to smoke in their cells. We always had individuals trying to get a lighted cigarette in the cell so now they are just trying to get a cigarette period. It may in fact deflect some of the other contraband problem.

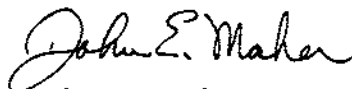
The risk of fire has been greatly reduced. We would in the past experienced minor fires as a result of careless smoking or discarding of smoking materials. Since the ban, fires have become very rare.

The facility is much cleaner now and is easier to maintain in a clean state. The smell inside the jail is usually fresher or has the aroma of the kitchen instead of stale cigarette smoke.

In summary, I think most of our staff was surprised by the ease with which we were able to go no smoking and the ease with which we are able to continue the policy. Sure there are problems from time to time but the risks seem to be much greater for the smoking facility than the no smoking one. Many more jails in Illinois have become no smoking and I believe that trend is continuing.

I hope this is of some help to you. If you have any further questions or I can be of any further assistance, please call me.

Sincerely,



John E. Maher
Corrections Superintendent
Peoria County Sheriff's Department

JEM:skc

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Infrastructure & Jobs Development Council

Subject: Infrastructure & Jobs Development Council Funding Rules
167 CSR 1 (Modified Rule)

PERTINENT DATES

Filed for public comment: April 10, 1995

Public comment period ended: May 11, 1995

Filed following public comment period: July 7, 1995

Filed LRMRC: July 12, 1995

Filed as emergency: April 10, 1995

Fiscal Impact: It is anticipated that 300 million dollars will be disbursed over the next five to ten years. The value of the spin off has not yet been estimated. The agency will provide a new fiscal note when the modified rule is filed with the Secretary of State.

ABSTRACT

This rule effectuates the purposes of West Virginia Code §31-15A-1 et seq. by bringing all of the infrastructure agencies together to discuss all proposed infrastructure projects. This eliminates the lengthy, frustrating process of going to each of the various funding agencies for assistance prior to seeking approval from the Public Service Commission. The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 is the definition section. Generally, it copies verbatim the definitions in the statute. Some of the specific definitions are:

"Cost" of a project includes everything from planning the project, acquiring and preparing the land, designing the project, conducting the feasibility studies, constructing the project, purchasing the necessary furnishings and equipment, loan or origination fees, finance charges, interest incurred prior to and six months after completion of the project and the cost of all legal services and expenses.

"Crisis Situation" is defined as a recent act of God or man which results in a loss or significant decline in quality or

quality of potable water or the treatment of waste water which poses serious and immediate threat or endangerment to health for which local funds are not available. Problems which are the result of failure to properly maintain the water or waste water treatment facility, negligence or failure to upgrade the facility to meet regulatory standards are not "crisis situations".

"Project" by statutory definition is limited to waste water facility or water facility projects.

"Infrastructure project" is defined as any project in the State which the Council determines it likely to foster and enhance public health, economic growth and development in the area where it is located. The definition includes a non-limiting list of things that would be considered infrastructure projects.

Section 3 discusses the preliminary application process and how it is reviewed. If a project sponsor believes the project is not governed by the Council, the sponsor completes the applicable portions of the application and requests to be exempt from review. There are six exemptions listed in the rule. They include projects which had been bid out or had all funding in place on July 1, 1994; projects where the funding recipient is designated by state or federal law or regulation; projects not funded by a State infrastructure agency; projects funded from the governor's civil contingent fund; activities determined by the council to be outside the scope of the definition of project and actions taken by the Economic Development Authority pursuant to West Virginia Code §31-15-1 et seq.

The Council must review the preliminary application within thirty days of the application being presented at a regularly scheduled Council meeting. The Council must either recommend that the project sponsor seek funding, not seek funding or request additional information. The Council is required to make its recommendation in writing and submit copies to all State infrastructure agencies listed in the recommendation as funding sources. It must explain what type of financing the sponsor should seek, the amount and source or sources from which to seek funding. The Council must also provide written notice to the sponsor if it determines that the project is not eligible for funding or that the project is not an appropriate investment of State funds.

Section 4 provides general guidelines for the review of projects seeking funding from the Council or other infrastructure agencies. The Council is to consider many things such as whether the project will improve public health, enhance economic development, comply with federal and state laws and regulations, the availability of alternative sources of funding and the applicant's ability to operate and maintain the system. The Council has the discretion to consider other factors that the it may consider necessary or appropriate to accomplish the purposes

and intent of the Act. The agency has advised counsel that procedural rules will be promulgated which will specify the procedures for the application process.

Section 5 provides for the administration of the infrastructure fund by the Water Development Authority. The fund is comprised of any appropriations, grants, gifts, contributions, loan proceeds or other revenues received by the fund. The fund is disbursed in the form of loans, loan guarantees, grants or other assistance. The Council determines whether a grant should be provided in whole or in part to a project by considering the effect that financing a project's costs will have on the rates charged to the users. The council is required to review the mandatory minimum end user utility rate. The mandatory minimum end user utility rate is based upon 1 and 1/2 percent of the median household income for the geographic area to be served by the project. That number is multiplied by an average customer usage of 4,500 gallons per month. The median household income is established by the Bureau of Census for the minor civil division most closely related to the geographic boundaries of the project. If a project covers more than one division or a municipal project provides services outside the corporate boundaries, the Council will compute the minimum end user utility rate. In addition to the end user utility rate, the council may consider such factors as the financial condition of the applicant, and the project sponsor and the inability of the sponsor to secure grant funding from other sources.

The Council may issue grants up to 20% of the total funds available in the Infrastructure Fund. Grants may not exceed 50% of the total cost of the project. If a project which has received grant funding is later sold to a for profit entity, the project sponsor must reimburse the Fund the proportionate amount of the grant received. Reimbursement is based on the value of the project at the time of the sale.

The Council has the authority to authorize the Water Development Authority to make loans or provide loan assistance. There is no limit on the amount of a loan. The interest rate for governmental entities and other not for profit project sponsors can not exceed 3% per annum. Loans made to for profit entities will be charged interest at the prime rate on the date of the loan commitment. The statute limits the funds that can be pledged to guarantee loans to 20% of the aggregate amount of the infrastructure revenues deposited into the Fund during a fiscal year.

The rule provides for advance funding assistance in cases where the Council determines that the engineering studies and requirements for the pre-application process would impose an undue hardship on a project sponsor. This assistance is limited to \$5,000 or 50% of the pre-application cost, whichever is greater. If the project is later approved for a loan, the advance funding

assistance will be included in the loan. If the project is not approved by the Council, the advance funding assistance will be considered a grant. Advance funding assistance is limited to an aggregate of \$1000 per fiscal year.

The Council can authorize the Water Development Authority to provide funding assistance in a crisis. Funding would be available to assist in restoring or safeguarding water or waste water treatment services where there is an immediate threat or endangerment to the public health. The project sponsor must notify the Council as soon as possible following the crisis and must make written application for funding within 30 days of the crisis.

The Council has the discretion to authorize the Water Development Authority to provide other forms of assistance not set forth in the rule. This includes bond and loan guarantees and the purchase of insurance for the bonds.

AUTHORITY

Statutory authority: W.Va. Code, §31-15A-1 et seq.

§31-15A-4. Development of guidelines and preliminary application for funding assistance.

"(a) To implement and carry out the intent of this article, the council shall promulgate legislative rules in accordance with article three, chapter twenty-nine-a of this code to develop comprehensive, uniform guidelines for use by the council and other state infrastructure agencies in evaluating any request by a project sponsor for funding assistance to plan, acquire, construct, improve or otherwise develop a project or infrastructure project. . . ."

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE

INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel had suggested several modifications which the agency addressed by providing a modified rule to be considered by the LRMRC.

NOVEMBER 15

SPECIAL MEETING

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Wednesday, November 15, 1995, 9:00 a.m. - 4:30 p.m.

Senate Judiciary Committee Room - W-208

1. Approval of Minutes - Meeting November 14, 1995
2. Review of Legislative Rules:
 - a. Division of Banking
Regulations Pertaining to the WV Consumer Credit and Protection Act
 - b. Division of Banking
Regulations Pertaining to the WV Consumer Credit and Protection Act and the Industrial Bank and Industrial Loan Company Act
 - c. Division of Banking
Regulations Pertaining to the WV Industrial Bank and Industrial Loan Company Act
 - d. Division of Banking
Legislative Rule Pertaining to the Legal Lending Limit
 - e. Division of Banking
Permissible Additional Charges In Connection With A Consumer Credit Sale
 - f. Insurance Commissioner
Regulation Relating to Excess Line Brokers
 - g. Insurance Commissioner
Continuing Insurance Education
 - h. Insurance Commissioner
Recognizing Mortality Tables For Use in Determining Reserve Liability for Annuities
 - i. Insurance Commissioner
Examiners' Compensation, Qualifications and Classification

- j. Insurance Commissioner
Substandard Risk Motor Vehicle Insurance Notice
Requirements
- k. Insurance Commissioner
Health Maintenance Organization
- l. Insurance Commissioner
Filing Procedures for Health Maintenance Organizations
- m. Insurance Commissioner
Actuarial Opinion and Memorandum Rule
- n. Insurance Commissioner
Minimum Reserve Standards for Individual and Group
Health Insurance Contracts
- o. Secretary of State
Procedures for Canvassing Electronic Ballot Elections
using Punch Card or Optical Scan Ballots
- p. State Election Commission
Election Expenditures
- q. State Election Commission
Fair Campaign Practices
- r. State Election Commission
Corporate Political Activity
- s. Environmental Protection/Air Quality
Emission Standards for Hazardous Air Pollution
Pursuant to 40 CFR Part 63
- t. Environmental Protection/Water Resources/Waste
Management
Waste Tire Management Rule

3. Other Business:

SPECIAL MEETING

Wednesday, November 15, 1995

9:00 a.m.-4:30 p.m.

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Robert "Chuck" Chambers,
ex officio nonvoting member

Senate

House

Ross, Chairman
Grubb, Vice Chairman
Anderson
Boley
Buckalew
Macnaughtan (absent)

Douglas, Chairman
Linch, Vice Chairman
Compton
Faircloth
Gallagher
Riggs

The meeting was called to order by Ms. Douglas, Co-Chairman.

Debra Graham, Committee Counsel explained that the rule proposed by the Department of Agriculture, Integrated Pest Management Programs in Schools and Day Care Centers, had been at the foot of the agenda at the Committee's previous meeting and that no action had been taken on the proposed rule. Cecil Dolan, Director, School Transportation Facilities, WV Dept. of Education, Dr. Peggy Powell, Compliance Assistance Specialist, and Chris Smith, Business Manager, Kanawha County Schools, addressed the Committee and responded to questions. Bob Frame, Assistant Director of the Pesticide Section, distributed proposed modifications to the proposed rule and answered questions from the Committee. Ms. Douglas told the Committee that the proposed rule would be moved down the agenda in order to allow counsel time to research the Committee's questions.

Joe Altizer, Associate Counsel, reviewed his abstract on the rule proposed by the Division of Environmental Protection, Coal-bed Methane Wells, and stated that the Division has agreed to technical modifications. Mr. Altizer, Mike Lewis, of DEP, Oil and Gas Division, and Neal Pierce, Counsel, Columbia Natural Resources, responded to questions from the Committee.

Ms. Compton moved that the Committee adopt the modifications proposed by the Committee's counsel. The motion was adopted.

Mr. Gallagher moved to amend the proposed rule by adding a new section 13.3.14 to read as follows: To the extent that landowners refusal to allow a CBM operator to enter land restricts the CBM operator from compliance with other sections of this rule then the CBM operator is relieved of liability for such noncompliance. The motion was adopted.

Roger Hall, of the Bureau of Environment, addressed the Committee and responded to questions.

Ms. Compton moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Division of Health, Standards for Local Boards of Health, and stated that the Division has agreed to technical modifications. She also distributed modifications being proposed by the Division to the Committee. Mr. Gallagher had staff distribute proposed modifications to the Division's modifications.

Mr. Gallagher moved that the modifications proposed by the Division be adopted with his proposed modifications. The motion was adopted.

Ms. Compton moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham responded to questions regarding the rule proposed by the Department of Agriculture, Integrated Pest Management Programs in Schools and Day Care Centers.

