

**Sec. 2005. Enforcement**

- A. Enforcement of this article shall be implemented by the Nicholas County Health Officer, or his or her designee. Provisions in this article which overlap with the authority of other agencies may be referred to that agency for enforcement under other applicable laws at the discretion of Nicholas County Health Department.
- B. Any citizen who desires to register a complaint under this regulation may initiate enforcement with the Nicholas County Health Department. Complaints should be written and signed. The identity of the complainant shall be kept confidential unless otherwise requested by the complainant or a court of competent jurisdiction; however, nothing in this article will prevent the accused from exercising his/her constitutional right to confront his/her accuser during the proceedings of criminal prosecution.
- C. For the purpose of enforcing the provisions of this regulation, the Health Officer or his or her designee, may at all reasonable times enter upon and in any open premises within Nicholas County to inspect the same for evidence of vector harborage.
- D. As stated below, in the event a violation of this regulation is found to be located upon any property in Nicholas County, the Health Officer or his/her designee shall give written notice thereof to the owner or occupant or both of the property requiring the condition to be corrected in not more than 30 calendar days of the receipt of the notice.
  - 1. The notice may be delivered directly to the hands of the owner or occupant or responsible person in his or her household who will sign for him or her; or
  - 2. The notice or a copy thereof, may be mailed by certified return-receipt mail to the last known address of the owner or occupant; or
  - 3. If the notice is returned, a copy of the notice may be posted in a conspicuous place in or about the cited premises.
- E. As stated below, the owner or occupant in violation of this regulation may request and be granted an extension if circumstances prevent the correction of the condition in violation within the specified time limit.
  - 1. The request must be submitted in writing and signed and dated prior to the end of the specified correction period.
  - 2. The request must state the reason for the delay in compliance and a schedule for correction of violations.
  - 3. The Health Officer or his/her designee shall determine that the circumstances noted in the request are valid and decide whether an extension is justified.
  - 4. The total amount of time allowed after the receipt of the initial notice shall not exceed ninety (90) calendar days.

**Sec. 2006. Correction of violation required; failure to act**

- A. Except as in 2005.E. upon notice of violation of this regulation, the owner and occupant of the property upon which the violation exists shall take all necessary action to correct such violation within the time period specified in the notice. Failure of the owner or the occupant of the subject property to carry out the necessary measures to correct the said violation to the satisfaction of the Health Officer or his/her designee shall be a separate violation of this regulation.

**Section 2007. Violation and Penalties**

- A. Willful violation of this Vector Control Regulation is an unlawful act.

Any person who owns, occupies, inhabits or otherwise controls the use of a premise shall commit a willful violation if he/she:

- 1. Knowingly allows harborage conditions or infestation to exist on the premises after being served proper notice and the time allotted for correction has passed.
- 2. Knowingly violates any other provision of this vector control regulation after being served proper notice and the time allotted for correction has passed.

Except as in 2005.E, any person(s) who allows any vector harborage or infestation conditions to exist on property that he/she owns, occupies, or controls beyond the specified time period contained in the notice to correct the condition commits a willful violation of this vector control regulation. Each day that a violation remains uncorrected after the period stated for correction in the notice of violation without an extension granted by the Health Officer or his/her designee shall constitute a separate offense.

**B. Penalties:**

The Board of Health may, at its option, seek civil relief and/or file a misdemeanor complaint under W. Va. Code 16-2-15 against any person who willfully violates this vector control regulation.

Enforcement through civil process includes, but is not limited to, a petition for injunctive relief. Any person who willfully violates this vector control regulation, may be charged with a misdemeanor under W. Va. Code 16-2-15 and, upon conviction, be subject to a monetary fine. At the time of adoption of this vector control regulation, West Virginia 16-2-15 provided as follows:

***§16-2-15. Obstructing local health officers and others in the enforcement of public health laws; other violations; penalties.***

*Any person who willfully obstructs any local health officer, public health nurse, sanitarian or any other person charged with the enforcement of any public health law, in the performance of that person's legal duties in enforcing the law, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than fifty dollars and not more than five hundred dollars.*

*Any person who willfully violates any of the provisions of this article, or any of the rules or orders adopted or issued pursuant to the provisions, for which a penalty is not otherwise provided, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than two hundred dollars and not more than one thousand dollars.*

*Magistrates have concurrent jurisdiction with the circuit courts of this state for violations of provisions of this article.*

In cases of extended noncompliance or in cases of a clear and present danger to the health, safety or general welfare of the citizenry, the Health Officer shall notify the Nicholas County Commission for further action.

