WEST VIRGINIA CODE: §19-16A-3

§19-16A-3. Definitions.

As used in this article:

(1) "Active ingredient" means:

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

(B) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

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

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

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

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

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

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

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

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

WV Legislature

only under the direct supervision of a certified public applicator.

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

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

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

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

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

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

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

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

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

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

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

WV Legislature

pesticide by the commissioner.

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

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

(21) "Ingredient statement" means a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide, and in case the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

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

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

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

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

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

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

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

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

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

(29) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform or sac like bodies

WV Legislature

covered with cuticle and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

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

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

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

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

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

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

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

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

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

WV Legislature

(39) "Private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or her or his or her employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on property of another person.

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

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

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

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

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

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

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

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

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

(49) "Wildlife" means all living things that are neither human, domesticated nor, as defined

WV Legislature

in this article, pests, including, but not limited to, mammals, birds and aquatic life.

WV Legislature