Mr. Faircloth moved that the Committee recommend that the Department withdraw the proposed rule. He requested a roll call vote. The motion was adopted 6 to 5.

Rita Stuart, Associate Counsel explained that the Committee had been considering the rule proposed by the Infrastructure & Jobs Development Council, Infrastructure & Jobs Development Council Funding Rules at its previous meeting when the meeting was adjourned. She distributed modifications proposed by the Council and responded to questions from the Committee. Daniel Yonkosky, Water Development Authority, responded to questions from the Committee.

Mr. Ross moved that the Committee accept the modifications proposed by the Council. The motion was adopted.

Mr. Ross moved to modify the proposed rule by adding a new section 5.13.5, requiring project sponsors receiving assistance from the Fund to certify to the Council that it will construct any building required for public use with a roof sloped sufficiently to allow for the proper drainage of water. The motion was adopted.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Banking, Regulations Pertaining to the WV Consumer Credit and Protection Act, and stated that the Division has agreed to technical modifications. Tim Winslow, Counsel, Division of Banking, responded to questions from the Committee.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Division of

Banking, Regulations Pertaining to the WV Consumer Credit and Protection Act and the Industrial Bank and Industrial Loan Company Act, and stated that the Division has agreed to technical modifications. Mr. Winslow answered questions.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Banking, Regulations Pertaining to the WV Industrial Bank and Industrial Loan Company Act, and stated that the Division has agreed to technical modifications.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Division of Banking, Legislative Rule Pertaining to the Legal Lending Limit, and stated that the Division has agreed to technical modifications. Mr. Winslow and Sharon Bias, Banking Commissioner, responded to questions from the Committee.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Banking, Permissible Additional Charges In Connection With A Consumer Credit Sale, and stated that the Division has agreed to technical modifications. Commissioner Bias answered questions from the Committee.

Mr. Gallagher moved that the proposed rule be approved as modified. After further discussion he asked unanimous consent to withdraw his motion. There being no objection, the motion was withdrawn.

Mr. Ross moved that Sections 4 and 5 of the proposed rule be modified to delete the set fees and allow the fees to be set by contract. After further discussion he asked unanimous consent to withdraw his motion. There being no objection, the motion was withdrawn.

Mr. Gallagher moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Insurance Commissioner, Regulation Relating to Excess Line Brokers, and stated that the Commissioner has agreed to technical modifications. Jeff Vanguilder, Chief of Finance, Division of Banking, responded to questions from the Committee.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Insurance Commissioner, Continuing Insurance Education, and stated that the Commissioner has agreed to technical modifications. She

responded to questions from the Committee.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Insurance Commissioner, Recognizing Mortality Tables For Use in Determining Reserve Liability for Annuities, and stated that the Commissioner has agreed to technical modifications.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Insurance Commissioner, Examiners' Compensation, Qualifications and Classification, and stated that the Commissioner has agreed to technical modifications.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Insurance Commissioner, Substandard Risk Motor Vehicle Insurance Notice Requirements, and stated that the Commissioner has agreed to technical modifications.

Mr. Gallagher moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Insurance Commissioner, Health Maintenance Organization, and stated that the Commissioner has agreed to technical modifications. Keith Huffman, General Counsel to the Insurance Commissioner, responded to questions from the Committee.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Insurance Commissioner, Filing Procedures for Health Maintenance Organizations, and stated that the Commissioner has agreed to technical modifications.

Mr. Gallagher moved that the proposed rule be modified by adding a new Section 2.8 requiring the update of biographical information when there is a change in personnel. The motion was adopted.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Insurance Commissioner, Actuarial Opinion and Memorandum Rule, and stated that the Commissioner has agreed to technical modifications.

Ms. Compton moved that the proposed rule be approved as

modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Insurance Commissioner, Minimum Reserve Standards for Individual and Group Health Insurance Contracts, and stated that the Commissioner has agreed to technical modifications.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Stuart told the Committee that the Secretary of State was requesting authority to modify the rule proposed by the Secretary of State, Procedures for Canvassing Electronic Ballot Elections using Punch Card or Optical Scan Ballots, to incorporate the contents of two other related rules being proposed by the Secretary of State, Procedures for Canvassing Paper Ballot Elections and Procedures for Canvassing Lever Voting Machine Elections. She explained the proposed rule as it would be modified.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Stuart explained the rule proposed by the State Election Commission, Election Expenditures, and stated that the Secretary of State has agreed to technical modifications.

Mr. Gallagher moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Stuart reviewed her abstract on the rule proposed by the State Election Commission, Fair Campaign Practices, and stated that the Secretary of State has agreed to technical modifications. She responded to questions from the Committee.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Stuart explained the rule proposed by the State Election Commission, Corporate Political Activity, and stated that the Secretary of State has agreed to technical modifications. Bill Harrington, Chief of Staff, Secretary of State office, answered questions from the Committee.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer reviewed his abstract on the rule proposed by the Division of Environmental Protection/Air Quality, Emission Standards for Hazardous Air Pollution Pursuant to 40 CFR Part 63.

Mr. Faircloth moved that the proposed rule be approved. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: Nov. 15, 1995

TIME: 9:00 a.m. - 4:30 p.m.

NAME

Present Absent Yeas Nays

Chambers, Robert "Chuck", Speaker

Douglas, Vickie, Co-Chair

Linch, Larry, Vice-Chair

Compton, Mary Pearl

Faircloth, Larry V.

Gallagher, Brian

Riggs, Dale

Tomblin, Earl Ray, President

Ross, Michael, Co-Chair

Grubb, David, Vice-Chair

Anderson, Leonard

Boley, Donna

Buckalew, Jack

Macnaughtan, Don

TOTAL

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RE: Special Meeting

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: LRMRC

DATE: 11/15/95

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly <u>Ellen Archibald</u>	<u>Green brooke Bldg., Smith St, Chas</u>	<u>Insurance Commissioner</u>	
<u>Tim Winslow</u>	<u>Cap. Complex Bldg 3</u>	<u>Div of Banking</u>	<u>if needed</u>
<u>Sharon Bias</u>	..	<u>Div of Banking</u>	<u>if needed</u>
<u>Keith Huffman</u>	<u>Green brooke</u>	<u>Ins. Commr.</u>	<u>" "</u>
<u>KAY HOWARD</u>	<u>Charleston</u>	<u>DHHR</u>	<u>" "</u>
<u>Chris Gordan</u>	<u>Charleston</u>	<u>DHHR</u>	<u>" "</u>
<u>Jeff VanGilder</u>	<u>Charleston</u>	<u>Insurance Comm.</u>	<u>" "</u>
<u>Donna Quesenberry</u>	<u>Charleston</u>	<u>Insurance Commissioner</u>	
<u>BEN STON</u>	<u>Chas</u>	<u>KAN. Co. SCHOOLS</u>	<u>if needed</u>
<u>Chris Smith</u> ✓	<u>"</u>	<u>"</u>	<u>"</u>
<u>Robert Frawm</u> ✓	<u>Chas</u>	<u>WV Dept of Agric</u>	<u>if needed</u>
<u>Peggy Powell</u> ✓	<u>"</u>	<u>"</u>	<u>"</u>

DRAFT

TITLE 61
LEGISLATIVE RULES
WEST VIRGINIA DEPARTMENT OF AGRICULTURE

SERIES 12J

INTEGRATED PEST MANAGEMENT PROGRAMS IN SCHOOLS
AND DAY CARE CENTERS

61-12J-1 General

1.1 Scope - These legislative rules establish procedures to provide for integrated pest management programs in schools and day care centers.

1.2 Authority - WV Code §19-16A-4

1.3 Filing Date -

1.4 Effective Date -

61-12J-2 Definitions

2.1 "Consumer information sheet" means a fact sheet that is designed for distribution to consumers and contains information on the toxicity of the end use concentration of a pesticide product. In the case of ready-to-use products, "consumer information sheets" may be the same as "material safety data sheets."

2.2.2 "Crack and crevice treatment" means the application of small amounts of insecticides into openings commonly found at expansion joints, between different elements of construction, and between equipment and floors or walls.

2.2.3 "Broadcast" means the application of pesticides over an area such as a lawn, field, room, crawl space, or other such surface. The term does not include crack and crevice or spot applications made to selected plants, insects, soil, or surfaces.

2.4 "Day care center" means a completed structure utilized as a facility for the care of seven or more children on a non-residential basis.

2.3.5 "Least hazardous materials" means the use of pest control practices and methods, including the use of chemicals in a manner to cause the least practical exposure ~~or harm~~ to the occupants of a structure. The "least hazardous materials" takes into account the pest control method, toxicity of the product and the exposure to the occupants to the practice or methods employed to control pests, such as the use of a non-volatile material formulation and/or application method as opposed to a broadcast application that creates to potential for exposure.

2.6 "Material safety data sheet" means a fact sheet that is designed for distribution to chemical manufacturing plant workers and refers to the toxicity of the concentrate of a pesticide product. In the case of ready-to-use products, "material safety data sheets" may be the same as "consumer information sheets."

2.4.7 "Pesticide" means, for the purposes of this integrated pest management rule, the use of insecticides and herbicides that are sprayed into or around a building and the adjacent play grounds utilized by a school or day care center.

2.5.8 "School" means a completed structure utilized as a public or private school, grades kindergarten through twelfth grade.

2.6.9 "Re-entry period" means the time that must elapse from the completion of a pesticide application until students or school and day care employees may enter the building to conduct scheduled activities.

2.7.10 "Space treatment" means the application of a pesticide that is intended to discharge the pesticide into the air throughout and entire room or area.

2.8.11 "Spot treatment" means the application of a pesticide to a limited area where pests are likely to occur, such as floors, walls, bases or underside of equipment, turf or ground. A "spot" shall not be more than 2 square feet and shall not be more than 20 percent of a surface area.

61-12J-3 Integrated Pest Management

3.1 Integrated Pest Management is a system of controlling pests in which pests are identified, action thresholds are considered, all possible control options are evaluated and selected controls are implemented. Control options, which include biological, chemical, cultural, manual, and mechanical methods, are used to prevent or remedy unacceptable pest activity or damage. Choice of control options is based on effectiveness, environmental impact, site characteristics, worker/public health and safety, and economics. The goal of an integrated pest management system is to manage pests and the environment to balance benefits of control, costs, public health and environmental quality. Integrated pest management takes into account site-specific factors and takes advantage of all pest management options.

3.2 Pesticides shall not be applied unless monitoring as specified in Section 6 of this rule indicates pests are present.

61-12J-4 Integrated Pest Management Programs for Schools

4.1 All schools covered by this rule shall develop and maintain an integrated pest management program utilizing the best management practices contained in "Integrated Pest Management in Schools and Other Public Institutions, Best Management Practices - 1995", published by the West Virginia Department of Agriculture or the most recent revision.

4.2 At a minimum, the integrated pest management program for a school shall contain:

- 4.2.1 a policy statement;
- 4.2.2 pest management objectives;
- 4.2.3 education of the building occupants in integrated pest management practices;
- 4.2.4 inspection activities;
- 4.2.5 monitoring activities; and

4.2.6 an evaluation of the integrated pest management strategies in practice.

4.3 At the inception of the integrated pest management program, the school *shall should* make a survey of the facility and record the structural maintenance, cultural or sanitation practices that need correcting in order to insure the success of an integrated pest management program. This record *shall should* be updated every six months **periodically** with the items corrected so noted on the record with the date of correction.

4.4 Pest management objectives and pest threshold levels will vary for each school facility and the occupants of the facility. In order to provide a cross representation of input to the integrated pest management program from the school's occupants and the school community, the Local School Improvement Council as created by §18-5A-2 shall **be allowed to review and approve comment on** the school's integrated pest management plan.

4.5 The completed integrated pest management plan shall be filed with the Commissioner for compliance inspection. When any changes are made to the program, the revised integrated pest management plan shall be submitted the Commissioner prior to the initiation of the new plan.

4.6 Schools shall maintain an Integrated Pest Management file for each school facility. The Integrated Pest Management file shall contain at a minimum the following items or documents:

4.6.1 the adopted integrated pest management plan;

4.6.2 monitoring diagrams of the facility;

4.6.3 treatment records of the facility, including ~~diagrams of a floorplan~~ indicating treatment locations;

4.6.4 labels of pesticide products used at the facility;
and

4.6.5 copies of consumer information sheets when available and material safety data sheets.