**Sec. 2012. Public Education**

The Nicholas County Health Department shall engage in a continuing program to explain and clarify the purposes and requirements of this ordinance to citizens affected by it. Such programs may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

**Sec. 2013. Other Applicable Laws**

The laws of the state of West Virginia shall govern the validity of this article, the construction of its terms and the rights of all persons affected by its enforcement. This article shall not be interpreted or construed to allow conditions where it is otherwise restricted by other applicable laws. This article is not intended to conflict with the United States Endangered Species Act or any other federal or state wildlife laws.

**Sec. 2014. Severability**

If any provision, clause, sentence or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

**Sec. 2015. Effective Date**

This article shall become effective immediately upon adoption.

This ordinance was approved by the Nicholas County Board of Health, to become effective immediately upon adoption.



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**NICHOLAS COUNTY VECTOR CONTROL  
REGULATION**

**Sec. 2000.**

Title- This article shall be known as the Nicholas County Vector Control Regulation.

Authority- WV Code §16-1-6; WV Code §16-1-17; WV Code §16-2-11(b)(3); WV Code §16-3-1; WV Code §16-3-6

**Sec. 2001. Findings and Purpose**

The Nicholas County Board of Health does hereby generally accept that:

- A. Creating or allowing harborage conditions for vectors of disease to exist threatens the health of the public, pets, and livestock.

- B. Vectors cause numerous cases of disease in humans and animals such as:

- Rabies (vector: mammals)
- Viral encephalitis- West Nile, LaCrosse, Eastern Equine (vector: mosquitoes)
- Parasites (vector: insects, arthropods and others)
- Plague (vector: rodents and other small mammals and their fleas)
- Shigellosis (vector: flies and other insects)
- Malaria (vector: mosquitoes)
- Hantavirus (vector: rodents)
- Others

- C. The following diseases have been found in humans or animals in West Virginia:

- West Nile, LaCrosse, Eastern Equine encephalitis
- Rabies Tularemia Other
- Parasites Huntavirus

- D. Additionally, the following diseases have also been found in states near West Virginia:

- Malaria Plague Others

- E. Mosquito and/or bird samples submitted from Nicholas County have tested positive for the following:

- West Nile LaCrosse Encephalitis
- Eastern Equine Encephalitis

- F. The presence of some vectors in large numbers can aggravate symptoms of asthma.

- G. The control of vector-borne diseases requires reduction of vector populations and removal of vector habitat.

- H. Certain necessary agricultural practices require storage and holding of water and stockpiles of materials that may be an attractant to vectors.

- I. Improper use of pesticides can cause illness and death in humans and non-target species.

- J. Improper use of pesticides can cause the development of resistance in the vector population.

- K. The presence of mosquito larvae in collections of water shall be evidence that mosquitoes are breeding at that location.

- L. The presence of rodents seen during the daytime, the existence of rodent burrows, runways, fresh droppings, urine tracks, rodent foot & tail tracks, and gnawing damage, fresh rodent carcasses, and rodent sounds generally indicates infestation.

**Sec. 2002. Definitions**

- A. **BREEDING AREA:** Any condition which provides the necessary environment for the birth or hatching of vectors.

- B. **COLLECTION OF WATER:** Standing water contained in ditches, pools, ponds, excavations, holes, depressions, open sewers, privy vaults, fountains, bird baths, cisterns, tanks, shallow wells, barrels, troughs, urns, cans, boxes, bottles, tubs, buckets, roof gutters, tanks, reservoirs, vessels, tires, appliances, automobiles, toys, miscellaneous junk, receptacles of any kind, or other containers or devices which hold water.

- C. **DESIGNEE:** Nicholas County Health Department Sanitarian.

- D. **DISPOSAL:** Includes the storage, collection, removal or handling of refuse.
- E. **EXTERMINATION:** The control and elimination of vectors by eliminating harborage areas; by removing food sources or making them inaccessible; by poisoning, spraying, fumigating, trapping or any other legal vector elimination method approved by the local, state, or federal authority having such administrative authority and used or applied in a way that is not injurious to human health or the safety of domestic animals and non-target species.
- F. **GARBAGE:** The animal and/or vegetable waste resulting from the handling, preparation, cooking, serving or non-consumption of food, or any other consumable material that would provide sustenance to vectors.
- G. **HARBORAGE:** Any place where vectors can live, nest or seek shelter.
- H. **HEALTH OFFICER:** The person holding the position of Health Officer or his or her designee.
- I. **INFESTATION:** The presence of vectors within or contiguous to a structure or premises in excessive numbers.
- J. **JUNK:** All large items of rubbish, including but not limited to:
  1. Non-operable automobiles.
  2. Non-operable appliances, such as refrigerators or stoves.
  3. Scrap metal
- K. **LITTER:** All waste material including, but not limited to, any garbage, refuse, trash, disposable package, container, can, bottle, paper, ashes, cigarette or cigar butts, carcass of any dead animal or any part thereof, or any other offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming, or manufacturing.
- L. **MOSQUITO-EATING FISH:** Species of fish approved by the West Virginia Department of Natural Resources to be stocked in the waters of West Virginia for the purpose of consuming mosquito larvae.
- M. **NECESSARY AGRICULTURAL OPERATIONS:** Any practice related to farming that is done in a manner consistent with the United States Department of Agriculture and/or the West Virginia Department of Agriculture recommendations. This term includes, but is not limited to, feeding and watering of farm animals and the growth of produce.
- N. **OCCUPANT:** Any person living, sleeping, cooking or eating in or actually having possession of a dwelling unit or a rooming unit, except that in dwelling units a temporary guest will not be considered an occupant.
- O. **OWNER:** Any person who, alone or joint-severally with others:
  1. Has legal title to any premises, dwelling or dwelling unit, with or without accompanying actual possession thereof, or
  2. Has charge, care or control of any premises, dwelling unit, as owner or agent of the owner, or an executor, administrator, trustee, assignee or rents or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this regulation to the same extent as if he/she were the owner.
- P. **PERSON:** Any individual, business, firm, corporation, association or partnership.
- Q. **PREMISES:** All areas of a property, including all non-sealed interior, exterior, grounds and yard spaces.
- R. **REFUSE:** All solid wastes, except body wastes, and shall include garbage, ashes and rubbish
- S. **RODENT INFESTATION:** Excessive numbers of rodents as evidenced by the existence of rodent burrows, runways, urine tracks, or foot & tail tracks combined with at least one of the following additional indicators:
  1. the presence of rodents seen during the daytime
  2. gnawing damage
  3. fresh droppings or fresh rodent carcasses
  4. rodent sounds

- T. **RUBBISH:** Solid wastes other than garbage, consisting of either:
  1. Combustible wastes, such as paper, cardboard, plastic, yard clippings and wood; or
  2. Noncombustible wastes, such as metal, glass and crockery.
- U. **SOLID WASTE:** Any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded materials, including carcasses of any dead animal or any other offensive or unsightly matter, solid, liquid, semisolid, or contained liquid or gaseous material resulting from industrial, commercial, mining, agricultural operations, and community activities.
- V. **STRUCTURE:** Any man-made construction or building which is located on any part of the premises.
- W. **VECTOR:** Any living creature which, either directly or indirectly, via microorganisms which it carries, can transmit disease to man. For the purposes of this chapter, the term "vector" shall ordinarily but not exclusively refer to rodent, insect or vermin species. For the purposes of this regulation, threatened or endangered or other species protected by law shall not be considered vectors.
- X. **VECTOR HARBORAGE or VECTOR SOURCE:** Any area, interior or exterior, where vectors can live, nest, breed or seek any form of shelter.
- Y. **VECTORPROOF:** A form of construction which prevents the ingress or egress of vectors to and from a given space or structure or which prevents vectors from gaining access to food, water or harborage.