4.7 Upon request, copies of pesticide labels and consumer

information sheets when available or material safety data sheets in the absence of consumer information sheets shall be provided to employees of the school facility or to parents or legal guardians of the school's students.

4.8 Exceptions - Areas of schools, such as but not limited to greenhouses, nursery plots or agricultural field plantings, utilized for vocational agricultural plots or research are exempt from the requirements of these rules.

61-12J-5 Integrated Pest Management Programs for Day Care Centers

5.1 All day care centers covered by this rule shall develop and maintain an integrated pest management program utilizing the best management practices contained in "Integrated Pest Management in Schools and Other Public Buildings, Best Management Practices - 1995", published by the West Virginia Department of Agriculture or the most recent revision.

5.2 At a minimum, the integrated pest management program for a day care center shall contain:

5.2.1 a policy statement;

5.2.2 pest management objectives;

5.2.3 education of the building occupants in integrated pest management practices;

5.2.4 inspection activities;

5.2.5 monitoring activities; and

5.2.5 an evaluation of the integrated pest management strategies in practice.

5.3 At the inception of the integrated pest management program, the day care center *shall should* make a survey of the facility and record the structural maintenance, cultural or sanitation practices that need correcting in order to insure the success of and integrated pest management program. This record *shall should* be updated every six months periodically with the items corrected so noted on the record with the date of correction.

5.4 The completed integrated pest management plan shall be filed with the Commissioner for compliance inspection. When any changes are made to the program, the revised integrated pest management plan shall be submitted the Commissioner prior to the initiation of the new plan.

5.5 Day care center operators shall maintain an Integrated Pest Management file for each facility in operation. The Integrated Pest Management file shall contain at a minimum the following items or documents:

5.5.1 the approved integrated pest management plan;

5.5.2 monitoring diagrams for the facility;

5.5.3 treatment records for the facility, including diagrams of treatment locations;

5.5.4 labels of pesticide products used at the facility;
and

5.5.5 copies of consumer information sheets when available and material safety data sheets for the products used at the facility.

5.6 Copies of pesticide labels and consumer information sheets when available or material safety data sheets in the absence of consumer information sheets shall be given to child's parents or legal guardians upon request.

61-12J-6 Monitoring for Pest Infestations

6.2.1 Monitoring Program

~~6.2.1.1. An integrated pest management program consists of a cycle of inspecting, identifying, monitoring, evaluating and choosing the appropriate method of control. Routine inspection and accurate identification of pests are vital steps in integrated pest management to ensure that control methods will be effective. Once the pest has been identified and the source of its activity pinpointed, habitat modifications primarily exclusion, repair and sanitation efforts may greatly reduce the prevalence of the pest.~~

The monitoring program shall includes inspecting areas of the facility for pest evidence, entry points, food, water and harborage sites, and estimating pest population levels. The information gained through monitoring ~~is~~ shall be evaluated to determine whether the action threshold has been exceeded and what can be done in the way of prevention.

6.2.1.2. A monitoring program shall be conducted in **suspect areas** in each facility on an ongoing basis. *Sticky traps designed for cockroaches and other crawling insects shall be placed along wall/floor junctions, on vertical surfaces, behind appliances, in closets, cabinets and shelves, and/or in other areas where insects have been seen. ~~Three to 5 traps shall be used in each room or area monitored.~~*

6.2.1.3. Components of the monitoring program shall include:

6.2.1.3.a. A floorplan of the facility showing the number and location of each trap.

6.2.1.3.b. Weekly Periodic inspection of each trap at no greater than monthly intervals with the following information recorded on a Pest Surveillance Data Sheet:

6.2.1.3.b.A. Trap number and location;

6.2.1.3.b.B. Date checked;

6.2.1.3.b.C. Trap condition (either OK or needs to be replaced);

6.2.1.3.b.D. Numbers and ~~species~~ kinds of insects, arthropods, rodents or other pests trapped;

6.2.1.3.b.E. Pest damage or other evidence of pests such as feces, cast skins, or rub marks;

6.2.1.3.b.F. Any need for pest management.

6.2.1.3.b.G. The name of the person performing the monitoring activity.

6.2.1.3.c. Replacement of the traps at *least every 2 months* or when the adhesive is no longer tacky or when trap is full, whichever comes first.

6.2.1.3.d. Removal and disposition of the ~~insects~~ trapped trap after catch numbers are recorded and identification is confirmed, to prevent counting specimens more than one time and to prevent their use as food by other insects or rodents.

6.3.2 When monitoring indicates the level of pest infestation meets or exceeds the threshold levels established for the facility and pest type, the progressive levels of pest control techniques and chemical applications as outlined in Section 7, Use of the Least Hazardous Materials, shall be followed in controlling the pest population. If monitoring indicates that pest populations do not meet or exceed threshold levels, no pesticides shall be applied.

61-12J-7 Use of the Least Hazardous Materials - Re-entry Intervals

7.1 Level 1 - Non-chemical Control Methods

7.1.1 Pest-preventive measures ~~shall~~ **should** be incorporated into existing structures. Such preventive measures reduce the need for pesticide applications, and include sanitation, such structural repairs as sealing cracks, and such physical and mechanical controls as screens, traps, and air doors. Consult the West Virginia Department of Agriculture's best management practices document "Integrated Pest Management in Schools and Other Public Institutions, Best Management Practices - 1995", or the most recent revision, for IPM strategies for specific sites. Note that every facility will experience slightly different combinations of pests.

7.2 Level 2 - Least Hazardous Materials

7.2.1. If non-chemical pest management methods alone are ineffective or impractical, it may be necessary to incorporate a pesticide into the integrated pest management program. Although all pesticides are inherently toxic, there are a number of pesticide materials that are determined to be of low impact to occupants because of their organic or biological nature, low toxicity, relative non-volatility, and/or low or non-existent exposure to the occupants due to the manner in which they are applied as baits,

gels or dusts into cracks and crevices or wall voids.

7.2.2. The least hazardous pesticides are those with a Caution signal word (EPA toxicity categories III and IV) such as botanical pesticides - pyrethring and the synthetic pyrethroids; the inorganic insecticides - boric acid, disodium octaborate tetrahydrate, silica gel, and diatomaceous earth; insecticidal soaps; insect growth regulators; biological control agents - fungi, bacteria, nematodes; baits in tamper-resistant containers or for crack and crevice or void placement only.

7.2.3 There is no re-entry interval for these products due to their level of safety.

7.3 Level 3 - Crack and Crevice and Spot Treatments

7.3.1. Products with an EPA Caution signal word but not listed under Level 2 and applied as crack and crevice or spot treatments.

7.3.2 Products applied by these methods provide for reduced, minimal use of liquid materials that may present some, but limited volatility of the pesticide applied. Exposure to occupants is minimal.

7.3.3 The re-entry interval for which students and employees are remain out of the treated area of the facility after the conclusion of treatment is four hours or the time period specified on the pesticide label as registered by the United States Environmental Protection Agency, which ever is greater.

7.4 Level 4 - Broadcast Applications and Space Treatments

7.4.1. Products with a Caution signal word applied by broadcast application or as a space treatment or products with a Warning or Danger signal word applied by any application method.

7.4.2 Products applied by these methods create the greatest opportunities for exposure at the time of application due to drift or volatility. However products applied as fogging agents are usually of low mammalian toxicity and pose little exposure after label re-entry times specified by the United States Environmental Protection Agency.

7.4.3 The re-entry interval for which students and employees are to remain out of the treated area of the facility after the conclusion of treatment is eight hours or the period specified on the label of the pesticide product as registered by the United States Environmental Protection Agency, which ever is greater, except when the air in the treated area can be purged by the heating, cooling, ventilation system the period of reentry shall be 4 hours or the period specified on the label of the pesticide product as registered by the United States Environmental Protection Agency, which ever is greater.

61-12J-8 Prior Notification

8.1 Employees of Schools and Day Care Centers

8.1.a All schools and day care centers shall notify their employees at least 24 hours in advance of the application of pesticides in levels 3 and 4 as detailed in Section 4, Use of the Least Hazardous Materials, of this rule.

~~8.2-a.1.b.~~ At the beginning of the school year School administrators shall notify their employees through routine announcement or individual notice to each employee of a facility where pesticides are to being applied. The notice shall instruct the employee of the location of posting of the treatment schedule and notification of any necessary unscheduled treatments.

8.2 Parents or Legal Guardians of Students of Schools

8.2.a At the beginning of each school year, or at the time a student is enrolled into the school, school administrators shall notify the parents or guardians of the right to be informed of the application of level 3 or 4 pesticides ~~in levels 3 and 4~~ as detailed in Section 4, Use of the Least Hazardous Materials, of this rule.

8.2.b The notification to the parents or guardians shall contain a registration form, whereby the parent or guardian can request to be notified by the school administrator of the application of level 3 or 4 pesticides.

8.2.c The administrator of the school shall provide notification to the parent or guardian requesting such notification

at least 24 hours in advance of the ~~pesticide~~ application of level 3 or 4 pesticides.

8.3 Parents or Legal Guardians of Children in Day Care Centers

8.3.a At the time a day care center operator signs a contract or other agreement for the care of a child, the operator shall notify the parent or guardian of the right to be informed of the application of a level 3 or 4 pesticide ~~in levels 3 and 4~~ as detailed in Section 4, Use of the Least Hazardous Materials, of this rule.

8.3.b The day care center operator shall post and make available to the parent or guardian, notification of the application of level 3 or 4 pesticides at least 24 hours in advance of any pesticide application. Such notification shall be placed at the register where the parent or guardian signs the child into and out of the day care center.

61-12J-9 Application of Pesticides to Schools and Day Care Centers

9.1 Pesticide applications shall not be made in the presence of students, children in day care centers or employees of schools ~~or and day care centers employees~~, except for school or day care center employees who are certified pesticide applicators, except that pesticides may be applied to a localized area of infestation when students, children or school and day care center employees are present if the infestation causes an imminent threat of bodily harm.

9.2 All pest control methods or practices shall be conducted in conformance to the Use of the Least Hazardous Materials as outlined in Section 7 of this rule.

9.3 All pesticide applications made to schools and day care centers shall be applied in accordance with the integrated pest management plan filed with the Commissioner.

9.4 All pesticide applications shall only be made by certified commercial pesticide applicators or certified public applicators certified in General Pest Control, or registered technicians under the supervision of a certified pesticide

applicators as outlined in Title 61 Series 12A Certified Pesticide Applicator Rules.

9.5 The commissioner shall require all certified pesticide applicators applying pesticides or supervising the application of pesticides, or persons providing services as a consultant to complete a specialized training program in urban integrated pest management.

9.5.1 The specialized urban integrated pest management program must be approved by the commissioner.

9.5.2 Pesticide applicators certified in the General Pest Control sub-category as detailed in Title 61 Series 12A, Certified Pesticide Applicator Rules who complete the specialized training program in urban integrated pest management prior to July 1, 1996 shall be determined to be certified in Urban Integrated Pest Management.

9.5.3 After ~~July~~ **September** 1, 1996, the commissioner shall require all certified pesticide applicators applying pesticides or supervising the application of pesticides in a school or day care center, or persons providing services as a consultant to schools and day care centers to be examined and certified in the sub categories of General Pest Control and Urban Integrated Pest Management as outlined in Title 61 Series 12A Certified Pesticide Applicator Rules.

61-12J-10 Record Keeping

10.1 All documents of required to be in the Integrated Pest Management Files for schools and day care centers as detailed in Section 4.6 and Section 5.5, respectively, of this rule shall be kept for a period of two years.

10.2 The records required for the Integrated Pest Management of schools and day care centers shall be made available upon request to the commissioner to verify the maintenance of the integrated pest management program.

61-12J-11 Implementation

11.1 All schools and day care centers covered by this rule

will be notified of these emergency rules and timetable for compliance as required by §18-5-9b and §49-2B-17 by August 15, 1995.

11.2 The commissioner shall make available to all schools and day care centers a copy of the integrated pest management materials titled " Integrated Pest Management in School and other Public Institutions, Best Management Practices - 1995" and "Integrated Pest Management in Schools and Other Public Institutions, A Guide for Commercial Applicators".

11.3 All schools and day care centers covered by this rule shall submit an initial draft of their integrated pest management plans to the commissioner for review by February 1, 1996. The commissioner shall review the plans and offer comments when they appear warranted.

11.4 All schools and day care centers covered by this rule shall submit their completed integrated pest management program to the commissioner by August 1, 19956.

11.5 All pesticide applications made to schools and day care centers shall be made in accordance with these rules and the integrated pest management programs on file with the commissioner after September 1, 19956.

Dist. 11/15/95 meeting

Draft Modified Rule - 11/14/95

**PROPOSED RULE - TITLE 64
WEST VIRGINIA ADMINISTRATIVE RULES
DIVISION OF HEALTH**

SERIES 73

STANDARDS FOR LOCAL BOARDS OF HEALTH

**Modified Rule for Approval by the
Legislative Rule-Making Review Committee**

RECEIVED

NOV 14 1995

**Legislative Rule Making
Review Committee**

**PROPOSED RULE
WEST VIRGINIA ADMINISTRATIVE RULES
DIVISION OF HEALTH
STANDARDS FOR LOCAL BOARDS OF HEALTH
64 CSR 73**

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WEST VIRGINIA ADMINISTRATIVE RULES
DIVISION OF HEALTH
SERIES 73
STANDARDS FOR LOCAL BOARDS OF HEALTH

§64-73-1. General.

1.1. **Scope** - This legislative rule establishes standards for the plans of operation, administration, fiscal reporting, quality assurance, and provision of public health services and programs by local boards of health.

1.2. **Authority** - W. Va. Code §16-1-7.

1.3. **Filing Date** -

1.4. **Effective Date** -

§64-73-2. Application and Enforcement.

2.1. **Application** - This rule applies to local boards of health.

2.2. **Enforcement** - This rule is enforced by the director of the division of health.

§64-67-3. Definitions.

~~3.1. **Board** - Local board of health.~~

3.1. **Department** - The state department of health and human resources.

3.2. **Director** - The director¹ of the division of health and his or her designee.

3.3. **Division of Health or Division** - The division of health of the department of health and human resources.

3.4. **Fiscal Year** - The twelve (12) month period beginning the first day of July and ending the thirtieth day of the following June.

3.5. **Local Board of Health or Board** - A board of health serving one (1) or more counties, one (1) or more municipalities, or a combination thereof.

¹ The Department of Health and Human Resources (DHHR) was created by the Legislature's reorganization of the executive branch of State government in 1989, and the Department of Health was renamed the Division of Health and made a part of the DHHR (W. Va. Code §§F-1-1 et seq.). Administratively within the DHHR the Bureau of Public Health through its Commissioner carries out the public health function of the Division of Health.

3.6. **Local Health Department** - The staff of the local board of health.

3.7. **Local Health Officer** - An individual physician with a current license to practice in West Virginia, who is knowledgeable of sanitary laws, and who shall supervise and direct the activities of county or municipal health services, employees and facilities.

~~3.8. **Patient or Client Encounter** - A one to one contact, in person or by phone, between an individual and a staff member of the local health department. The term "patient or client encounter" does not include a one to one contact for the purposes of short, simple inquiries, or the dissemination of general information to groups.~~

3.8. **State Aid Funds** - Funds appropriated annually by the legislature to provide financial aid to local boards of health.

§64-73-4. Organization.

4.1. A local board of health shall be organized in accordance with Chapter 16 of the W. Va. Code.

4.2. A local board of health in a county having a population greater than thirty thousand (30,000) shall meet no less than six (6) times a year. A local board of health in a county having a population less than thirty thousand (30,000) shall meet no less than four (4) times a year.

4.3. The board shall comply with the requirements of W. Va. Code §6-9A-1 through §6-9A-6 regarding open governmental proceedings.

4.4. The by-laws of the board shall at a minimum include attendance requirements for board members and scope of responsibility the number, duties, tenure and qualifications of members, a description of the process for filling vacancies on the board, requirements for written minutes and records of board actions, and a description of duties and election process for officers. A quorum of the board for transacting business is a simple majority of the constituent membership of the board.

§64-73-5. Health Services and Programs.

5.1. The board shall provide the following public health services and programs:

5.1.1. Evaluation of the community health needs of the community it serves using generally accepted professional health needs assessment techniques;

5.1.2. Prevention and control of epidemics, and investigation and containment of diseases and injuries through compliance with the requirements of W. Va. Department of Health and Human Services Administrative Rules, 64 CSR 7, Reportable Diseases, regarding disease surveillance and epidemiological reporting;

5.1.3. Assurance of a safe and healthy environment, and maintenance of clean and safe

air, water, food and facilities through a program of routine public health environmental education and control;

5.1.4. Promotion of healthy lifestyles, including the provision of health education to individuals and communities;

5.1.5. Targeted outreach and the formation of partnerships with other community organizations; and

5.1.6. Initiation and participation in mobilization of the community for actions to improve the health and well-being of the population served.

5.2. The board shall administer public health sanitation rules as specified by the director with regard to:

5.2.1. Public drinking water sanitation;

5.2.2. Sewage and wastewater sanitation;

5.2.3. Food and milk sanitation;

5.2.4. Housing and institutional sanitation;

5.2.5. Recreational sanitation; and

5.2.6. General sanitation.

5.3. The board of health shall assure a program of immunizations according to the Standards for Pediatric Immunization Practices, as published by the U. S. Centers for Disease Control and Prevention.

~~5.4. The board shall, as resources permit, provide health programs in addition to the minimum requirements.~~

~~5.4.1.~~ 5.4. The board shall conduct preventive health programs designed to promote healthy behaviors.

~~5.4.2.~~ 5.5. The board may provide individual health care services.

~~5.4.2.a.~~ 5.6. The board shall maintain and conform to its written policies and procedures governing patient or client referral, release of information, confidentiality, and the consent for staff to provide services to patients or clients which shall be consistent with applicable federal and state laws, rules and regulations.

5.7. ~~5.4.2.b.~~ Patient or client care protocols, including standing orders and medical directives shall be approved annually by the local health officer.

5.8. The board may charge fees for permits and services as authorized by the director, the state legislature and applicable state law and rules.

§64-73-6. Reports and Records.

The board shall in a timely manner submit reports and records in compliance with applicable state and federal rules and regulations and departmental policies.

§64-73-7. General Administration of the Local Health Department.

7.1. Staff.

7.1.1. The board may employ or contract for staff to carry out its duties and responsibilities.

7.1.2. The board shall have a written organizational chart for the local health department which indicates lines of authority and responsibility.

7.1.3. The board shall review the organizational chart annually and shall document the review in minutes of an official board meeting.

7.1.4. The board shall employ an administrator or designate a staff member or shall contract for an administrator to manage day-to-day operations.

7.1.5. Staff and consultants of the board and of any contractors providing services for the board shall be in compliance with applicable W. Va. licensure requirements.

7.1.6. The board shall have liability insurance at least equivalent to that available to local boards through the state board of risk management which includes all staff, board members, and contracted services.

7.2. Policies and Procedures.

All administrative policies, procedures, rules, and instructions specifying the operations and activities of the ~~local department~~ staff, including patient- or client-related activities shall be written and readily available to relevant staff.

7.3. Personnel Management.

7.3.1. The board shall keep a confidential personnel record ~~shall be kept~~ for each staff member.

7.3.2. The board shall review and reapprove or revise functional job descriptions, including those performed through contract, at least every two (2) years.

7.4. Staff Development.

7.4.1. The board shall provide an orientation program for all new staff which shall include, at a minimum, introduction and discussion of all policies relating to the job, behavior expected, patient confidentiality, and individualized on-the-job training in specific functions.

7.4.2. The board shall provide training for staff who assume new functions or increased responsibilities or who experience other changes in their job responsibilities.

7.4.3. The board shall provide in-service and continuing education related to current responsibilities to staff on an ongoing basis.

§64-73-8. Financial Management.

8.1. The board shall participate in audits of and shall be in compliance with procedures required by the State tax commissioner. The board shall include a copy of the most recent audit report with the annual submission of the program plan required by § 10 1.2 of this rule.

8.2. The board shall identify in writing staff or contract staff who have the authority to:

8.2.1. Handle cash;

8.2.2. Sign checks in accordance with W. Va. Code §16-2A-6; and

8.2.3. Approve or disapprove of expenditures.

8.3. The board should maintain a cash reserve equal to at least the past three (3) months' operating expenditures of the local health department.

8.4. The board shall establish a written schedule and procedures for reimbursement of employee travel and other expenditures.

8.5. Contracts, memoranda, or other forms of agreement between the board and other parties shall be in writing.

8.6. The board shall establish a procedure to monitor program costs, revenues, and expenditures.

8.7. No later than thirty (30) days prior to the first day of July, the board shall develop a budget for the coming fiscal year. The ~~document~~ budget shall identify and provide details of the operating expenses needed for each individual program and other activities.

§64-73-9. Physical Facilities.

9.1. The board shall provide facilities and equipment for the local health department.

9.2. The board should be able to provide evidence that the buildings and grounds of the local health department are in compliance with federal and state laws and regulations.

9.3. The buildings and grounds of the local health department shall have one (1) or more outside signs which clearly identify the department.

9.4. The board ~~physical arrangements of the building~~ shall assure the ~~promote~~ protection of patient ~~and~~ or client privacy.

9.5. The board shall establish a policy prohibiting smoking or the use of smokeless tobacco in the local health department.

§64-73-10. Program Plan.

10.1. Program Plan.

10.1.1. The plan shall be submitted on forms supplied or approved by the director which shall include:

10.1.1.a. A comparison of current year activities (year-to-date) and projections for the coming year;

10.1.1.b. A brief general mission statement;

10.1.1.c. An overall general five (5) year plan;

10.1.1.d. Short-term goals for each program; and

10.1.1.e. The budget document.

10.1.2. The plan shall be submitted annually to the division no later than thirty (30) days prior to the first day of July.

10.2. Planning Process.

10.2.1. The board shall conduct an ongoing planning process.

10.2.2. The board shall provide opportunities for and document citizen and staff participation in planning, developing, and implementing programs.

~~§64-73-11. Evaluation.~~

10.3. The director shall approve or disapprove the board's program plan based on compliance with this rule.

§64-73-11. Penalties.

In the event that the director determines that a local board of health is not in compliance with this rule, the director may withhold state aid funds until such time as the board submits an acceptable plan to correct deficiencies in the program plan.

§64-73-12. Administrative Due Process.

Those ~~persons~~ local boards of health adversely affected by the enforcement of this rule who desire a contested case hearing to determine any rights, duties, interests, or privileges, shall do so in a manner prescribed in Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

§64-73-13. Severability.

The provisions of this rule are severable. If any provisions of this rule are held invalid, the remaining provisions remain in effect.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 11/15/93

TIME: 11:30 a.m.

NAME Present Absent Yeas Nays

Chambers, Robert "Chuck", Speaker

Douglas, Vickie, Co-Chair

Linch, Larry, Vice-Chair

Compton, Mary Pearl

Faircloth, Larry V.

Gallagher, Brian

Riggs, Dale

Tomblin, Earl Ray, President

Ross, Michael, Co-Chair

Grubb, David, Vice-Chair

Anderson, Leonard

Boley, Donna

Buckalew, Jack

Macnaughtan, Don

TOTAL

			✓
		✓	
			✓
		✓	
			✓
		✓	
		✓	
			✓
		✓	

RE:

Faircloth's motion that Dept of Agriculture
withdraw its Integrated Pest Mgt Rule

Dist 11/12/95 meeting

TITLE 167
RULES

SERIES 1
STATE INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

§ 167-1-1. General.

1.1. Scope and Purpose. -- This legislative rule establishes guidelines to be used by the Council in evaluating any request by a project sponsor for funding assistance for the planning, design, acquisition, or construction of water and waste water projects and the funding of all or any part of such projects through the Infrastructure Fund.

1.2. Authority. -- West Virginia Code §§ 31-15A-4, 31-15A-5 and 31-15A-10.

1.3. Filing Date. --

1.4. Effective Date. --

~~1.5. Incorporation by Reference. -- Whenever federal or State statutes or regulations are incorporated into these regulations by reference, the reference is to the statute or regulation in effect on _____.~~

§ 167-1-2. Definitions.