**Sec. 2003. Prohibition of Vector Harborage and Breeding Areas**

- A. Except as in section 2003.A.1, it shall be unlawful to have, keep, maintain, cause or permit, within Nicholas County, any man-made or artificial collection of standing water in which vector mosquitoes breed or where mosquito larvae are found, unless such collection of water is treated or managed so as to effectively prevent such breeding.
  1. Necessary agricultural operations, such as livestock watering, are exempt from Section 2003.A unless it is determined by the Health Officer or designee that the operation may be contributing to disease spread or the operation is causing a vector nuisance for adjoining property owners.
  2. The presence of any mosquito larvae in a tire or other container suitable for the breeding of vector mosquitoes is prima facie evidence of the existence of a condition endangering public health and is a direct violation of this regulation.
  3. It shall be unlawful to keep tires that are capable of collecting and holding water for a period exceeding seven (7) days unless they are stored in a manner that prevents them from collecting water. Waste tires must be disposed of as stated in WV Code Chapter 17 Section 24 and WV Code Chapter 22 Section 15.
- B. It shall be unlawful to have, keep, maintain, cause or permit, within Nicholas County, any accumulation of garbage or rubbish unless the waste is managed so as to effectively prevent access to vectors. All solid waste storage, collection and disposal must be done in a safe, clean and sanitary manner consistent with other local, state (WV Code Chapter 22 Section 15) and federal laws.
- C. If an area is found to contain a rodent infestation as defined in this regulation or an infestation of any other vector species, all owners and occupants in the affected area must comply with the orders and recommendations issued by the Health Officer or his/her designee. Noncompliance with orders issued by the Health Officer or his/her designee is a violation of this regulation. Such orders and recommendations may include, but are not limited to:
  1. Storing all pet and domestic animal feeds in vector-proof sealed containers or structures inaccessible to vectors.
  2. Removing all vector food sources, such as fallen fruit and animal excrement.
  3. Extermination of the vectors by an approved method.
  4. Collecting and removing all solid waste to an approved landfill.

1. Removing or organizing piles of materials or elevating materials to at least 12 inches above ground and away from any structures.
2. Elevating to at least 12 inches above ground or vector-proofing structures except for storing agricultural products such as hay and other forage.

**Sec. 2004. Control Measures**

- A. Any person found to have areas that are supporting the breeding of vectors of disease shall use practices recommended by the United States Environmental Protection Agency, the Health Department, the West Virginia Department of Agriculture, and/or other agency having jurisdictional authority over the application of pesticides and pest control, to control the proliferation of such vectors. Vector control measures shall comply with the principles of integrated pest management.
- B. Baiting of rodents must be done at the cost of the person(s) responsible immediately prior to the removal of rodent habitat and harborage.
- C. Pesticides must be stored and used according to manufacturer's recommendations and in such a manner as to prevent the accidental poisoning of humans and non-target animals.
- D. Except as in E, F & G below, all man-made or artificial collections of water capable of supporting vector mosquitoes must be removed and all containers must be stored in an area protected from the weather or stored in another manner to prevent the collection of water or disposed of in an approved landfill.
- E. A person may choose to regularly treat the standing water with a pesticide approved for use as mosquito larval control.
- F. Except for tires and similar containers that cannot be easily emptied, containers may be emptied at least every seven (7) days or more often as necessary to prevent the successful hatching and growth of mosquito larvae.
- G. The treatment and management of any water for the prevention or control of mosquitoes includes but is not limited to:
  1. Screening with wire or plastic netting of at least eighteen (18) meshes to the inch each way, or with any other material which will effectively prevent the ingress or egress of mosquitoes;
  2. Emptying and cleaning of unscreened or untreated ornamental containers, containers used for the specific purpose of collecting water for use, and bird baths every seven (7) days to destroy all mosquito larvae and eggs (this does not apply to tires and similar containers due to the difficulty of emptying);
  3. Properly applying an approved and appropriate larvicide effectively;
  4. Stocking with approved mosquito-destroying fish;
  5. Removing by physical or approved chemical means, all vegetation and other obstructions which impede drainage, cause impoundment, and restrict free movement of mosquito-destroying fishes;
  6. Filling or draining to prevent temporary or permanent accumulations of water as allowed by law;
  7. Drilling holes or otherwise modifying the container so that it can no longer accumulate water;
  8. Treating, filling, or removing as feasible naturally existing mosquito-breeding sources such as tree and rock holes and water-holding plants or artificial containers such as wading or swimming pools.
  9. Constructing the collection of water in a manner that prevents or discourages the breeding of mosquitoes, such as a continually circulating system, a flowing system, or an enclosed system.
- H. The management of solid waste for the prevention or control of flies, rodents and other vectors includes but is not limited to:
  1. Except as in 2004.H.2, garbage shall be removed at a frequency of at least once every seven (7) days.
  2. Garbage that is stored for periods longer than seven (7) days prior to its collection for ultimate disposal must be kept in a closed metal or heavy plastic container designed specifically for this purpose or in a container durably constructed in such a manner that prevents access of rodents, flies, and other vectors.
  3. Garbage may not be stored in plastic garbage bags unless they are placed in an acceptable container as described above.
  4. Garbage may not be stored for periods longer than one month regardless of the type of storage container.