2.1. "Act" means the Infrastructure and Jobs Development Act, W. Va. Code § 31-15A-1 et seq.

2.2. "Cost" means, as applied to any project to be financed in whole or in part with infrastructure revenues or funds otherwise provided pursuant to the Act, the cost of planning, acquisition, improvement and construction of the project; the cost of preliminary design and analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility studies, assessments, applications, approvals, submissions or clearances; the cost of preparation of plans and specifications and other engineering services; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and any other interests required for the acquisition, repair, improvement or construction of the project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth, demolishing or removing any buildings or structures; the cost of constructing any buildings or other improvements; the cost of all pumps, tanks, vehicles, apparatus and other machinery, furnishings and equipment; loan or origination fees and all finance

charges and interest incurred prior to and during the construction and for no more than six months after completion of construction; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring, repairing, improving or constructing any project; the cost of placing any project in operation; and all other costs and expenses of any kind or nature incurred or to be incurred by the project sponsor developing the project that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project: *Provided*, That costs shall not include any amounts related to the ongoing operations of the owner or operator, depreciation thereof or any other cost which the Council or the Water Development Authority has not determined to be consistent with the purposes and objectives of the Act.

2.3. "Council" means the West Virginia Infrastructure and Jobs Development Council created pursuant to Section 1 of the Act.

2.4. "Crisis Situation" means a recent incident such as an act of God (drought, freeze, flood, storm or landslide), or an act of man (chemical spill or vandalism), resulting in an outage or a significant decline in quality or quantity of potable water or the treatment of waste water which poses a serious and immediate threat or endangerment to health for which local funds are not available to resolve: *Provided*, That a crisis situation caused by an act of man shall not include occurrences resulting from the lack of maintenance; negligence; normal replacement of operating parts, pumps, or systems; or upgrades to achieve compliance with existing or new regulatory standards.

2.5. "Division of Environmental Protection" means the Division of Environmental Protection established under Article one, Chapter twenty-two of the Code or any successor to all or any substantial part of its powers and duties.

2.6. "Division of Health" means the Division of Health created in Article one, Chapter sixteen of the Code or any successor to all or any substantial part of its powers and duties.

2.7. "Economic Development Authority" means the Economic Development Authority established under Article fifteen, Chapter thirty-one of the Code or any successor to all or any substantial part of its powers and duties.

2.8. "Governmental agency" means any county; municipality; watershed improvement district; assessment district; soil conservation district; sanitary district; public service district; drainage district; regional governmental authority and any other state governmental agency, entity, political subdivision

or public corporation or agency authorized to acquire, construct or operate water or waste water facilities or infrastructure projects.

2.9. "Housing Development Fund" means the West Virginia Housing Development Fund established under Article eighteen, Chapter thirty-one of the Code or any successor to all or any substantial part of its powers and duties.

2.10. "Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Section nine of the Act.

2.11. "Infrastructure project" means a project in the State which the Council determines is likely to foster and enhance public health, economic growth and development in the area of the State in which the project is developed, for commercial, industrial, community improvement or preservation or other proper purposes, ~~including, without limitation, infrastructure projects~~ include but are not limited to tourism and recreational housing, land, air or water transportation facilities and bridges, industrial or commercial projects and facilities, mail order, warehouses, wholesale and retail sales facilities and other real and personal properties, including facilities owned or leased by this state or any other project sponsor, and includes, without limitation (1) the process of acquiring, holding, operating, planning, financing, ~~demolition—demolishing, construction~~ constructing, improving, expanding, ~~renovation—renovating~~, leasing or otherwise disposing of the project or any part thereof or interest therein, and (2) preparing land for construction and making, installing or constructing improvements on the land, including water or waste water facilities or any part thereof, steam, gas, telephone and telecommunications and electric lines and installations, roads, bridges, railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and drainage and flood control facilities, whether on or off the site.

2.12. "Infrastructure revenue" means all amounts appropriated by the Legislature; all amounts deposited into the Infrastructure Fund; any amounts received, directly or indirectly, from any source for the use of all or any part of any project completed pursuant to ~~this article—the Act~~; and any other amounts received by the State Treasurer, the Council or the Water Development Authority ~~for the purposes of the Act~~.

2.13. "Project" means any waste water facility or water facility ~~project~~, or any combination thereof, constructed or operated or to be constructed or operated by a project sponsor.

2.14. "Project sponsor" means any ~~person or governmental agency or person~~, or any combination thereof, including, but not limited to, any public utility, which intends to plan, acquire,

construct, improve or otherwise develop a project or infrastructure project.

2.15. "Public Service Commission" means the Public Service Commission of West Virginia created and established under Section three, Article one, chapter twenty-four of the Code or any successor to all or any substantial part of its powers and duties.

2.16. "Person" means any individual, corporation, partnership, association, limited liability company or any other form of business organization.

2.17. "Public utility" means any person or persons, or association of persons, however associated, whether incorporated or not, including, without limitation, any governmental agency, operating a waste water facility or water facility as a public service, which is regulated by the Public Service Commission as a public utility or which is required to file its tariff with the Public Service Commission.

2.18. "State Development Office" means the West Virginia Development Office established under Article two, Chapter five-b of the Code or any successor to all or any substantial part of its powers and duties.

2.19. "State infrastructure agency" means the Division of Health, Division of Environmental Protection, Housing Development Fund, Public Service Commission, State Development Office, Water Development Authority, Economic Development Authority and any other state agency, division, body, authority, commission, instrumentality or entity which now receives or in the future may receive applications for the funding of, and provides funding or technical assistance to for, the planning, acquisition-acquiring, ~~construction-constructing~~ or ~~improvement-of-improving~~ a project.

2.20. "Waste water facility" means all public facilities, land and equipment used for or in connection with treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding waste water, including, without limitation, facilities for the treatment and disposal of sewage, industrial wastes or other wastes, waste water, and the residue thereof; facilities for the temporary or permanent impoundment of waste water, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport waste water together with the equipment and furnishings therefor or thereof and their appurtenances and systems, whether on the surface or underground including force mains and pumping facilities therefor.

2.21. "Water Development Authority" means the West Virginia Water Development Authority established under Article one,

~~Chapter twenty-two C of the Code~~ or any successor to all or any substantial part of its powers and duties.

2.22. "Water facility" means all public facilities, land and equipment used for or in connection with the collection and/or storage of water, both surface and underground, transportation of water, storage of water, treatment of water and distribution of water for the purpose of providing potable, sanitary water suitable for human consumption and use.

§ 167-1-3. Projects.

3.1. Project Review. Prior to applying for or receiving any loan, loan guarantee, grant or other funding assistance for a project from any State infrastructure agency, a project sponsor must submit a preliminary application on the Council's form and must receive the Council's recommendation.

3.1.1. If a project sponsor believes that a project is outside the review of the Council, then the project sponsor shall complete only the appropriate sections of the preliminary application form and shall request an exemption from review.

3.2. Exemption from Review. The Council shall exempt a ~~project—the following~~ from the preliminary application review process ~~if:~~

3.2.1. Any project sponsor which either had received acceptable bids for the project or had all funding in place on July 1, 1994.

3.2.2. Any funding from a State infrastructure agency where the recipient of the funding is designated by state or federal law or regulation.

3.2.3. Any funding from any state agency determined by the Council not to be a State infrastructure agency.

3.2.4. Any funding from the governor's civil contingent fund with regard to projects or infrastructure projects.

3.2.5. Any activity funded by a State infrastructure agency determined by the Council to be outside the scope of the definition of project.

3.2.6. Any action taken by the Economic Development Authority pursuant to the authority established in article fifteen, chapter thirty-one of the West Virginia Code.

3.2.7. The North Fork Hughes River project described in Section 8(d) of the Act.

3.3. Preliminary Application Filing. A project sponsor may file a preliminary application with the Council, at the offices of the Water Development Authority, at any time; *Provided*, that the preliminary application will not be formally accepted until such preliminary application is presented to the Council at the next regularly scheduled Council meeting, at which time the thirty-day review period shall begin. The Water Development Authority may, but is not required to, circulate the preliminary application to Council members or Council committees in advance of such meeting.

3.4. Preliminary Application Review. Within thirty days of the Council's formal ~~review-acceptance~~ of a complete preliminary application from a project sponsor, the Council shall either recommend that the project sponsor seek funding or that the project sponsor not seek funding for the project or request additional information if necessary to make a determination.

3.5. Approval. If the Council determines that the project is consistent with the Act, it shall make a written recommendation for the project financing stating: (i) the loan, loan guarantee or grant, or any combination thereof, for which the project sponsor should apply; (ii) the amount or amounts of said loan, loan guarantees or grant; (iii) the source or sources of such funding; and (iv) which State infrastructure agency or agencies should consider funding the project, including funding from the Infrastructure Fund.

3.6. Funding of Project. The Council may provide that if the recommended funding sources have not or cannot dedicate money for the project, the project sponsor shall submit a supplement to its preliminary application to the Council for consideration of alternate funding from another funding source or the Infrastructure Fund.

3.7. Denial. If the Council determines that the project is not eligible for funding assistance from any State infrastructure agency, or that the project is not otherwise an appropriate or prudent investment of State funds, it shall recommend that the project sponsor not seek funding from any State infrastructure agency.

3.8. Recommendations. The Council shall provide a copy of its recommendation, together with a copy of the preliminary application, if not previously provided, to all State infrastructure agencies which are listed in the recommendation as recommended funding sources.

§ 167-1-4. Review Guidelines.

4.1. Determination of Eligible Projects. When evaluating any request for funding assistance to plan, acquire, construct, improve or otherwise develop a project, the Council and other State infrastructure agencies shall consider the following:

4.1.1. The public health benefits;

4.1.2. The economic development benefits;

4.1.3. The degree to which the project will correct deficiencies involving compliance of water systems or sewage treatment facilities with State or federal laws, regulations or standards;

4.1.4. The degree to which the project encourages effective and efficient consolidation of water or sewage treatment systems consistent with the comprehensive plan developed pursuant to Section six of the Act;

4.1.5. The cost effectiveness of the project as compared with alternatives which achieve substantially the same public health or economic development benefits, including the consideration of system operation and maintenance requirements and providing maximum feasible fire protection;

4.1.6. The availability of alternative sources of funding which could finance all or a part of the project, and the need for the assistance of the Council to finance the project or attract other sources of funding;

4.1.7. The applicant's ability to operate and maintain the system if the project is approved;

4.1.8. The degree to which the project achieves other State or regional planning goals;

4.1.9. The estimated date upon which the project could commence if funding were available and the estimated completion date of the project;

4.1.10. Such other considerations as the Council may consider necessary or appropriate to accomplish the purpose and intent of the Act.

4.2. Waste Water Guidelines. When evaluating a request for funding a project which will include the construction, improvement, or development of a waste water facility or system, the Council and other State infrastructure agencies shall consider the following:

4.2.1. The improvement of public health by addressing direct human impact due to system malfunctions or inadequately treated sewage; the severity of individual or public water supply contamination; the degree of impact on public bathing areas; and the severity of safety hazards from deteriorated facilities.

4.2.2. The enhancement of economic development by encouraging directly or indirectly development activity and job creation or retention.

4.2.3. The facilitation of enforcement compliance by reducing existence of overload conditions, damage to fish and aquatic life, loss of boating and recreation opportunity, impact on industrial water supply uses, impact on crop irrigation and degradation of streams used for stock watering.

4.2.4. The adequacy, efficiency and social impact; the extent that reorganization or consolidation of facilities will be accomplished; whether the population will be directly affected; the ongoing ability of the applicant to operate and maintain the project facilities and system; an increase in the reliability of service; and efficiency of the proposed solution when compared with other alternatives.

4.2.5. The enhancement of the State goal of providing waste water treatment in developing ~~or developable~~ but currently unserved areas.

4.3. Water Guidelines. When evaluating a request for funding of a project which will include the construction, improvement, or development of a water facility or system, the Council and other State infrastructure agencies shall consider the following:

4.3.1. The effect on public health; the elimination of an ongoing public health hazard; the elimination of a periodic or potential public health hazard; and the preventive maintenance related to health hazards.

4.3.2. The enhancement of economic development activity and job creation or retention resulting directly or indirectly from the project; the opportunity to use other State programs; and the degree of local distress in the area where the project is located.

4.3.3. The effect on compliance and improvement in water system design, treatment, service, operation and compliance.

4.3.4. The ongoing ability of the applicant to operate and maintain the project facility and system.

4.3.5. The beneficial environmental and social impacts; beneficial environmental impact only; and beneficial social impact only.

4.3.6. The adequacy and efficiency of the water facility or system; the increase in availability of water, ~~consolidation of systems~~, water conservation or improvement in aesthetic water quality; the increase in the reliability of service; ~~consolidation of systems~~; and the efficiency of the proposed solution when compared with other alternatives.

4.3.7. The enhancement of the State goal of providing potable water in developing ~~or developable~~ but currently unserved areas.

§ 167-1-5. Infrastructure Fund Administration.

5.1. Administration of Infrastructure Fund. The Water Development Authority shall administer amounts in the Infrastructure Fund.

5.2. Sources of Money for Fund. The Infrastructure Fund shall consist of infrastructure revenues; any appropriations, grants, gifts, contributions, loan proceeds or other revenues received by the Infrastructure Fund from any source, public or private; amounts received as payments on any loans made by the Water Development Authority from the Infrastructure Fund to pay for the cost of a project or infrastructure project; insurance proceeds payable to the Water Development Authority or the Infrastructure Fund in connection with any infrastructure project or project; all income earned on moneys held in the Infrastructure Fund; all funds deposited in accordance with the Act; and all proceeds derived from the sale of bonds issued pursuant to article fifteen-b, chapter thirty-one of the West Virginia Code.

5.3. Use of Moneys in the Fund. Upon the written recommendation of the Council, and subject to the restrictions set forth in the Act, including but not limited to the restrictions set forth below, the Water Development Authority shall use money in the Infrastructure Fund to make loans, loan guarantees or grants, or any combination thereof, and to provide ~~such financial, technical and other assistance (financial, technical or otherwise)~~ as necessary to finance all or part of the costs of infrastructure projects or projects to be undertaken by a project sponsor.

5.4. Council Determination. Prior to the Water Development Authority's making any loan, loan guarantee, grant or other assistance, the Council shall determine that the loan, loan

guarantee, grant or other assistance and the manner in which it will be provided are necessary or appropriate to accomplish the purposes and intent of the Act.

5.5. Eligible Grant Recipients. The Council shall not authorize the Water Development Authority to make grants for any project to any project sponsor (i) which is not a governmental agency or a not-for-profit corporation, or (ii) where the project, if funded, will provide subsidized services to certain users in the service area of the project.

5.6. Grant Requirements. The Water Development Authority may make a grant to a project sponsor for a project if the Council in its sole discretion determines and finds that (1) the level of rates for the users would otherwise be an unreasonable burden given the users' likely ability to pay; or (2) the absence of a sufficient number of users prevents funding of the project except through grants. Prior to awarding any infrastructure grant money to a project sponsor, the Council must determine that no other funding is available for the proposed grant portion of the project.

5.7. Grant Criteria. In determining whether a grant should be offered, and, if so, what proportion of the financial assistance offered should constitute a grant and what portion should constitute a loan or other loan assistance, the Council will consider the ultimate effect that financing a project's costs will have on the rates that users will be required to pay.

~~5.7.1.~~ In performing this assessment, the Council shall review the mandatory minimum end user utility rate that must be met by the project sponsor before grant assistance may be awarded. This mandatory minimum end user utility rate shall be based upon a uniform statewide percentage of the median household income as determined and published by the United States Department of Commerce, Bureau of the Census, for the geographic area which the project will serve and upon an average customer usage of 4,500 gallons per month. The uniform percentage rate shall be 1 1/2% of the median household income. The Council shall base its determination on the median household income for the Bureau of Census established minor civil division (MCD) most closely related to the geographic boundaries of the project sponsor as established by law. The minor civil divisions and the median household incomes extracted from the ~~most recent available census 1990~~ Bureau of Census report are set forth in Appendix A attached hereto and incorporated herein by reference. If the project sponsor provides service to two or more MCD's but does not serve an entire county or if a municipal project sponsor serves outside its corporate boundaries, then the Council shall compute the minimum end user utility rate in accordance with the formula set forth in Appendix A.

5.7.2. The Council may further consider factors including, but not limited to, the financial condition of the applicant, including revenues, expenses, debt structure, reserve balances, available collateral and financial condition of the project sponsor, and the inability of the project sponsor to secure grant funding from other sources.

5.8. Limit on Grant Amount. Any moneys disbursed from the Infrastructure Fund in the form of grants shall not exceed twenty percent of the total funds available for the funding of projects. The Council may limit individual grant awards to whatever amount it deems desirable to advance the intent and purposes of the Act: *Provided*, That no project sponsor shall receive infrastructure grant money in an amount in excess of fifty percent of the total cost of the project.

5.9. Terms of Grant. Where a project sponsor has received infrastructure grant money to fund a project, and such project is then sold to a for profit entity, the project sponsor shall reimburse the Infrastructure Fund the ~~proportionate full~~ amount of infrastructure grant, ~~less the applicable share of accumulated depreciation on such asset (calculated using the Internal Revenue Service Accelerated Depreciation Schedule for the categories of asset in question) money received based upon the value of the project at the time of the sale.~~ The Council may establish such other terms and conditions as it deems necessary.

5.10. Loans. The Council shall authorize the Water Development Authority to make loans or loan assistance from the Infrastructure Fund ~~on a case-by-case basis based on the need of the project sponsor and upon such terms and conditions as the Council shall recommend.~~ No loan or loan assistance will be authorized where the project, if funded, will provide subsidized services to certain users in the service area of the project.

5.11. Limit on Loan Amount. The Council may limit loans to project sponsors to whatever amount it deems desirable to advance the intent and purposes of the Act.

5.12. Limit on Loan Interest Rate. The interest rate on any loan to governmental, quasi-governmental, or not-for-profit project sponsors for projects made pursuant to the Act shall not exceed three percent per annum. Loans made to for profit entities shall bear interest at the current market rates which shall be the equivalent of the prime rate published as such in the Wall Street Journal, or similar publication, on the date of the loan commitment.

5.13. Financial Assistance from the Fund. Each loan, loan guarantee, grant or other assistance made or provided by the Water Development Authority shall be evidenced by a loan, loan guarantee, grant or assistance agreement between the Water Development

Authority and the project sponsor to which the loan, loan guarantee, grant or assistance shall be made or provided, which agreement shall include, without limitation and to the extent applicable, the following provisions:

5.13.1 The estimated cost of the infrastructure project or project, the amount of the loan, loan guarantee or grant or the nature of the assistance, and in the case of a loan or loan guarantee, the terms of repayment and the security therefore, if any;

5.13.2. The specific purposes for which the loan or grant proceeds shall be expended or the benefits to accrue from such loan guarantee or other assistance, and the conditions and procedure for disbursing loan or grant proceeds;

5.13.3. The duties and obligations imposed upon the project sponsor regarding the acquisition, construction, improvement or operation of the project or infrastructure project; and

5.13.4. The agreement of the project sponsor to comply with all applicable federal and state laws, and all rules and regulations issued or imposed by the Council or other state, federal or local bodies regarding the acquisition, construction, improvement or operation of the infrastructure project or project, and granting the Water Development Authority the right to appoint a receiver for the project if the project sponsor should default on any terms of the agreement.

5.14. Advance Funding Assistance. If the Council determines that the engineering studies and requirements for the pre-application process would impose an undue hardship on a project sponsor, the Council may provide funding assistance to the project sponsor to defray the expenses of such process from moneys available in the Infrastructure Fund: Provided, That such funding assistance is limited to an amount equal to five thousand dollars or fifty percent of the total pre-application cost, whichever amount is greater. If the project is ultimately approved for a loan by the Council, the amount of such funding assistance shall be included in the total amount of the loan to be repaid by the project sponsor. If the project is not ultimately approved by the Council, the amount of such funding assistance shall be considered a grant by the Council, and the total amount of the assistance shall be forgiven. In no event may the amount of advance funding assistance provided to all project sponsors exceed, in the aggregate, one hundred thousand dollars annually, as determined on a State fiscal year basis.

5.15. Crisis Situation Funding Assistance. The Water Development Authority, upon recommendation of the Council or designated committees of Council, shall make funding available to provide assistance to restore or safeguard water or waste water treatment service following a crisis situation which is an

immediate threat or endangerment to the public health, provided, that the project sponsor must notify the Council as soon as reasonably possible following the incident and make application for funding in writing within 30 days of the incident.

5.16. Other Assistance. The Authority, at the ~~discretion~~ ~~direction~~ of the Council, may provide other forms and methods of assistance in addition to loans and grants, including, but not limited to, bond and loan guarantees and the purchase of insurance for the bonds.

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*Dist 11/15/95 meeting
Approved*

Senator Ross moves to ^{modify} ~~amend~~ the rule on page 12 by adding thereto a new subsection 5.13.5 to read as follows:

5.13.5 Each project sponsor who receives assistance from the Infrastructure Fund for a project must certify to the Council that it will construct any building required for public use with a roof sloped sufficiently to allow for the proper drainage of water.

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Amend by adding a new subsection as subsection 2.8 to read as follows:

2.8. Either before or after receiving a certificate of authority, the applicant must provide amended versions of the documents required by subparagraphs 2.3.d, D, and E of this rule to the Insurance Commissioner within thirty (30) days of any change in the individuals referred to in those subsections.

This amendment requires HMO's to file amended biographical information whenever there is a change of their officers, directors, or administrators.

Approved

Dist 11/15/95 meeting

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Secretary of State

Subject: Procedures for canvassing elections, 153 CSR 18.

PERTINENT DATES

Filed for public comment: June 23, 1995
Public comment period ended: July 24, 1995
Filed following public comment period: July 28, 1995
Filed LRMRC: July 28, 1995
Filed as emergency: n/a

Fiscal Impact: None

ABSTRACT

S. B. 573(1995) required the Secretary of State to make, amend and rescind any rules, regulations or orders as might be necessary to standardize and make effective the provisions of West Virginia Code, §3-1A-1, et seq. In addition, all rules promulgated under West Virginia Code, §3-1A-1, et seq., were to be submitted to the LRMRC on or before August 1, 1995.

This proposed rule combines three rules which had been filed as procedural rules in 1994 and as legislative rules in 1995. During discussions with the agency on counsel's suggested modification the agency determined that it was unnecessarily repetitious to have three separate rules on canvassing procedures.

This proposed rule sets out the guidelines for conducting a canvass of an election. The rule covers the use of punch cards or optical scan ballots, lever voting machines and paper ballots. The procedures set forth in the rule are in accord with the requirements of West Virginia Code, §3-4-26, §3-4A-28 and §3-6-9.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 adds a definition section. The most important addition is the definition of board of canvassers. A Board of Canvassers consists of different groups depending on the type of election being canvassed. In statewide primary general or special elections and for any other election conducted in conjunction with a statewide election using the same precincts and election officials the county commission is the board of canvassers. The county commission is also the board of canvassers for special elections ordered by the county commission and held throughout all

or part of that county and any other election conducted in conjunction with the special elections using the same precincts and election officials. The county commission and the board of education jointly comprise the board of canvassers for any special levy or bond election ordered by the board of education. The municipal governing body is the board of canvassers for elections held entirely within the city and not held in conjunction with any county or state election.

Section 3 sets out the steps necessary to prepare to conduct the canvass. The canvass is to begin on the Friday immediately following a primary election and on the fifth day, excluding Sunday, after a general election. A quorum of the board must be present in order to conduct the canvass.

All voting materials including the returns, used and unused ballots, pollbooks, official registration records, tabulating and voting devices, ballot boxes, absentee ballots, and other such documents are to be brought to the board. Generally the canvass is conducted at the county courthouse or if a municipal election is being canvassed it will be conducted at city hall. However, any canvass conducted when lever voting machines have been used will be conducted at the place where the machines are stored.

Section 4 refers the reader to the proper sections of the rule for the order the canvass is to follow. The process is slightly different for the three voting systems.

Section 5 provides the process for receiving absentee ballots for all three systems. The clerk responsible for absentee voting for the election being canvassed must deliver the ballots, lists and other documents to the board. Any absentee ballot, received after the polls have closed that has a late or missing postmark must be examined by the board for a post mark. The ballots must be counted and recorded in the record of the canvass. The envelopes with late or missing postmarks are returned to the packet and held to be sealed after the precincts have been processed. Any ballots which have a postmark on or before election day are to be put with the proper precinct to be counted.

Section 6 deals with canvassing each precinct. The actual steps in the process, i.e. the manner the envelopes are to be opened and counted is not set forth in the rule. Rather, the Secretary of State will provide a step by step manual to the governing body responsible for canvassing the returned of an election. The manual must be provided at least once annually and not less than 15 days before the first election held in that calendar year.

Section 7 sets out the special canvassing procedures to be used for elections conducted with lever voting machines. The board must examine each machine immediately after convening the canvass

and before the precincts are canvassed. The board must compare the number of the machine and the number of the external counter with the corresponding numbers on the precinct return sheet. The board must also open the machine and compare the tallies on the internal counters with the results recorded on the precinct returns. If the numbers differ, the true numbers must be recorded in red on the precinct returns. ✓

Section 8 sets forth the process for hand counting 5% of the precincts where electronically tabulated ballots were used. A random selection of which precincts will be counted must be made. It is recommended that two people examine each ballot and read out the votes cast. Two other people should independently record the votes. The results of the recorded votes should be compared to the tabulated results. If there is more than a 1% difference all precincts must be hand counted.

Section 9 explains the procedure for declaring the results. After the hand count had been completed, the votes in all precincts are to be totaled again. These totals must be declared and recorded. At a minimum of 48 hours after the totals have been declared the results may be certified. The board of canvassers is to announce when the results will be certified if no recount is requested. The board is to adjourn until that time.

Section 10 discusses certification of the results. If no recount is requested, duplicate certificates of the results are prepared in primary elections for each office and each party. In the general election, the certificates for federal, statewide, legislative and judicial offices must be prepared in triplicate. All other results for offices and issues in the general election are to be prepared in duplicate. In primary elections the board must send certificates of the election to the county commission or the municipal governing body for a municipal election. For candidates on the ballot only within the county, one original certificate must be filed with the clerk of the circuit court and copy is filed with the secretary of state. For candidates on the ballot in more than one county, one original certification for each candidate will be filed with the secretary of state.

In general elections the board must transmit original certificates for each candidate and the election records to either the county commission or in municipal elections to the municipal governing board. One certificate is to be mailed to each candidate voted for on the ballot. For candidates for President and Vice President, US Senator, US House of Representatives, Justice of the supreme Court of appeals and judge of the circuit court, original certificates are to be filed with the Governor and a copy with the Secretary of State.

Each member of the board must sign each certificate.

Section 11 is preparation for a recount. If a recount or contest is requested in one race but not others, the other races

must be certified. A date should be scheduled for the recount which gives people at least three days notice. Notice of the recount should be served by the sheriff.

AUTHORITY

Statutory authority: W.Va. Code, §3-1A-6, provides as follows:

The secretary of state shall be the chief election official of the state. Except for those rules required by the provisions of section five of this article to be promulgated by the commission, the secretary of state shall have the authority, after consultation with the state election commission, of which he is a member, to make, amend and rescind such orders and to promulgate such legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, as may be necessary to standardize and make effective the provisions of this chapter. Any rule proposed for promulgation by the secretary of state pursuant to the provisions of this section, and all rules heretofore adopted or in any way represented to govern the administration or enforcement of the provisions of this chapter by the secretary of state, shall be submitted on or before the first day of August, one thousand nine hundred ninety-five, to the Legislature for review by the legislative rule-making review committee and approval by the Legislature. All rules which have not been submitted and approved as aforesaid shall be of no further force and effect as of the first day of April, one thousand nine hundred ninety-six.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE

SERIES 18
PROCEDURES FOR CANVASSING ELECTIONS

§153-18-1. General.

1.1. Scope -- This rule details procedures for the board of canvassers for canvassing the results of elections conducted with paper ballots, lever voting machines, or electronically tabulated ballots, including punch card ballots and optical scan ballots.

1.2. Authority. -- W. Va. Code 3-1A-6

1.3. Filing Date. -- June 23, 1995

1.4. Effective Date. --

§153-18-2. Definitions.

2.1. "Board of canvassers" or "board" means:

2.1.a. The County Commission of each county for any statewide primary, general or special election held throughout the county, and for any other election conducted in conjunction with a statewide election using the same precincts and election officials;

2.1.b. The County Commission of the affected county for any special election ordered by that Commission and held throughout all or part of that county, and for any other election conducted in conjunction with that county election using the same precincts and election officials;

2.1.c. The County Commission and the Board of Education, jointly, for any special levy or bond election ordered by the Board of Education;

2.1.d. The municipal governing body for any primary, general or special election conducted by the municipal governing body entirely within the city and not held in conjunction with any county or state election.

2.2. "Canvass" means the proceeding required by law in which the materials, equipment and results of an election are reviewed, corrected and officially recorded prior to the certification of that election.

2.3. "Election" means any statewide primary, general or special election held under the provisions of the West Virginia Code throughout the state or any of its subdivisions.

2.4. "Electronically tabulated ballots" means ballots authorized under the provisions of Article 4A, Chapter 3 of West Virginia Code, including those ballots referred to as punch card and optical scan ballots, which are counted by means of electronic scanners or readers.

2.5. "Lever voting machines" means those mechanical vote recording devices authorized under the provisions of Article 4, Chapter 3 of West Virginia Code in which the votes cast are recorded on counters within the voting machine.

2.6. "Paper ballots" means ballots authorized under the provisions of Article 1, Chapter 3 of West Virginia Code which are counted by hand.

§158-18-3. Preparation.

3.1. The governing body constituting the board of canvassers shall schedule the canvass to begin on the Friday immediately following a primary election, and on the fifth day, not counting Sunday, after a general election. If the fifth day falls on a Saturday or legal holiday, the canvass shall begin on the next business day.

3.1.a. For a canvass conducted by the county commission or a joint canvass conducted by the county commission and board of education, the canvass shall be held at the county courthouse; except that, for an election conducted with lever voting machines, the canvass shall be convened at the place of storage of the voting machines in order to perform the review required under section 7.

3.1.b. For a canvass conducted by a municipal governing body, the canvass shall be held at city hall.

3.2. A quorum of the governing body constituting the board of canvassers, or in the case of a joint board of canvassers as prescribed in 2.1.c., a quorum of each governing body, must be present to conduct the canvass.

3.2.a. If a quorum of the governing body, or each governing body, is not present, the meeting will stand adjourned until the next business day.

3.2.b. If the canvass cannot be completed in one day, the board of canvassers may adjourn until the next day, and so on from day to day until the canvass is completed and the results declared.

3.3. The board of canvassers may utilize regular or temporary personnel to assist with the canvass, but all procedures must be conducted under the supervision of a quorum of the board.

3.4. The presiding officer of the governing body shall act as the presiding officer of the board of canvassers.

3.5. The clerk of the county commission for canvasses conducted by the county commission, or the municipal clerk or recorder for canvasses conducted by the municipal governing body, shall assist the board of canvassers.

3.6. The officers having custody of the materials and equipment of the election shall bring it before the board at the proper time, as follows:

3.6.a. When paper ballots were used, the ballot boxes, all packages of voted, unused, spoiled and challenged ballots, the pollbooks, tally sheets, precinct return certificates, official registration records, and cumulative returns;

3.6.b. For canvasses of electronically tabulated ballot elections, the ballot boxes, all packages of tabulated, spoiled, challenged and any unused ballots, the pollbooks, officials registration records, voting devices, tabulating equipment, and computer printouts of the unofficial tabulation of the ballots for each precinct and any supplementary tabulations such as tally sheets of hand counted ballots with write-in votes prepared on election night; and

3.6.c. For canvasses of lever voting machine elections, following the examination of the voting machines at the place where they are stored, according to the procedures outlined in section 7, the packages of challenged, unused, and voted paper ballots used in conjunction with the election, the pollbooks, official registration records, the precinct return certificates, and the cumulative returns.

§158-18-4. Order of Canvassing Procedures by Voting System

4.1. For canvasses of elections conducted with paper ballots, the board of canvassers shall proceed with steps outlined in sections 5, 6, 9, 10 and 11, in that order.

4.2. For canvasses of elections conducted with electronically tabulated ballots, the board of canvassers shall proceed with steps outlined in sections 5, 6, 8, 9, 10 and 11, in that order.

4.3. For canvasses of elections conducted with lever voting machines, the board of canvassers shall proceed with steps outlined in sections 7, 5, 6, 9, 10 and 11, in that order.

§158-18-5. Receiving the Absentee Ballots for All Voting Systems

5.1. The clerk responsible for absentee voting for the election shall deliver to the board of canvassers all absentee ballots, lists and other documentation as follows:

5.1.a. All absentee ballots postmarked on or before election day but received after delivery to the polls, along with

the original applications and a precinct list of those ballots, to be delivered in packets labeled with the precinct number;

5.1.b. All absentee ballots challenged by the circuit clerk, along with the original applications and a precinct list of those ballots, to be delivered in packets by precinct; and

5.1.c. All absentee ballots not postmarked by election day and received after the polls are closed, along with the original applications and a list of those ballots, to be delivered in a single packet.

5.1.d. Certification by the clerk responsible for absentee voting that the voter registration records for each absentee voter have been examined and that all unchallenged absentee ballots were cast by voters properly registered.

5.2. The board of canvassers shall open the packet of absentee ballots with late or missing postmarks received after the polls have closed, as described in subdivision 5.1.c. The board shall then:

5.2.a. Examine each absentee envelope for the postmark;

5.2.b. Count and record in the record of the canvass the number of ballot envelopes found with a late or missing postmark, return the envelopes to the packet and hold them to be sealed after the precincts have been processed; and

5.2.c. Place any ballot envelopes found to contain a postmark dated on or before election day with the materials from the proper precinct to be processed utilizing the step procedures issued by the Secretary of State according to subsection 6.1.

§153-18-6. Canvassing Each Precinct.

6.1. At least once annually, and not less than 15 days before the first election held in that calendar year, the Secretary of State shall provide a step procedures manual for canvassing individual precincts to each governing body responsible for canvassing the returns of that election.

6.1.a. The manual shall include detailed descriptions of the steps required to verify the accuracy of the "Statement of Ballots Used", the steps required for processing absentee ballots as provided in subsections 5.1.a. and 5.2.c., and the steps required for determining the disposition of the challenged ballots.

6.1.b. The manual shall include worksheets for the board of canvassers to record the findings relating to each precinct and to enter the tallies of challenged or absentee ballots counted by the board of canvassers and added to the unofficial results.

6.2. In canvassing the precincts, the board of canvassers shall perform the step procedures and complete the worksheets for each precinct, considering one precinct at a time.

§153-18-7. Special Canvassing Procedures for Elections Conducted with Lever Voting Machines

7.1. Immediately after convening the canvass and before canvassing the individual precincts as provided in section 5 of this rule, the board of canvassers shall examine each voting machine, with only one machine open at a time.

7.1.a. The board shall first compare the number of the machine and the number of the external counter with the corresponding numbers entered on the precinct return sheet.

7.1.b. The board shall then open the back of the machine and read the tallies recorded on the counters for each position and compare those numbers with the results recorded on the precinct returns. If the numbers differ, the board shall enter the true numbers on the precinct returns in red ink, and relock the machine.

7.2. Any candidate or that candidate's party representative may observe the reading and recording of the tallies during the examination of the voting machines.

§153-18-8. Special Canvassing Procedures for Elections Conducted with Electronically Tabulated Ballots; Hand Counting Five Percent (5%) of Precincts.

8.1. The board of canvassers shall tally by hand the ballots of a number of precincts equal to five percent of the total number of precincts in the jurisdiction, not fewer than one precinct, and with fractions rounded to the nearest whole number, as in the following table.

When the total precincts equal:	Count the ballots of:
1 - 29	One precinct
30 - 49	Two precincts
50 - 69	Three precincts
70 - 89	Four precincts
90 - 109	Five precincts
110 - 129	Six precincts
130 - 149	Seven precincts
150 - 169	Eight precincts
170 - 189	Nine precincts

8.2. The board shall identify the precincts to be counted by random selection, such as by drawing, and may not arbitrarily select.

8.3. In order to reduce the potential for error, the tally should be made with two persons reading out the votes cast on each ballot, and two other should separately record the votes read.

8.4. After the hand count of each precinct is recorded, the board shall compare the recorded tallies with the tabulated results of the same precincts.

8.5. If the difference between the tabulated results of the randomly selected precincts and the hand counted results of the same ballots is more than 1% of the total votes cast, all precincts must be hand counted.

153-18-9. Declaring the Results.

9.1. After the canvassing procedures have been completed for all precincts, the board shall re-total the votes cast for each candidate and for or against every issue. The board shall then declare the resulting totals and enter each total into the record of the canvass.

9.2. The board shall also announce the place and time, which shall be scheduled at least forty-eight (48) hours after the declaration, of the meeting at which the results will be certified if no recount is requested, and shall then adjourn until that time.

156-8-10. Certifying the Results.

10.1. If no recount is demanded according to the requirements of law, the board shall prepare duplicate certificates for a primary election for each office and each party, and for the general election for each office and ballot issue, with the total votes for each candidate or question entered in words and numbers on the certificates. In the general election, the certificates for federal, statewide, legislative and judicial offices shall be prepared in triplicate originals.

10.2. The board shall take official action to certify the results of the election, and each member of the canvassing board shall sign each certificate.

10.3. The board of canvassers shall transmit certificates for a primary election within thirty (30) days from the election, or within thirty (30) days from the completion of a recount if one is requested, as follows:

10.3.a. One of each original shall be filed with the election records of the county commission, or of the municipal governing board for a municipal primary election.

10.3.b. For candidates on the ballot only within the county, including single county districts, county offices and county executive committee, one of each original shall be filed with the clerk of the circuit court, and one copy of each shall be filed with the secretary of state.

10.3.c. For candidates on the ballot in more than one county, one of each original shall be filed with the secretary of state.

10.3.d. For issues on the ballot, one of each original shall be filed with the secretary of state.

10.3.e. Upon request of the chairman of the political party executive committee of the county, a certificate showing the

number of votes received by each of the candidates of the party in the county or any magisterial district therein.

10.3.f. For municipal elections, one of each original shall be filed with the municipal recorder or clerk.

10.4. The board of canvassers shall transmit certificates for a general election within thirty (30) days from the election, or within thirty (30) days from the completion of a recount if one is requested, as follows:

10.4.a. One of each original shall be filed with the election records of the county commission, or of the municipal governing board for a municipal primary election.

10.4.b. One certificate shall be mailed to each candidate voted for on the ballot.

10.4.c. For candidates for President and Vice President, United States Senator, United States House of Representative, Justice of the Supreme Court of Appeals, and judge of circuit court shall be filed with the Governor, and one copy of each shall be filed with the secretary of state.

10.4.d. For candidates for statewide office, except Justice of the Supreme Court of Appeals, and candidates for State Senate and House of Delegates, one of each original shall be filed with the secretary of state.

10.4.e. For issues on the ballot, one of each original shall be filed with the secretary of state.

§153-18-11. Preparing for a Recount.

11.1. If a recount is requested by any candidate, the board of canvassers shall proceed to certify the results for all offices and issues not subject to the recount request.

11.2. For any office in which a recount has been properly requested and a bond posted, the board shall immediately schedule a date for the recount to begin, which shall be no earlier than three days after the notices are served.

11.3. The board shall prepare the proper notices for the recount proceeding and make arrangements with the sheriff to serve the notices on each of the other candidates in the race in which the recount has been requested within twenty-four (24) hours following the meeting held for the purpose of certifying the election.

Dist 11/15/95 meeting

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Infrastructure & Jobs Development Council

Subject: Infrastructure & Jobs Development Council Funding Rules
167 CSR 1 (Modified Rule)

PERTINENT DATES

Filed for public comment: April 10, 1995

Public comment period ended: May 11, 1995

Filed following public comment period: July 7, 1995

Filed LRMRC: July 12, 1995

Filed as emergency: April 10, 1995

Fiscal Impact: It is anticipated that 300 million dollars will be disbursed over the next five to ten years. The value of the spin off has not yet been estimated. The agency will provide a new fiscal note when the modified rule is filed with the Secretary of State.

ABSTRACT

This rule effectuates the purposes of West Virginia Code §31-15A-1 et seq. by bringing all of the infrastructure agencies together to discuss all proposed infrastructure projects. This eliminates the lengthy, frustrating process of going to each of the various funding agencies for assistance prior to seeking approval from the Public Service Commission. The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 is the definition section. Generally, it copies verbatim the definitions in the statute. Some of the specific definitions are:

"Cost" of a project includes everything from planning the project, acquiring and preparing the land, designing the project, conducting the feasibility studies, constructing the project, purchasing the necessary furnishings and equipment, loan or origination fees, finance charges, interest incurred prior to and six months after completion of the project and the cost of all legal services and expenses.

"Crisis Situation" is defined as a recent act of God or man which results in a loss or significant decline in quality or

quality of potable water or the treatment of waste water which poses serious and immediate threat or endangerment to health for which local funds are not available. Problems which are the result of failure to properly maintain the water or waste water treatment facility, negligence or failure to upgrade the facility to meet regulatory standards are not "crisis situations".

"Project" by statutory definition is limited to waste water facility or water facility projects.

"Infrastructure project" is defined as any project in the State which the Council determines it likely to foster and enhance public health, economic growth and development in the area where it is located. The definition includes a non-limiting list of things that would be considered infrastructure projects.

Section 3 discusses the preliminary application process and how it is reviewed. If a project sponsor believes the project is not governed by the Council, the sponsor completes the applicable portions of the application and requests to be exempt from review. There are six exemptions listed in the rule. They include projects which had been bid out or had all funding in place on July 1, 1994; projects where the funding recipient is designated by state or federal law or regulation; projects not funded by a State infrastructure agency; projects funded from the governor's civil contingent fund; activities determined by the council to be outside the scope of the definition of project and actions taken by the Economic Development Authority pursuant to West Virginia Code §31-15-1 et seq.

The Council must review the preliminary application within thirty days of the application being presented at a regularly scheduled Council meeting. The Council must either recommend that the project sponsor seek funding, not seek funding or request additional information. The Council is required to make its recommendation in writing and submit copies to all State infrastructure agencies listed in the recommendation as funding sources. It must explain what type of financing the sponsor should seek, the amount and source or sources from which to seek funding. The Council must also provide written notice to the sponsor if it determines that the project is not eligible for funding or that the project is not an appropriate investment of State funds.

Section 4 provides general guidelines for the review of projects seeking funding from the Council or other infrastructure agencies. The Council is to consider many things such as whether the project will improve public health, enhance economic development, comply with federal and state laws and regulations, the availability of alternative sources of funding and the applicant's ability to operate and maintain the system. The Council has the discretion to consider other factors that it may consider necessary or appropriate to accomplish the purposes

and intent of the Act. The agency has advised counsel that procedural rules will be promulgated which will specify the procedures for the application process.

Section 5 provides for the administration of the infrastructure fund by the Water Development Authority. The fund is comprised of any appropriations, grants, gifts, contributions, loan proceeds or other revenues received by the fund. The fund is disbursed in the form of loans, loan guarantees, grants or other assistance. The Council determines whether a grant should be provided in whole or in part to a project by considering the effect that financing a project's costs will have on the rates charged to the users. The council is required to review the mandatory minimum end user utility rate. The mandatory minimum end user utility rate is based upon 1 and 1/2 percent of the median household income for the geographic area to be served by the project. That number is multiplied by an average customer usage of 4,500 gallons per month. The median household income is established by the Bureau of Census for the minor civil division most closely related to the geographic boundaries of the project. If a project covers more than one division or a municipal project provides services outside the corporate boundaries, the Council will compute the minimum end user utility rate. In addition to the end user utility rate, the council may consider such factors as the financial condition of the applicant, and the project sponsor and the inability of the sponsor to secure grant funding from other sources.

The Council may issue grants up to 20% of the total funds available in the Infrastructure Fund. Grants may not exceed 50% of the total cost of the project. If a project which has received grant funding is later sold to a for profit entity, the project sponsor must reimburse the Fund the proportionate amount of the grant received. Reimbursement is based on the value of the project at the time of the sale.

The Council has the authority to authorize the Water Development Authority to make loans or provide loan assistance. There is no limit on the amount of a loan. The interest rate for governmental entities and other not for profit project sponsors can not exceed 3% per annum. Loans made to for profit entities will be charged interest at the prime rate on the date of the loan commitment. The statute limits the funds that can be pledged to guarantee loans to 20% of the aggregate amount of the infrastructure revenues deposited into the Fund during a fiscal year.

The rule provides for advance funding assistance in cases where the Council determines that the engineering studies and requirements for the pre-application process would impose an undue hardship on a project sponsor. This assistance is limited to \$5,000 or 50% of the pre-application cost, whichever is greater. If the project is later approved for a loan, the advance funding

assistance will be included in the loan. If the project is not approved by the Council, the advance funding assistance will be considered a grant. Advance funding assistance is limited to an aggregate of \$1000 per fiscal year.

^{\$100,000}
The Council can authorize the Water Development Authority to provide funding assistance in a crisis. Funding would be available to assist in restoring or safeguarding water or waste water treatment services where there is an immediate threat or endangerment to the public health. The project sponsor must notify the Council as soon as possible following the crisis and must make written application for funding within 30 days of the crisis.

The Council has the discretion to authorize the Water Development Authority to provide other forms of assistance not set forth in the rule. This includes bond and loan guarantees and the purchase of insurance for the bonds.

AUTHORITY

Statutory authority: W.Va. Code, §31-15A-1 et seq.

§31-15A-4. Development of guidelines and preliminary application for funding assistance.

"(a) To implement and carry out the intent of this article, the council shall promulgate legislative rules in accordance with article three, chapter twenty-nine-a of this code to develop comprehensive, uniform guidelines for use by the council and other state infrastructure agencies in evaluating any request by a project sponsor for funding assistance to plan, acquire, construct, improve or otherwise develop a project or infrastructure project. . . ."

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE

INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel had suggested several modifications which the agency addressed by providing a modified rule to be considered by the LRMRC.

SPECIAL MEETING

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Wednesday, November 15, 1995, 9:00 a.m. - 4:30 p.m.

Senate Judiciary Committee Room - W-208

1. Approval of Minutes - Meeting November 14, 1995
2. Review of Legislative Rules:
 - a. Division of Banking
Regulations Pertaining to the WV Consumer Credit and Protection Act
 - b. Division of Banking
Regulations Pertaining to the WV Consumer Credit and Protection Act and the Industrial Bank and Industrial Loan Company Act
 - c. Division of Banking
Regulations Pertaining to the WV Industrial Bank and Industrial Loan Company Act
 - d. Division of Banking
Legislative Rule Pertaining to the Legal Lending Limit
 - e. Division of Banking
Permissible Additional Charges In Connection With A Consumer Credit Sale
 - f. Insurance Commissioner
Regulation Relating to Excess Line Brokers
 - g. Insurance Commissioner
Continuing Insurance Education
 - h. Insurance Commissioner
Recognizing Mortality Tables For Use in Determining Reserve Liability for Annuities
 - i. Insurance Commissioner
Examiners' Compensation, Qualifications and Classification

- j. Insurance Commissioner
Substandard Risk Motor Vehicle Insurance Notice
Requirements
- k. Insurance Commissioner
Health Maintenance Organization
- l. Insurance Commissioner
Filing Procedures for Health Maintenance Organizations
- m. Insurance Commissioner
Actuarial Opinion and Memorandum Rule
- n. Insurance Commissioner
Minimum Reserve Standards for Individual and Group
Health Insurance Contracts
- o. Secretary of State
Procedures for Canvassing Electronic Ballot Elections
using Punch Card or Optical Scan Ballots
- p. State Election Commission
Election Expenditures
- q. State Election Commission
Fair Campaign Practices
- r. State Election Commission
Corporate Political Activity
- s. Environmental Protection/Air Quality
Emission Standards for Hazardous Air Pollution
Pursuant to 40 CFR Part 63
- t. Environmental Protection/Water Resources/Waste
Management
Waste Tire Management Rule

3. Other Business: